

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 5944/2022

Vidarbha Youth Welfare Society,
through its Secretary Mr. Yuvrajsingh
s/o. Vasantrya Choudhary,
aged about 54, R/o. Jog Compound,
Mangilal Plot, Camp, Amravati.

... **PETITIONER**

VERSUS

1. Dr. Mir Sadique Ali,
Aged about 62 yrs., Occ. Service,
R/o. Jamil Colony, Walgaon Road,
Amravati.
2. All India Council for Technical Education,
through its Chairman, Nelson Mandela Marg,
Vasant Kunj, New Delhi.
3. State of Maharashtra,
through its Secretary, Department of
Higher and Technical Education,
Mantralaya, Mumbai.
4. The Directorate of Technical Education,
Maharashtra State, through its
Director, 3-Mahapalika Marg,
Opposite Metro Cinema, Mumbai.
5. Sant Gadge Baba Amravati
University, through its Registrar,
Tapowan, Amravati.

... **RESPONDENTS.**

Mr. M.G. Bhangde, Sr. Advocate with Mr. R.D. Bhuibhar, Advocate for petitioner.

Mr. A.M. Sudame, Advocate for respondent No.1.

Mr. N.P. Lambat, Advocate for respondent No.2.

Ms. T.H. Khan, Assistant Government Pleader for respondent Nos. 3 & 4.

Mr. J.B. Kasat, Advocate for respondent No.5

CORAM : VINAY JOSHI, J.

JUDGMENT RESERVED ON : 26.04.2023

JUDGMENT PRONOUNCED ON : 30.06.2023

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. This petition is under Article 226 and 227 of the Constitution of India filed by the Management (Vidarbha Youth Welfare Society) raising a challenge to the order dated 05.08.2022 of the University and College Tribunal, Nagpur ("Tribunal") in appeal No. A-9/2021, by which notice of superannuation dated 27.11.2020 issued to respondent No.1 Principal (respondent) is quashed and set aside, by holding that the age of superannuation for Principal is of 65

years, as per AICTE Notification.

3. The petitioner-Society is registered under The Societies Registration Act, 1860 and The Maharashtra Public Trust Act, 1950. The petitioner-Society runs and administers a college namely “Prof. Ram Meghe College of Engineering and Management” situated at New Express Highway, Badnera, District Amravati. The petitioner’s - College is duly approved by respondent No. 2 All India Council of Technical Education (‘AICTE’). It is a private self-financed institution started imparting education from the academic year 2009-2010 under the relevant provisions of the All-India Council of Technical Education Act, 1987 (‘AICTE Act’). Respondent No.4, the Directorate of Technical Education, Maharashtra State has permitted the petitioner to run college on permanent non-grant basis, and it is affiliated to the respondent No.5 Sant Gadge Baba Amravati University (‘Amravati University’).

4. Respondent Dr. Ali was initially appointed for the period of one year on probation as a Principal of the said College vide order dated 29.04.2009. The appointment of Dr. Ali was regularized and

confirmed by the petitioner-Society vide letter dated 07.01.2011. In pursuance of the mandate of Ordinance 24 of the Amravati University, an agreement dated 07.01.2011 has been executed in between the petitioner-Society and Dr. Ali. In terms of the Clause (4) of the agreement, the age of superannuation of Dr. Ali shall be 65 years.

5. It is petitioner's case that the age of retirement of Dr. Ali by superannuation is 62 years as prescribed by the Government Resolution dated 05.03.2011 and 12.06.2016. The Approval Process Handbooks issued by the AICTE lays down that the appointment of teaching staff shall be strictly in accordance with the method and procedure of the affiliated University and State Government. The petitioner made a communication with the Joint Director of Technical Education, Amravati about the age of superannuation of Dr. Ali, who in turn confirmed that the age of superannuation of Principal of unaided private colleges is of 62 years. Accordingly, the petitioner has served an order of retirement by way of superannuation dated 27.11.2020 upon Dr. Ali, stating that he shall stand retired on 31.12.2020.

6. Initially, the said order of retirement was challenged by Dr. Ali in Writ Petition No. 3367/2020. In the said writ petition, interim order has been passed directing that the respondent (Dr. Ali) shall be allowed to function as Principal subject to condition that he shall neither claim salary, nor any right or equity. The petitioner (respondent of writ petition) has objected to the maintainability of the writ petition by virtue of existence of alternate remedy of appeal, provided under Section 81 of the Maharashtra Public Universities Act, 2016. The said writ petition was dismissed with liberty to Dr. Ali to resort alternate legal remedy of appeal. All questions were kept open and interim order was continued for further two weeks.

7. In turn, respondent Dr. Ali has preferred an appeal No. A-9/2021 before the Tribunal. The Tribunal has continued the order passed in writ petition towards interim measure. After hearing both sides, the Tribunal held that as per Universities Act, Statute and AICTE Regulations, the age of superannuation for Principal i.e. Dr. Ali is of 65 years and accordingly by allowing the appeal, quashed and set aside the order of superannuation dated 27.11.2020. Being aggrieved by said order of Tribunal dated 05.08.2022 the petitioner

Education Society is before this Court.

8. Heard both sides exhaustively. It is petitioner's prime contention that AICTE is only advisory and recommendatory Body which cannot regulate the service conditions of private colleges. The regulations framed by AICTE are not binding in law since they are of recommendatory in nature. Though the service agreement provides retirement age of 65 years, however the said agreement is not in consonance with the statutory format of agreement. It is submitted that the AICTE Regulations have not been adopted by the State Government as regards to the service conditions of unaided self funded colleges. The State Government is free to follow them fully or partially. The State Government has not adopted AICTE Regulations in full. It is submitted that Government Resolutions dated 20.08.2010 and 11.09.2019 apply to the aided colleges and they are to be applied fully. In support of said contention, the petitioner relied on several decisions of the Supreme Court of which contextual reference can be made in later part.

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9. Per-contra, Mr. Sudame, learned counsel appearing for the respondent Dr. Ali resisted the petitioner's contention. It is argued that the Tribunal has correctly applied the law in force, and the decision rendered in the appeal requires no interference. The Regulations framed under AICTE Act are having force of law. The law made by the State Legislature being in conflict with the law made by the Parliament, will not prevail. The AICTE has been enacted for regulating the norms and standards of technical education. Section 10 of the AICTE Act, provide functions of the Council. AICTE Regulation of 2010 as well as of the year 2019 would apply to all institutions imparting technical education and therefore, AICTE Regulations are mandatory in nature. It is submitted that already agreement has been executed in between Dr. Ali and petitioner specifying the age of superannuation as 65 years. The AICTE Regulations have been adopted by respondent No. 5 Amravati University. As per AICTE Regulations, age of superannuation is 65 years and therefore, the stand taken by the petitioner is untenable. Respondent has also relied on several decisions of different High Courts and the Supreme Court, to buttress the said stand.

10. At the inception, reference can be made of few admitted facts of the case. The petitioner is a private unaided, self-financed educational institution. The petitioner's college is a technical institution within the meaning of Section 2(h) of the AICTE Act, and governed by the provisions of AICTE Act, and Regulations. Dr. Ali was initially appointed on probation as a Principal for the period of one year vide order dated 29.04.2009. The services of Dr. Ali have been regularized by petitioner vide communication dated 07.01.2021. Undisputably, an agreement was entered in between Dr. Ali and petitioner on 07.01.2011 as required under Amravati University Ordinance 24. Clause (4) of the agreement provides the age of superannuation as 65 years. By virtue of the interim order of this Court and Tribunal, the petitioner is serving with the College subject to final outcome of the litigation.

11. Mr. Bhangde, learned senior counsel appearing for the petitioner would submit that the State Legislature is empowered to make laws with respect to any of the matters enumerated in List III of Seventh Schedule i.e. concurrent list. Particularly, entry No. 25 in List III of Seventh Schedule of the Constitution of India pertains to all

education including technical education. In absence of specific Central Legislation pertaining to fixation of age of superannuation, the State has exercised its power by issuing various Government Resolutions laying down the criteria in that regard. Though AICTE is empowered to make Regulations in terms of Section 23 of the AICTE Act, however it should be in consonance with the powers conferred under Section 10 of the AICTE Act. Clauses (a) to (v) of Section 10 of the AICTE Act, do not confer a power to the Council to lay down service conditions for the unaided colleges. In absence of power to frame Regulations in said subject, Regulations to that effect are inapplicable.

12. It is strenuously argued that the functions of AICTE are limited to the extent of ensuring proper maintenance of norms and standards in technical education and in compliance therewith, they are empowered to issue Regulations. The role of AICTE is only advisory and recommendatory i.e. it can set the standards of technical education, but cannot lay down the Regulations pertaining to service conditions by encroaching upon the powers of the State Legislation. In this regard, heavy reliance is placed on the decision of

the Supreme Court in case of **Association of Management of Private Colleges Vs. All India Council for Technical Education and others, with connected matter, (2013) 8 SCC 271**. It is argued that the Service Agreement dated 07.01.2011 though stated the age of superannuation as 65 years, however the said agreement is not in consonance with statutory format provided under the Schedule-A, of which Clause (4) says that the age of superannuation will be 60 years. Therefore, the said agreement in variance with the statutory requirement is unenforceable.

13. It is petitioner's contention that since the role of AICTE is advisory and recommendatory, the Regulations framed thereunder would not automatically apply to the private unaided institutions, unless they have been specifically adopted. According to the petitioner, the State Government has not adopted AICTE Regulations as regards to the service conditions in respect of private unaided colleges. The State has partially adopted AICTE Regulations pertaining to Government and Non-government aided colleges.

14. The petitioner has relied on the Government Resolution dated 20.08.2010 pertaining to the revision of pay-scale relating to Government and Non-government aided colleges, which specifies that the age of superannuation shall be as per the State Government employees. It is stated that the said Government Resolution bears reference of AICTE Notification dated 05.03.2010, however it has been adopted partially to the extent of finance and aided colleges only.

15. In response to the AICTE Notification dated 05.03.2010, it is submitted that the same has not been adopted by the State Government. In this regard, it is submitted that clause (iii) of the said Notification under the caption of “applicability of the scheme” specifies that the option is left to the State Government to adopt the same. Clause (iii) of the Notification dated 05.03.2010 reads as below:-

- “(i)
- (ii)
- (iii) This Scheme may be extended to all technical Institutions coming under the purview of State legislatures, provided State Governments wish

to adopt and implement the Scheme subject to the following terms and conditions:

Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.

The entire liability on account of revision of pay scales etc. of teachers of AICTE approved Institutions shall be taken over by the State Government opting for revision of pay scales with effect from 1.04.2010.

Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1.01.2006.

State Government, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 1.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central Assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).

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 AICTE by way of Regulations and other guidelines shall be implemented by State Governments and technical institutions coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above.”

According to the petitioner, though the said Notification specifies the age of superannuation as 65 years, however it has not been adopted

by the State Government in its later Government Resolution dated 20.08.2010.

16. It is petitioner's contention that AICTE Notification dated 01.03.2019 is applicable to the Government aided colleges only. Though there is no specific mention that the option is left with the State Government, however in earlier Notification dated 05.03.2010, the said option was left. According to the petitioner, the State Government has not adopted the said Notification as regards to the age of superannuation. It is submitted that the State Government has issued Government Resolution dated 11.09.2019 with reference to the AICTE Notification dated 01.03.2019, wherein the age of superannuation has been stated to be as per Notification dated 08.03.2019 which is of 62 years. Therefore, impliedly Notification dated 05.03.2010 has not been adopted by the State to the extent of age of superannuation.

17. It is petitioner's contention that though other side has relied on the Handbook, but it pertains to admission process which cannot be applied like a statute. The learned counsel appearing for

petitioner has relied on the communication dated 12.06.2020, by which the Director of Education has informed under the Right to Information Act ('RTI Act') that the age of superannuation is of 62 years. Moreover, the petitioner has produced a communication dated 27.01.2020 under which Amravati University in reply to the same query has merely forwarded Government Resolution dated 05.03.2011 and 12.07.2016 which pertains to the age of superannuation of 62 years.

18. On the other hand, Mr. Sudame, learned counsel appearing for respondent would submit that Dr. Ali was appointed as Principal to which approval was granted by the Amravati University. The respondent has entered into an agreement in pursuant to the mandate of Ordinance No. 24 of the Amravati University with regard to the service conditions. Particularly Clause (4) of the agreement expressly provides the age of superannuation of 65 years which is binding.

19. It is argued by respondent that AICTE Regulations are enacted in exercise of powers conferred by Section 23(1) of the

AICTE Act, and have been placed before the both the Houses of Parliament in terms of Section 24 of the AICTE Act. The AICTE Regulations are having statutory force and are binding on all technical institutions. Regulation dated 01.03.2019 do not provide any option to the State Government to either adopt or deny. It is submitted that in case of State Legislation is in conflict with the Regulations framed under the Central statute, the primacy would be to the Regulations framed under the Central Act. The State Legislature has not passed any law connecting to the Entry No.25 of the List III of Seventh Schedule. The Government Resolutions are purely executive instructions having no primacy over the delegated legislation which is in the from of Regulations framed by the AICTE under the statutory empowerment.

20. Both sides have placed reliance on various decisions to substantiate their respective stand. More particularly the learned counsel appearing for respondent has referred the decision of the Karnataka High Court in case of **Dr. G.R. Bharath Sai Kumar Vs. State of Karnataka**, (decided on 24.05.2021 in Writ Petition No. 15421/2020) which bears the determination of the age of

superannuation in context with the AICTE Regulations enhancing the age to 65 years. The respondent also relied on the decision of Punjab and Harayana High Court in case of **Dr. Jogender Pal Singh and others Vs. Union of India and others**, (decided on 01.03.2021 in CWP No. 20447-2020) deciding the same issue in favour of respondent. Likewise on the similar issue, the decision of Madras High Court in case of **Dr. S. Kothandaraman Vs. The Pro-Chancellor & ors.** (decided on 12.04.2022 in W.P.Nos. 17918 & 17929 of 2021) has been pressed into service. All three High Courts have leaned in favour of primacy of AICTE Regulations holding that the age of superannuation is of 65 years.

21. The learned counsel appearing for the petitioner would submit that these decisions are inapplicable since the decision of the Supreme Court in case of Association of Management (supra) has not been cited before these High Courts. In said case, the Supreme Court has specifically ruled that the role of AICTE is advisory and recommendatory. Decisions rendered without considering the said decision of the Supreme Court are of no help. Moreover, it is submitted that in above cases, the decision of the Supreme Court in

case of **Jagdish Prasad Sharama and others Vs. State of Bihar and others, (2013) 8 SCC 633 (PAGE NO. 78)** has not been properly considered. The said decision conveys that the State is entitled to enact any law pertaining to service conditions of teachers, however it was not appreciated in proper perspective and therefore, these decisions of different High Courts are of no help.

22. Then Mr. Sudame, learned counsel appearing for respondent would submit that the petitioner has not challenged the power of the Council to issue Regulations nor there is pleading to that effect. He has pointed out that only in response to the reply in re-joinder, the petitioner has stated about absence of power. Moreover, it is submitted that the petitioner has not asked a declaration about the power and thus, in absence of foundational pleadings, said issue cannot be agitated. Moreover, he would submit that, the petition is under Article 227 of the Constitution of India raising a challenge to the impugned decision dated 05.08.2022 passed by the Tribunal, and thus, the inquiry is limited to the extent of deciding the legality and correctness of said order. In short, he would submit that in absence of pleading, the power of Council

cannot be questioned.

23. On the other hand, Mr. Bhangde would submit that the petitioner has very much challenged the said power before the Tribunal. Moreover, it is submitted that Regulations framed beyond the empowerment are non-est and required to be ignored even they have not been specifically challenged. Mr. Bhangde, learned senior counsel took through the observations made by the Supreme Court in **Bharthidasan University and another Vs. All India Council for Technical Education and others, (2001) 8 SCC 676**. In para 14 of the decision, in no uncertain words, it has been stated that if the Regulations are beyond the defined canal then the Courts are bound to ignore them when the question of their enforceability arises. So also, mere fact that there was no specific relief sought to strike down the Regulations, it does not confer any sanctity or validity to the Regulations. In view of said dictum, if the Regulations are beyond the scope, then in absence of challenge, the Court can ignore the same or nullify its effect.

24. Ms. Khan, learned AGP appearing for respondent No. 3 and 4 supported the contention raised by Mr. Bhangde, senior counsel for petitioner. Whilst Mr. Lambat, learned counsel for respondent No.2 AICTE and Mr. Kasat, learned counsel for respondent No. 5 University reiterated the stand taken by Mr Sudame, learned counsel for respondent No.1 Dr. Ali. Their submissions are in the line of Mr. Bhangde and Mr. Sudame respectively, therefore to avoid repetition, they have not been independently considered.

25. I have given my anxious consideration to the submission made by the respective learned counsel appearing for the parties, and have perused the material on record, in furtherance whereof, the point that arises for my consideration is “whether the petitioner is entitled to claim that his age of retirement should be 65 years in terms of the Regulations of the AICTE?”.

26. The petitioner laid emphasis on the point that AICTE has no power to frame Regulations, pertaining to service conditions of staff of private unaided colleges. In absence of power to frame

Regulations, the service conditions relating to age of superannuation would be unenforceable. According to the petitioner, Section 23 of the AICTE Act, though empowers to make Regulations, however the scope is restricted to the extent of functions of the Council as enumerated under Section 10 of the AICTE Act. In other words, it is submitted that none of the Clauses (a) to (v) contained in Section 10 of the AICTE Act empowers the Council to frame Regulations beyond the defined scope of Section 10 of the AICTE Act.

27. There is no dispute that Section 23 of the AICTE Act empowers Council to make Regulations to carry out the purposes of the Act. Moreover, the Regulations made under the AICTE Act shall be placed before the each House of the Parliament in terms of Section 24 of the AICTE Act. The learned counsel appearing for AICTE has tendered a copy of affidavit filed in Writ Petition No. 2022/2020 making a categorical statement to this Court that the AICTE Regulations are placed before both the houses of the Parliament. The same has not been countered by the other side. The powers and functions of the Council have been defined under Section 10 of the AICTE Act. These powers are invested with the

Council which is an Apex Body for integrated development of technical education and maintenance of standards. In order to subserve the aims and objects of the Council, functions have been defined under Clauses (a) to (v).

28. The issue involved largely hinges around the powers and functions of AICTE Act. In the context, it is necessary to reproduce relevant provisions of the AICTE Act as below:-

“Section 10. Functions of the Council

It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes for performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) coordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to-

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for over-all improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms

and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institution or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

(m) *lay down norms for granting autonomy to technical institutions;*

(n) *take all necessary steps to prevent commercialisation of technical education;*

(o) *provide guidelines for admission of students to technical institutions and Universities imparting technical education;*

(p) *inspect or cause to inspect any technical institution;*

(q) *withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;*

(r) *take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;*

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advise the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the Institution or the programme;

(v) perform such other functions as may be prescribed.”

“Section 23 - Power to make regulations :-

(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to

the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council;

(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such Committee.”

“Section 24. Rules and regulations to be laid before Parliament.

Every rule and every regulation made under this Act shall be laid, as soon as may be after

it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

29. Since the entire thrust of the respondent is on the regulations issued under the AICTE Act dated 05.03.2010 and 01.03.2019, relevant portion of these two notifications reads as under:-

***“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]***

***NOTIFICATION
New Delhi, the 5th March, 2010***

F.No.37.3/Legal/2010 - 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 (52 of 1987) the ALL India Council for Technical Education makes the following Regulations:-

1. Short Title, Application and Commencement:

1.1. These Regulations may be called the ALL India Council for Technical Education (Pay Scales, Service Conditions and Qualification 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.

They shall come into force with effect from the date of their publication in the Official Gazette.

Age of Superannuation:

(i) In order to meet the situation arising out of

shortage of teachers in Technical Institutions and the consequent vacant positions therein, the age of superannuation for teachers in Technical Institutions has been enhanced to sixty five years vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.03.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Reemployment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years at the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career for teaching and to meet the shortage of teachers by retaining teachers in service for a longer

period, and whereas there is no shortage in the categories of librarians, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of librarians.”

Relevant portion of AICTE Notification dated 01.03.2019 is as below:-

“NOTIFICATION

New Delhi, 1st March, 2019

AICTE REGULATIONS ON PAY SCALES, SERVICE CONDITIONS AND MINIMUM QUALIFICATIONS FOR THE APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF SUCH AS LIBRARY, PHYSICAL EDUCATION AND TRAINING & PLACEMENT PERSONNEL IN TECHNICAL INSTITUTIONS AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN TECHNICAL EDUCATION – (DEGREE) REGULATION, 2019.

F.No.61-1/RIFD/7th CPC/2016-17.—In exercise of the powers conferred under sub-section (1) of Section 23 read with Section 10(g), (h) and (i) of the All India Council for Technical Education Act, 1987 (52 of 1987) and after approval of the Government of India vide No. 1 - 37 / 2016 – TS.II, Dated 18th January, 2019 followed by letters of even No. dated 29th January, 2019 and 12th February, 2019, the All

India Council for Technical Education makes the following regulations; namely:

1.2 Categories of Institutions to whom the regulations apply

These shall apply to all degree level technical institutions and universities including deemed to be universities imparting technical education and such other courses / programs approved by AICTE and areas as notified by the council from time to time.

2.11 Financial Assistance from Government of India for implementation of 7th CPC scale.

The Central Government shall provide by way of financial assistance, 50% of the additional expenditure (arrears from 01.01.2016 till 31.03.2019) on implementing the revised scales of pay for faculty and other staff such as Library, Physical Education and Training Placement Personnel in State Government/Government Aided /State Government Autonomous institutions/State University Departments.

a) Financial assistance from the Central Government to State / UT Governments for revising pay scales of teachers and other staff such as Library, Physical

Education and Training Placement Personnel under the scheme shall be limited, by way of reimbursement, to the extent of 50% (fifty percent) of the additional expenditure involved after payment of arrears to eligible faculty members in the implementation of the revision, for the Universities, colleges and other technical education institutions funded by the State / UT Government. For this, State / UT Governments shall submit the claim to the Central Government. All such claims must be submitted to the Central Government by the state / UT on or before 31.03.2020. No claim of the State / UT Government shall be considered for financial assistance after 31.03.2020.

2.12 Age of Superannuation

The age of superannuation of all faculty members and Principals / Directors of institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) may be given to those faculty members who are physically fit, have written technical books, published papers and has average 360° feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service.”

30. The AICTE Notification dated 05.03.2010 has been issued in exercise of powers conferred under Sub-section (1) of Section 23 read with Section 10(i) and (v) of the AICTE Act, whilst Notification dated 01.03.2019 has been issued in exercise of powers conferred under Sub-section (1) of Section 23 read with Section 10(g), (h) and (i). The learned counsel for respondent would submit that Clause (v) is residuary one which authorizes Council to do all other functions as may be necessary. Moreover, relying on the decision of the Supreme Court in case of **State of T.N. and another Vs. Adhiyaman Education & Research Institute and Others, (1995) 4 SCC 104** it has been submitted that the term 'co-ordination' employed in entry No. 66 of List I (Union List) is inclusive of doing all the acts which are necessary to ease the co-ordination.

31. The Preamble of the Central Act states that it has been enacted to provide for the establishment of an All India Council for Technical Education with a view to (i) proper planning and coordinated development of the technical education system throughout the country (ii) promotion of qualitative improvement of such education in relation to planned quantitative growth (iii)

regulation and proper maintenance of norms and standards in the technical education system.

32. Chapter III of the Act enumerates the powers and functions of the Council. Section 10 of the said Chapter states that in order to perform its duties and to take all such steps as it may think necessary to ensure the object of and perform the functions under the Act, the Council may, among others.

33. The aforesaid provisions of the Act make it abundant clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is, further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to

withhold or discontinue grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed.

34. Entry No. 66 of List I i.e. Union List of Seventh Schedule of the Constitution empowers the Central Legislation to make Laws in the subject. The said entry reads as below:-

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

Thus, the said subject is a special preserve of the Parliament. Likewise entry No. 25 of List III i.e. Concurrent List authorizes the State to make Laws in that respect. The said entry reads as below:-

“25. 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.”

35. Article 254(1) of the Constitution of India provides that in case of repugnancy in the Legislation made by the Parliament and

State Legislature which may arise in case of subject in List III, the Law made by the Parliament whether passed before or after the Law passed by the State Legislature shall prevail. For ready reference, Article 254(1) of the Constitution is reproduced herein below:-

“254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matter enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.”

36. As stated above, Mr. Bhangde, learned senior counsel has called in question the power of AICTE to frame Regulations laying

down service conditions of staff of private unaided colleges. In other words, he led emphasis on the point that Regulations making power in terms of Section 23 read with Section 10 of the AICTE Act does not authorizes Council to lay down Regulation in respect of service conditions. It is contended that in absence of source to frame Regulations pertaining to service conditions, it loses its enforceability.

37. Undoubtedly, respondents are relying on AICTE Notification dated 05.03.2010 issued in terms of Sub-section (1) of Section 23 read with Section 10(i) and(v) of the AICTE Act and subsequent Notification dated 01.03.2019 issued in terms of Sub-section (1) of Section 23 read with Section 10(g), (h) and (i) of the AICTE Act. Both sides are in agreement about the conferment of powers to the Council to make Regulations in terms of Section 23 of the AICTE Act. Dispute is about the subjects governed by the Regulation. Mr. Bhangde, would submit that the Council does not have power to frame Regulations dehors to the limitations prescribed under Section 10 of the AICTE Act. The Regulations framed beyond the scope of defined limit under Section 10 of the

AICTE Act are unenforceable. To buttress said contention, reliance is placed on the decision of the Supreme Court in case of Bharthidasan University (supra), with special emphasis on para 14 of the decision which reads as below:-

“14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that regulations made under Section 23 of the Act have “constitutional” and legal status, even unmindful of

the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.”

In above decision, the Supreme Court has emphasized upon the limitations on the Regulation making power, which should run within the confined limits. In-contrast, the Courts are not bound to consider the same.

38. In the light of above position, it is necessary to have a re-look to Clause (g)(h)(i) and (v) of Section 10 of the AICTE Act. Notification dated 05.03.2010 has been issued by drawing source from Clause (i) and (v) of the AICTE Act. Clause (v) is residuary one to which this Court will advert after short while. As regards to Clause (i) is concerned, for ready reference it is extracted herein

below:-

“Clause (i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.”

Close examination of Clause (i) indicates that Council is authorized to fix the norms and standards of the courses, curriculum, staffing pattern, staff qualifications, quality assessments and about examination. The said clause relates to maintaining standard of technical courses. The field is restricted to fix the curriculum, syllabus, requirement of staff, its qualification, method of assessment and examination. It neither speaks about the service conditions nor the same can be constructed as an ancillary to the above defined aspects.

39. Notification dated 01.03.2019 has been issued by drawing source from Clauses (g), (h) and (i) of Section 10 of the AICTE Act which are reproduced below for ready reference:-

Clause (g) Evolve suitable performance appraisal systems for technical institutions and Universities

imparting technical education, incorporating norms and mechanisms for enforcing accountability;

Clause (h) formulate schemes for the initial and in-service training of teachers and identify institution or centres and set up new centres for offering staff development programmes including continuing education of teachers.

Clause (i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.”

40. Bare perusal of Clauses (g) indicates that it pertains to fixing a suitable performance appraisal system in imparting technical education and its enforcibility. Clause (h) empowers Council to formulate scheme for providing training of teachers to uphold the standards which does not bare relevance with service conditions. Clause (i) provides for laying down norms and standards for courses, staffing pattern, its qualification and assessment of

examination. By and large, these clauses empower to lay down norms to maintain educational standard of technical education.

41. Clause (v) is residuary one which permits Council to do other functions as may be prescribed. Residuary Clause is always to be read in context with rest Clauses, defining the field. The very purpose of insertion of residuary Clause is in the nature of enabling provision to do other functions which are ancillary to the main purpose defined by rest Clauses. Insertion of residuary Clause does not confer unbridled power to do the things which are disassociated with main Clauses. The enabling provision cannot be used as a free battle field to do anything which is not prescribed under the main purpose for conferring powers.

42. The learned counsel appearing for the respondent failed to convince as to how the subject of service conditions would fall under either of the Clauses (a) to (u) of Section 10 of the AICTE Act. If the interpretation that the residuary clause permits to do anything is accepted, then it would be a dangerous proposition. In that case, there was no necessity for Legislatures to define and limit the

functions vide Clauses (a) to (u), but the authority would have given uncontrolled power by simply highlighting residuary clause only. Therefore, the submission made by Mr. Bhangde, learned senior counsel deserves to be accepted.

43. Mr. Sudame would submit that Division Bench of this Court has already held about the primacy of AICTE Regulations. For this purpose, he has heavily relied on the decision of this Court in case of **Lalit Rajendra Gajanan Vs. Vidyavardhani, through its Secretary and others, 2021 SCC OnLine Bom 3649** to contend that AICTE Regulations have primacy over the executive instructions issued by the State Government in the form of Government Resolutions. It is submitted that this Court has already held that the AICTE Regulations relating to the age of superannuation would prevail and therefore, the issue is well covered. In the said case, the similar issue fell for consideration pertaining to age of superannuation. It was canvassed before the Division Bench that there being an inconsistency insofar as the age of superannuation, the AICTE Regulations would prevail and not the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act ('MEPS Act')

which is a general law. It was argued that the MEPS Act has been enacted by the State Legislature in exercise of its legislative power under Article 246(3) of the Constitution of India. The MEPS Act has been enacted in relation to the subject mentioned in Entry No. 25 of List III (Concurrent List). Whilst on the other hand, the AICTE Act has been enacted by the Parliament in exercise of its legislative powers under Article 246(1) and (2) read with Entry No. 66 of List I (Union List) and Entry No. 25 of List III (State List).

44. In said case, reliance was placed on the decision of the Supreme Court in case of State of T.N. and another to contend that the expression “co-ordination” used in Entry 66 in the Union List includes the power to do all things which are necessary. Precisely, it was canvassed that the State Act i.e. MEPS Act, would not be enforceable in view of there being a conflict between the State Act and the AICTE Regulations insofar as the age of superannuation is concerned. Once the field is occupied by the Central Act, the State Act cannot be applied.

45. The relevant observation (Lalit's case) made in para 66 to 68 reads as below:-

“66. This Court in case of Amrutraj Pratapji Vyas and Ors. (supra) after considering the provisions of MEPS Act and AICTE Act held that till 1990, all Polytechnics were not within the ambit of MEPS Act. Thereafter, the AICTE was responsible to prescribe the pay scales and other service conditions of the teaching as well as non-teaching staff in technical institutions like the Polytechnics and degree courses. Various resolutions were passed by the State Government adopting the recommendations made by the AICTE regarding the qualifications and the pay scales. This Court also considered that under section 4(1) of the MEPS Act, the State Government is empowered to make rules providing for the minimum qualifications for recruitment, duties, pay, allowances, post retirement and other benefits and other conditions of service of employees of private schools.

67. This Court also held that AICTE being a body created under the AICTE Act, is required to carry out statutory functions and it is a model agency so far as the technical education in India is concerned

*and is thus responsible to issue directions/instructions to the Management whether aided or unaided in view of the provisions of section 4(3) of the M.E.P.S. Act, read with section 3(1) of the said M.E.P.S. Act. It is held that the polytechnic was not only bound to comply with the directions issued under the provisions of MEPS Act and the MEPS Rules framed thereunder, but, were also bound to comply with the directions issued by the AICTE under the provisions of AICTE Act including the directions issued for payment of pay scale and other service conditions prescribed in respect of the staff in a Polytechnic college or schools. The principles laid down by this Court in case of **Amrutraj Pratapji Vyas and Ors.** (supra) squarely applies to the facts of this case. We do not propose to take any different view in the matter.*

68. *In our view, since there is conflict between the provisions of the MEPS Act and the AICTE Regulations in respect of the age of superannuation, the provisions of the AICTE Regulations would prevail. The resolutions passed by the State Government under the provisions of the AICTE Regulations prescribing the age of superannuation would apply to the teaching and*

non-teaching staff appointed by the polytechnic institutes governed by the provisions of the AICTE Act and Regulations. In our view, Mr. Anturkar, learned senior counsel for the petitioners is right in his submission that the provisions of the MEPS Act and of the AICTE Regulations cannot be read harmoniously and thus there being a conflict insofar as the age of superannuation is concerned, the provisions of the AICTE Regulations or the resolutions and/or the circulars issued under the provisions of the AICTE Act or the Regulations would prevail and not the age of superannuation prescribed under the provisions of the MEPS Act read with Rules.”

46. Mr. Bhangde, learned senior counsel has questioned the applicability of the decision rendered by this Court in Lalit's case by making two fold proposition. Firstly, it is submitted that the said decision is based on the earlier pronouncement of this Court in case of Amrjutraj of which the correctness is doubted and referred to the Larger Bench by this Court in latter decision in case of **Dinesh Kumar Singh & ors. Vs. Sainath Education Trust, through its Joint Secretary and ors., 2022 SCC Online Bom 1240**. Secondly, this Court has

erroneously placed reliance (para 18 of Lalit's case) on the decision of the Supreme Court in case **_Pramod Vs. State of Maharashtra & ors., (2016) 14 SCC 505**, since in the case of Pramod itself, the Supreme Court has clarified that the observations made therein cannot be construed as a binding precedent.

47. Contextually, I have has gone through the decision of the Supreme Court in Pramod's case. True, in the said case, the Court has observed that Regulations of AICTE being statutory, unless these have been superseded or annulled by a competent authority the age of superannuation stood extended upto 65 years. However, in the same decision (para 18) the Supreme Court thought it fit to clarify that, we are not laying down any law in this regard. The relevant observations made in para 18 (Pramod's case) are as below:-

“18. In the facts noticed above and since there is some confusion and lack of assistance on the issue of age of superannuation from the side of respondents and also because there is no discussion on this issue in the judgment under appeal, we refrain to lay down the law in this regard. But in the interest of justice, we deem it proper to direct for immediate

reinstatement of the appellant within two weeks from today. Ordinarily we would have directed Management of the respondent society to consider the appellant's case for promotion and pass appropriate orders in accordance with law but from the materials on record as well as from the submissions in the course of hearing, we have gathered an impression that the Management of the Respondent Society cannot be presumed to be just and fair to the appellant and expected to act in accordance with law. Hence, instead of relegating the appellant to the mercy of the Management, we direct the concerned respondents to issue order of reinstatement and also appointment of the appellant by promotion to the post of Principal of the respondent polytechnic within four weeks from today."

48. Mr. Sudame, learned counsel has expressed his disagreement with the said line of argument by stating that the decisions of the Supreme Court are having binding force in terms of Article 141 of the Constitution of India. As well as the *obiter* of the Supreme Court is binding. In principle, there can be no dispute about these two propositions of law. However, general propositions

regarding binding effect of the Supreme Court's decision and Supreme Court's *obiter* would not apply in the facts and circumstances of the case. The Supreme Court itself thought it fit, rather necessary, to clarify that in absence of assistance on the point of the age of superannuation, it refrains from laying down the law in this regard. The very intent was loud and clear that the finding to that effect cannot be applied as a precedent, hence out of caution, the Supreme Court has expressed so. Therefore in such peculiar facts, the decision in case of Pramod would not assist the respondent in any manner.

49. Reverting to the decision of Lalit's case, as noted above there could be no assistance from the case of Pramod for our purpose. As regards to the reliance placed in Lalit's case on the decision of Amrutraj's case, the same has been referred to the Larger Bench by later decision of coordinate Bench in case of Dinesh Kumar. In case of Dinesh Kumar, this Court faced with the inconsistencies in the view expressed by two Division Benches of this Court i.e. in case of Amrutraj and earlier contrary view expressed in

case of Mahadev More. In that context, this Court in case of Dinesh Kumar observed that prior decision in case of Mahadev More was brought to the notice of this Court while deciding Amrutraj's Case. According to this Court (Dinesh Kumar's case), in Amrutraj's case, court was required to deal the contrary view expressed in Mahadev More's case, but neither it was held that the decision in case of Mahadev More is per incuriam, nor disagreed with the interpretation made in the said case about the provisions of the MEPS Act. This Court further expressed in Dinesh Kumar's case that the law laid down in the case of Mahadev More is consistent with the interpretation made therein. In other words, doubted the correctness of the view expressed in Amrutraj's Case. The relevant para 39 of the decision in Dinesh Kumar's case reads as below:-

“39 The Division Bench has observed that the decision in the case of Mahadeo More (supra) would not assist the case of Respondent Nos. 1 and 2. The Division Bench in the case of Amrutraj Pratapji Vyas has relied upon the decision in the case of Teachers Association (supra). In our opinion the Division Bench in the case of Amrutraj Pratapji Vyas (supra) on being confronted with the decision in the case of Mahadeo

More (supra) was required to deal with the same according to law. If in the opinion of the Division Bench the law laid down in Mahadeo More (supra) was not correct, the Division Bench was required to record such a finding. The Division Bench has also not held that the decision in the case of Mahadeo More (supra) is per incuriam for one reason or the other. It is held that though provisions of MEPS Act and MEPS Rules are applicable to the employees of the technical institutions up to diploma level, the Government of Maharashtra was right in making revision of pay after recommendation of the pay commission applicable to the employees of polytechnic by circular/resolution. In our view there is an anomaly in the sense that the provisions of MEPS Act are made partly applicable without complying with the mandate of the provisions as held in the case of Mahadeo More (supra). The decision in the case of Amrjutraj Pratapji Vyas (supra) has not at all disagreed with the interpretation of the provisions of MEPS Act and MEPS Rules. In this case in our opinion the Division Bench on being confronted with the legal position settled in the case of Mahadeo More (supra) was required to either refer the issue to a larger bench or to hold that the decision in the case of Mahadeo More (supra) is per incuriam being

rendered without considering the Division Bench's decision in the case of Teachers Association (supra). In our opinion there are conflicting views as to the interpretation of the provisions of Section 16 & 4 of the MEPS Act and Rule 7 of MEPS Rules. On going through the AICTE notification dated 30/12/1999 and the issue involved in the matters we are of the opinion that the law laid down in the case of Mahadeo More (supra) is consistent with the interpretation of the provisions of MEPS Act and MEPS Rules."

With such observations, this Court (Dinesh Kumar's case) made reference to the Larger Bench, to decide correctness of the view expressed by this Court in case of Amrutraj rendered by the Bench of equal strength.

50. The very foundation of the decision in Lalit's case is questioned in later decision of this Court in Dinesh Kumar's case by referring the issue to the Larger Bench. Besides that in Dinesh Kumar's case, this Court has expressed that the AICTE is empowered to make recommendations in certain matters, but the service conditions are governed by the State Legislature. Relevant

observations made in para 32 (Dinesh Kumar's case) reads as below:-

“32. It is undisputed that the service conditions of the employees of the “School” as defined under Section 2(24) are governed by the provisions of MEPS Act and MEPS Rules. In the year 1987 the parliament enacted AICTE Act and as per Section 10 of AICTE Act the Council is empowered to grant permission to technical colleges. AICTE is also responsible for specifying norms and standards prescribing the pay scales and service conditions of teaching and non-teaching staff, to ensure qualitative education all over India. AICTE is empowered to make recommendations in the matter of revised qualifications as well as pay scales for teachers of the technical institutions including polytechnic. Remaining service conditions of the teaching and non-teaching employees of the technical institutions are governed by the State legislation of different States all over India. It is to be noted that save and except the qualifications and the pay scales of the employees of the technical institutions, remaining service conditions and mode and manner of the implementation are governed by the law applicable to the employees of

the respective States all over India (Emphasize supplied). It is therefore apparent that in the State of Maharashtra, MEPS Act and MEPS Rules are governing rest of the service conditions of the employees of the technical institutions including polytechnic institutes. It is necessary to mention that the mechanism as to the mode and manner of implementation of the pay scales recommended by AICTE and approved by the Central Government has not been provided under the AICTE Act or the Regulations. It would therefore be necessary for the State Government to make the said pay scales applicable by taking recourse to the State Legislation and particularly the mode and manner provided therein.”

51. In view of above, I am unable to persuade myself about the applicability of the decision of Lalit's case to uphold the contention raised by the respondent about primacy of the Regulations framed by AICTE pertaining to laying down service conditions.

52. In response to the decision cited by the respondent in case of State of T.N. and another (supra) the learned counsel appearing

for the petitioner would submit that though the Central Legislation would prevail over the State Legislation in-conflict, however the subordinate legislation in the form of Regulations is not made by the Central, but they are framed by AICTE and thus, said ratio would not help. However, in forgoing paragraphs, it has been observed that the Subordinate Legislation i.e. Regulations framed by the AICTE are not within the statutory framework laid down under Section 10 of the AICTE Act and therefore, they do not assume character of binding nature. In the said case, there was direct conflict between State Act (T.N. Private Colleges Act) with Central Act (AICTE Act). The State Act has set the norms and standards and the requirements for recognition higher than those laid down by the Council within its competency. Herein, the question of competency arose, therefore being different facts, said ratio would not help the respondent.

53. The learned counsel appearing for respondent has relied on the decision of the Supreme Court in case of **Parshvanath Charitable Trust and others Vs. All India Council for Technical Education and others and another connected matter**, (2013) 3 SCC

385 to contend that AICTE Regulation has primacy in the field of technical education. The emphasis is led on para 25 of the decision that the Regulations framed by the Central Authority such as AICTE has force of law and are binding on all concerned. There can be no dispute that when Parliament and the State Legislature both have power to legislate, the Central Act shall take precedence in the matter which are covered by such Legislation. The State cannot lay down any guideline or policy in-conflict with the Central or the standards laid by the Central Body, but the laying service conditions do not pertain to standard of education. One can understand the effect of Primacy of the Central Legislation, if the State Legislation has directly transgressed on the subject enumerated under Section 10 of the AICTE Act so as to eclipse the effect. However, the AICTE Regulations do not find any force in the shape of source to frame Regulations pertaining to service conditions and therefore, being different facts, the said decision would not help to the respondent.

54. The respondent further relied on the decision of Supreme Court in case of **Varun Saini and others Vs. Guru Gobind Singh Indraprastha University, (2014) 16 SCC 330** to impress the primacy

of AICTE Regulations. It is argued that the Constitutional Bench has upheld the primacy of AICTE Regulations. In particular, my attention has been invited to some interim orders reproduced in para 8 to 10 of the decision. In this regard, the learned counsel appearing for the petitioner would submit that the interim orders would not bind, and secondly has produced a copy of final order (page No. 492) to show that the appeal pertaining to interim order in case of **Orissa Technical Colleges Association Vs. All India Council of Technical Education (AICTE) & ors.** has been dismissed. Needless to say that always interim order merges into final order. Besides that, it is difficult to find any assistance to the respondent from above cited decision.

55. The respondent further relied on the decision of the Supreme Court in case of **Sukhdev Singh and others Vs. Bhagatram Sardar Singh Raghuvanshi and another with connected matters, (1975) 1 SCC 421** with special emphasis to para 15 and 17 of the decision to contend that Regulation has force of law. In the context of Central Legislation, it has been observed that the status of Regulations framed under the Central Legislation have force of law.

However, it is also observed that the Authority making Rules and Regulations must specify the source of the Rules and Regulations. In case at hand, it is observed above that the very source for laying service conditions does not find place in the Central Legislation and therefore, being different facts, the said decision is of no assistance.

56. It is petitioner's consistent stand that the AICTE though can set standards of technical education, however the power of AICTE is limited for the purpose of ensuring proper maintenance and standards of education. The power is limited to that extent which does not override the other enactments. It has been submitted that the role of AICTE is only advisory and recommendatory. Particular reference has been made to para 53 of the decision in case of Association of Management (supra) which reads as below:-

“53 A cumulative reading of the aforesaid paragraphs of Bharathidasan University's case which are extracted above makes it very clear that this Court has exempted universities, its colleges, constituent

institutions and units from seeking prior approval from the AICTE. Also, from the reading of paragraphs 19 and 20 of Parashvanath Chartitable Trust case it is made clear after careful scanning of the provisions of the AICTE Act and the University Grants Commission Act, 1956 that the role of AICTE vis-à-vis universities is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself."

In the said decision, the Supreme Court has considered the prior decision of coordinate benches in cases of Bharathidasan, Parashvanath and ruled that the role of AICTE is advisory and recommendatory only. Though the respondent would submit that the said decision is in context with the AICTE Act vis-a-vis Universities Act, however the emphasis is led about the role of AICTE is of advisory, recommendatory and providing guidelines only. The petitioner would submit that the view expressed in the decision of the Association of Management (supra) was considered by the three Judge Bench of the Supreme Court in the case of All

India Council for Technical Education Vs. Shri Prince Shivaji Maratha Boarding House's College of Architecture and others, 2019 SCC Online SC 1445, however the view remained undisturbed.

57. The petitioner heavily relied on the decision of the Supreme Court in case of Jagdish Prasad (supra) to contend that the State is entitled to enact any law pertaining to service conditions of teachers unless repugnant to any primary Central Legislation. In this regard, reliance is placed on the observations made in para 77 and 78 of the decision which reads as below:-

“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 non-teaching 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 the 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 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 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 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 dehors the responsibility attached thereto, must, therefore, fail.

58. It is expressed that though the Council is free to frame Regulations, however the State Government is also entitled to legislate the said matter. Particularly, it has been observed that the State is free to decide as to whether the scheme framed would be adopted, and there is no automatic application of recommendation made by the Commission.

59. Undisputedly, the service agreement has been executed on 07.01.2011 specifying the age of superannuation as 65 years. Mr. Bhangde, learned senior counsel has pointed out that the said

agreement is not in conformity with the statutory format of agreement.

60. Contextually, Mr. Bhangde pointed out inconsistency in Clause (4) of the agreement dated 07.01.2011 along with Clause (4) of the Statutory agreement which reads as below:-

“Agreement dated 07.01.2011.

(4) That the age of superannuation for the party of the first part will be sixty five years as stipulated by the Amravati University Direction 63/2010 dated 20.10.2010 read with the AICTE Regulations, 2010, the actual time of retirement for the party of the first part to be last day of the academic year in which he attains the age of sixty five.”

“Statutory agreement.

(4) That the age of superannuation will be sixty years, the actual time of retirement for the party of the first part to be last day of the academic years in which he attains the age of sixty.

Provided that the Academic Council may, on the recommendation of the Governing Body, sanction extension for one year at a time upto the age of 65

years or for five such extensions at the most.”

61. Though the respondent's agreement dated 07.01.2011 bears reference that as per Amravati University Direction 63/2010, the age of superannuation is 65 years, however it is factually incorrect. University Direction 63/2010 does not specify so, as well as the petitioner's agreement is against the statutory format.

62. Mr. Bhangde, has relied on the decision of **Union of India and another VS. Dr. S. Baliar Singh, (1998) 2 SCC 208** to contend that whenever there is change in the age of superannuation, it will come into play from the date on which the change comes into force. Thus, according to him, the conditions imposed prior to the Government Notification, has no force after change made by the Government Resolution. Moreover, it is argued that, there is no estoppel against the statute. For this purpose, reliance is placed on the decision of the **Supreme Court in case of Bhagwant Rai and others Vs. State of Punjab and others, (1995) 5 SCC 440.**

63. The Government Resolution dated 11.09.2019 bears specific reference that the age of superannuation would be as per State Government Policy in terms of Government Resolution dated 08.03.2019 which is of 62 years. It is pointed out that the Universities direction No. 50/19 dated 13.12.2019 has adopted Government Resolution dated 11.09.2019 which speaks about the age of superannuation as per Government Policy.

64. The learned counsel appearing for the petitioner has submitted that in view of the anomaly, the petitioner in all its fairness has consulted the Director of Education seeking clarification about the age of superannuation. The reply received under Right to Information Act ('RTI Act') from the Director (page No.81) specifies the age of retirement of the Principal is of 62 years in consonance with Government Resolution dated 05.03.2011. Moreover, the petitioner also made correspondence with the University under the RTI Act about the age of superannuation. Similarly, the University has replied about the applicability of Government Resolutions dated 05.03.2011 and 12.07.2016. It is pointed out that the petitioner was in dilemma due to contradictory instructions and therefore, sought

information from the authorities which equally confirms that the age of superannuation is of 62 years.

65. Though AICTE Notification dated 05.03.2010 provides age of superannuation for teachers in technical institutions as 65 years, however specific option is left with the State Government in pursuance of Clause (iii) under caption “applicability of the scheme” in the same Notification dated 05.03.2010 which requires to be noted. The said AICTE Notification was followed by Government Resolution dated 20.08.2010 which specifically bears reference of AICTE Notification dated 05.03.2010 under reference No. 3. The said Government Resolution is captioned as under:-

“Revision of Pay Scales of Teachers and equivalent cadre in Degree/Diploma Level Technical Education as per AICTE Scheme (6th Pay Commission).

Dr. Babasaheb Ambedkar Technological University, Lonere, University Departments, All University Affiliated Government and Non Government Aided Colleges & MSBTE affiliated Government and Non Government Aided Polytechnics conducting Professional Degree/Diploma Courses such as

Engineering, Pharmacy, Architecture, Management etc.”

It particularly relates to finance i.e. revision of pay-scale to Government and Non-government aided colleges. The Government has particularly adopted AICTE scheme pertaining to pay-scale, but as regards to age of superannuation, it says that the same should be as per State Government employees. Following portion of the Government Resolution under the caption “Resolution” is worth to be noted.

“RESOLUTION:

The Government after considering all the aspects of the scheme announced by the ALL India Council for Technical Education vide its notification in reference 3 & 4, has decided to revise pay scales and Dearness Allowance of all teachers and equivalent cadres working in Government and non-Government aided institutions w.e.f. 01-01-2006 as per the provision of the scheme with additional provisions prescribed in para-8 of this resolution for enhancing and improving the quality of education. The other allowances

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applicable, the age of Superannuation and leave package to the teachers and librarians in these institutions shall be as per the State Government Employees.”

66. In pursuance of that, Amravati University has issued directions No. 63/2010, dated 20.10.2010 about the implementation of revision of pay-scale. It bears reference of AICTE Notification dated 05.03.2010 as well Government Resolution dated 20.08.2010. The said consequential direction does not say about adopting the age of superannuation as enhanced by AICTE rather it says that Government Resolution dated 20.08.2010 would apply.

67. The learned counsel for petitioner would submit that AICTE Notification dated 01.03.2019 though stipulates age of superannuation of 65 years, it applies to aided Government and Non-government colleges only. Mr. Sudame, learned counsel on the other hand pointed to Clause (1.2) stating that it would apply to all levelled technical institutions. Clause (2.11) of the Notification speaks about the financial arrangement, meaning thereby it pertains to the finance provided by the Government. It reveals from the

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Notification that in order to apply it fully, it necessitates to be financed by the State. Subsequent to that, the State Government has issued Government Resolution dated 11.09.2019 bearing reference under Clause (6) about AICTE Notification dated 01.03.2019. Clause (1.1) pertaining to the applicability of Government Resolution, speaks about Government and Non-government aided institutions. Moreover, Clause (2.10) specifies that the age of superannuation shall be as per the State Government Policy. It is evident from Government Resolution dated 08.03.2019 which is of 62 years. It was followed by Amravati University Direction 50/2019 dated 13.12.2019. Clause (5) of the University Direction would state that provisions made in the Government Resolution shall prevail. It shows the intent of the Government that they have not made applicable the entire AICTE Notification pertaining to the service conditions.

68. The respondent has relied on Clause (7.16) of the Handbook which reads as below:-

“7.16. The Technical Institutions shall follow Faculty Cadre and Qualifications as provided in the

Appendix 8 of the Approval Process Handbook.

The age of superannuation of all faculty members and Principal/Director of the Institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) may be given to those faculty members who are physically fit, have written Technical Books, published papers and has average 360° Feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service.”

As per said clause, the age of superannuation would be 65 years with the provision of extension of 5 years. The petitioner would submit that in absence of applicability of AICTE Notification on the subject of service condition, the Handbook which is merely approval process would not prevail. The above Clause is from approval process of Handbook which is obviously meant for laying down procedure to be followed for approval. Certainly, it cannot assume a binding character like a statutory direction or instruction.

69. The first letter of approval dated 15.06.2009 has been tendered under which approval for commencing four courses has

been accorded. Mr. Bhangde has attracted my attention to the foot note pertaining to the conditions imposed while granting approval. Those conditions are about providing adequate infrastructure, but it does not specify anything as a condition precedent in the field of service conditions. The letter of extension of approval is produced on record which merely says about following mandate of Chapter VI of the Handbook which is about approval process.

70. The petitioner has relied on Government Resolution dated 05.03.2011 resolving that the age of superannuation is of 62 years with provision of extension. Particularly under clause (9), it has been stated that the State Government shall take decision about the extension of services relating to permanent no grant colleges. Mr. Bhangde also took this Court through appointment letter dated 07.01.2011 having a specific Clause that the appointment is subject to conditions of service as are in force and as amended from time to time. It is argued that the appointment letter itself is clear enough to convey that the service conditions are subject to change as and when made enforceable.

71. While stressing on the power of the State Government to lay service conditions, Section 8(3) of the Maharashtra Public Universities Act has been pressed into service. Section 8(3) of the University Act authorizes the State Government to lay down the service conditions which empowers the State Government to issue Government Resolution read with Article 162 of the Constitution of India. Mr. Sudame, learned counsel relied on the letter of approval with reference to Clause (6) stating that the staff shall be selected as per norms prescribed by Council. However, it does not assist to infer anything beyond selection of staff members. He has pointed towards permission granted by the Director of Technical Education and first approval letter which does not enlighten on the issue involved.

72. The above discussion leads to hold that AICTE is empowered to make Regulations within the defined frame work contained in Section 10 of the AICTE Act. The subject of laying service conditions is outside the purview which is left for the decision of respective State Governments. Besides making

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recommendations about the qualifications and standard of technical education, the remaining service conditions of the teaching and non-teaching employees of technical self financed Institutions would be governed by the State Legislation. Therefore, it is not possible to accept the view taken by the University Tribunal holding that the age of superannuation for appellant (respondent No.1 herein) is of 65 years. In view of above the impugned judgment and order dated 05.08.2022 passed by the Tribunal in appeal No. A-9/2021 is hereby quashed and set aside. Consequently, appeal No. A-9/2021 stands dismissed.

73. Rule made absolute in above terms.

Latter on,

74. After pronouncement of the judgment, Mr. Sudame, learned counsel for respondent No.1 would submit that the respondent No.1 desirous to challenge this judgment and order before the Supreme Court and therefore, seeks to stay the effect of this judgment and order. During pendency of this petition, certain

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arrangement was made on the basis of statement made by the parties. In view of that, the same arrangement shall continue for the period of four weeks from the date of uploading this order.

(VINAY JOSHI, J.)