

16.06.2025
SI No.34
Court No.8
(gc)

MAT 1346 of 2018

**Srikanta Maity
Vs.
The State of West Bengal & Ors.**

Mr. Aditya Mondal,
Mr. W.A. Dafader
...for the Appellant.
Mr. Tapan Kr. Mukherjee, Ld. A.G.P.,
Mr. Dipankar Das Gupta
...for the State.
Mr. Soumya Majumdar, Sr. Adv.,
Mr. Biswaroop Bhattacharya,
Mr. Uttam Sharma,
Ms. Bidushi Banerjee,
Ms. Vrinda Kedia
...for the Respondent Nos.5 & 6.

Soumen Sen J. (Oral):

1. This appeal is directed against an order passed by the learned Single Judge dated 27th August, 2018 in which the writ petitioner, a Graduate Senior Laboratory Instructor in MCKV Institute of Engineering, has moved the Court praying, inter alia, for issuance of writ of mandamus compelling the Institute to continue with his service till he attains 62 years by quashing the letter dated 24th October, 2017 by which his age of retirement was determined as 60 years. The writ petitioner was dismissed on the ground that the College concerned is a private institution not amenable to writ jurisdiction. While it cannot be of any doubt that merely because the College which is a limb of the University

being the respondent no.2 has been receiving grant for financial aid would not be a decisive factor for the College to come within the purview of Article 12 of the Constitution of India and in this regard, the learned Single Judge, in our view, has correctly held upon consideration of the various judgments that the said College is not amenable to the writ jurisdiction. However, in course of the appeal, it appears that a representation was made by the petitioner to the All India Council for Technical Education (in short "AICTE") and in response to that application AICTE directed the Principal of MCKV Institute of Engineering to act in accordance with AICTE Approval Process Hand Book and the methods and procedures of the Affiliating University/Board, State Governments and Hon'ble Court Directives, if any and as applicable in the case. Although, not clearly stated the said direction prohibits as consideration of the communication dated 27th July, 1998 from the Deputy Secretary to the Government of West Bengal to the Director of Public Instruction that all Graduate Laboratory Instructors shall be regarded as member of the teaching staff as per order of the Hon'ble High Court at Calcutta. AICTE Notification

disclosed in this proceeding would show that the age of superannuation would be of 62 years and thereafter no extension of service shall be given. It further appears that the age of superannuation would be 62 years indicated in para-1(vi) of Annexure of letter dated 9th October, 1998 shall also be applicable to Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other employees of the Technical Institutions who are treated at par with the teachers and whose age of superannuation was 60 years. The State Government has issued a notification dated 27th January, 2017 by which the service terms and conditions of such teachers, Principals, Librarians and Graduate Laboratory Instructors, including the rules relating to Death-cum-Retirement benefits and the rules regarding voluntary retirement shall remain unaltered except to the above extent in the said notification.

2. If the said rules are applicable to the writ petitioner then read with the compliance of the State Government decision on superannuation age as reflected from the AICTE notification dated 22nd January, 2010 requires to be followed.

3. It is submitted that the College is a self-financed institutions receiving no Government aid.
4. Under such circumstances, we feel that the matter can amicably be resolved if it is referred to the Department of Higher Education in taking a decision in this regard. The factual aspect has to be gone into by the Director of Department of Higher Education and in the event it is found that the said rules are compulsorily made applicable to the institutions in question, it is needless to mention that appropriate direction may be passed by the said Director since the affiliation is based on certain undertakings being given by the College.
5. However, we agree with Mr. Majumdar, learned Senior Counsel appearing for the respondent nos.5 and 6 that AICTE Handbook is in the nature of recommendation and it is for the State Government to accept the said recommendation and for that reason we direct the Department of Higher Education to consider the said representations dated 16th October, 2017 and 2nd November, 2017.
6. However, we permit the appellant/petitioner to make a detailed representation to the said Department of Higher Education within a

fortnight from date along with the representations already made and we direct the Secretary, Higher Education Department to consider and decide the said representations within eight weeks thereafter after giving opportunity to the College and the University and dispose of the said representations by a reasoned order within two weeks thereafter.

7. The reasoned order shall be communicated to the parties within one week from the date of the final order.
8. The appellant/writ petitioner shall be entitled to receive his retirement benefits including the gratuity without prejudice to his rights and contentions, in fact, he was offered such retiral benefits which he did not accept due to the pendency of the appeal.
9. Accordingly, the appeal is disposed of.
10. However, there shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)