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W.P.No.8427 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2024

Pronounced on : 26.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.8427 of 2024 and
WMP.No.9385 of 2024

R.Ananda Natarajan

... Petitioner

Vs.

- 1.The Vice Chancellor,
Puducherry Technological University,
(Erstwhile Pondicherry Engineering College),
Puducherry 605 014
- 2.The Secretary for Education,
Government of Puducherry cum Pro Chancellor,
Puducherry Technological University,
(Erstwhile Pondicherry Engineering College),
Chief Secretariat,
Puducherry 605 001
- 3.The Chief Secretary,
Chief Secretariat,
Puducherry 605 001
- 4.All India Council for Technical Education,
No.29, Haddows Road,
Shasthri Bhavan, Nungambakkam,
Chennai 600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from superannuating or retiring the petitioner from service as on



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31.03.2024 as per AICTE Regulation F.No.61-1/RIFD/7th CPC/2016-17
dated 1st March 2019.

For Petitioner : Mr.V.K.Vijayaraghavan

For Respondents
For R1 to 3 : Mr.Syed Mustafa,
Special Government Pleader

ORDER

This writ petition has been filed to forbear the respondents from retiring the petitioner from his service as on 31.03.2024.

2. The case of the petitioner is that the petitioner was appointed as Assistant Professor at Puducherry Technological University on 22.12.1989. Thereafter, the petitioner was promoted to the post of Professor. Originally it was Puducherry Engineering College and subsequently converted as Puducherry Technological University. The Government of Puducherry passed Puducherry Technological University Act, 2019 and incorporated as an affiliated and research University of Puducherry. The petitioner is completing his age of 62 years as on 31.03.2024. As per All India Council for Technical Education (hereinafter called as AICTE) Regulation, the age of retirement shall be



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65 years. However, the respondents are under preparation of his retirement / superannuation as on 31.03.2024.

3. The learned counsel for the petitioner would submit that AICTE has framed pay scales, service conditions and minimum qualifications for 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 – Regulation, 2019 on 01.03.2019. It was published in the official gazette on the same date. It was framed under the powers conferred under Section 23(1) r/w 10(g)(h) and (i) of the AICTE Act, 1987 and with the approval of the Government of India. Therefore, it is binding on all technical institutions including Puducherry Technological University. As per Clause 2.12, the age of superannuation of all faculty members and Principals / Directors of Institutions shall be 65 years. An extension of five years (till the attainment of seventy years of age) may be given to those faculty members who are physically fit, have written technical books, published papers and has average 360 degree feedback



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of more than 8 out of 10 indicating them being active during last three preceding years of service. Therefore, the petitioner submitted representation to the first respondent. However, so far the request made by the petitioner was not considered.

3.1 The learned counsel for the petitioner relied upon the judgment of the the Hon'ble High Court of Karnataka rendered in the case of ***Dr.G.R.Bharath Sai. Kumar Vs. State of Karnataka rep. by Principal Secretary and Others*** in WP.No.15421 of 2020 dated 24.05.2021, wherein it is held that the faculty members including the Principals in the institutions governed by AICTE / UGC are entitled to continue in service upto 65 years. He also relied upon the judgment of the Hon'ble Division Bench of High Court of Punjab and Haryana rendered in the case of ***Dr.Jogender Pal Singh and Others Vs. Union of India and Others*** in CMP.No.20447 of 2020, wherein it is held that the services of the petitioners are governed by AICTE Regulations, according to which the age of superannuation of the petitioners would be 65 years with provision for extension of five years subject to requirements of



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Regulations. He also relied upon the judgment of this Court rendered in the case of ***Dr.S.Kothandaraman Vs. The Pro-Chancellor, Puducherry Technological University*** in WP.Nos.17918 and 17929 of 2021 dated 12.04.2022, wherein it is held on the mandatory nature of AICTE Regulations issued in the year 2019 with regards to the prescriptions of the age superannuation of faculty and granted the relief of continuation in service till the age of 65 years.

4. The learned counsel for respondents 1 to 3 submitted that no compulsion to accept and/or adopt the said scheme by State or Union Territory Governments. They are free to decide as to whether the scheme would be adopted by them or not. Therefore, the Regulations of AICTE is not an automatic application to the State or Union Territory without any conscious decision. They can take decision on account of the financial implications and other consequences. Further, as per the University guidelines dated 04.04.2007, the age of superannuation of University and College Teachers is 65 years. But the increase in the age of superannuation from 62 to 65 years for teaching positions has been



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implemented only in centrally funded institutions in Higher and Technical Education. In fact, so many Arts and Science Colleges / Engineering Colleges are run by Union Territory of Puducherry including the respondents institutions. The age of superannuation for the teachers is only 62 years.

4.1 He further submitted that AICTE is empowered to frame Regulations under Section 26 of the UGC Act, 1956 for the promotion and coordination of University Education and for the determination and maintenance of standards of teaching, examination and research. Therefore, the Regulations of AICTE is a policy matter involving financial implications and is to be decided by the Government of Puducherry which provides Grant-in-Aid to run the institutions under the control of Government of Puducherry. However, the Government of Puducherry is yet to decide to adopt / implement the recommendations till date. The AICTE published the Regulations vide its notification dated 01.03.2019 for the purpose of service conditions and minimum qualifications for appointment of teachers and other academic staff for the Maintenance of



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Standards in Technical Education – (Degree) Regulation, 2019. The said Regulation clauses 2.11(c) and (f) are clear that there is an option available to the State / Union Territory Government in opting for revision of pay scales and other guidelines shall be implemented by State / Union Territory Government and technical institutions coming under their jurisdiction as a composite scheme respectively. A plain reading of the said clauses, more particularly, the words 'opting' and 'composite scheme' respectively shall only lead to a conclusion that the Regulations of AICTE were optional. Therefore, it is not automatic on account of stipulation that the Regulations of AICTE would have to be accepted in its totality and shall not be implemented as a matter of routine and the same requires deliberation by the State / Union Territory Governments. It is relevant to extract Regulations 2.11 (c) and (e) as follows:

c) The entire liability on account of revision of pay scales etc. with effect from 01.04.2019 shall be taken over by the State/UT Government opting for revision of pay scales.

e) State/UT Governments, taking into consideration other local conditions, may also decide at their discretion, to introduce pay higher than those



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mentioned in this Scheme, and shall give effect to the revised scales of pay from 01.01.2016; 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 as approved by the Central Government and not to any higher pay fixed by the State /UT Government(s).

4.2 He further submitted that the Hon'ble Supreme Court of India held in the recent judgment in the case of ***Dr.J.Vijayan & Others Vs. The State of Kerala and Others*** reported in ***2002 Live Law (SC) 655***, wherein it is held that fixing of age of superannuation is a policy decision of the Government. The Regulations have to be consistent with directions on questions of policy relating to national purposes. Therefore, the age of superannuation could be decided by way of recruitment rules, which has to be framed by the authorities referred in Article 309 of the Constitution of India. The age of superannuation, service conditions and Rules, etc. prescribed by AICTE by its regulations, if construed as mandatory that will result in usurping the power vested under Article 309 of the Constitution of India. The Hon'ble Supreme Court of India held in the case of ***B.Bharath Kumar and Others Vs. Osmania University and***



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Others reported in (2007) 11 SCC 58, wherein it is held that it is not for the court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the legislation. If the State Government, in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so. Therefore, the policy decision of the Government of Puducherry is clear that enhancement in the age of superannuation is not applicable to the teachers in colleges and technical institutions run by the Union of Territory.

5. Heard, the learned counsel appearing on either side.

6. On perusal of records, the communication dated 25.04.2007 from the Government of Puducherry to the Deputy Secretary to Government of India, Ministry of Human Resource Development revealed that a request was made to clarify whether the age enhancement from 62 to 65 years is applicable to the institutions under the Union Territory of



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Puducherry. The Government of India by its communication dated 11.05.2007 clarified that the enhancement in the age of superannuation is not applicable to the teachers in colleges / technical institutions run by the Union Territory Administration of Puducherry. However, it shall be open to the Administration of the Union Territory to take a decision with the approval of the competent authority. Therefore, the Government of Puducherry decided not to extend the age of superannuation as 65 years. By way of Government Order in GO.Ms.No.24 Chief Secretariat (Education) dated 10.03.2011, it was decided that considering the financial soundness and other administrative imbalances in respect of all educational institutions under the purview of the Directorate of Higher and Technical Education and as it is the prerogative of the Union Territory Administration to take a decision depending on the local requirements and funding position as outlined by the Ministry of Human Resource Development, Government of India in the matter, it has been decided that the retirement age of the technical teachers shall be maintained as 62 years instead of 65 years as recommended by the AICTE to maintain uniformity and parity of teaching faculty of Higher



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and Technical Education Department of this administration in service condition.

7. In fact, it was challenged before the Central Administrative Tribunal in several applications and Tribunal by its order dated 30.08.2011 upheld the Government Order and dismissed the applications. Further, the Government Order in GO.Ms.No.103 Chief Secretariat (Education-1) Puducherry dated 22.09.2009 thereby denied the benefit of age of superannuation as 65 years was challenged. The Tribunal by its order dated 05.09.2011 dismissed the application. The order passed by the Tribunal was challenged before this Court and the Hon'ble Division Bench of this Court by order dated 03.11.2011 in WP.No.25294 of 2011 dismissed the appeal and confirmed the order passed by the Tribunal. That apart, there were complaints for non implementation of retirement age as 65 years by the Puducherry College Teachers Association and by order dated 17.03.2016, Government of Puducherry concluded that the Government of Puducherry has already taken a policy decision that the age of superannuation shall be maintained



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as 62 years with the approval of Lieutenant Governor with the consideration of financial soundness and other administrative conveniences. Therefore, the said complaints were rejected.

8. In fact, the Government of Tamilnadu passed recent order in GO.Ms.No.20 Higher Education (C2) Department dated 14.01.2020 in respect of revision of pay and other conditions to the teachers and other academic staff in diploma level Government / Government aided Polytechnic Colleges and Special Institutions governed by AICTE. In respect of the age of superannuation, it has been fixed that the age shall be continued as 58 years for teachers, reemployment shall also be continued with present system i.e. till the completion of academic year i.e. May of every year. Nowhere the Regulations of AICTE has been followed insofar as the age of superannuation i.e. 62 to 65 years. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand. Further, the petitioner approached this Court in the fag end of his service though AICTE Regulations were issued on 01.03.2019. Therefore, the direction sought for in this writ petition cannot be



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considered and the writ petition itself is devoid of merits and liable to be dismissed.

9. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

26.04.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Vice Chancellor,
Puducherry Technological University,
(Erstwhile Pondicherry Engineering College),
Puducherry 605 014
- 2.The Secretary for Education,
Government of Puducherry cum Pro Chancellor,
Puducherry Technological University,
(Erstwhile Pondicherry Engineering College),
Chief Secretariat,
Puducherry 605 001
- 3.The Chief Secretary,
Chief Secretariat,
Puducherry 605 001
- 4.All India Council for Technical Education,
No.29, Haddows Road,
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