GAHC010196332022

2026:GAU-AS:15538

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6330/2022

DR. BHUPEN SARMAH
SON OF LATE SARBESWAR SARMA,
RESIDENT OF HOUSE NO. 33,
MILIJULI PATH, NAMGHAR PATH,
PANJABARI IN THE DISTRICT OF KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM,
TRANSFORMATION AND DEVELOPMENT DEPARTMENT,
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM

TRANSFORMATION AND DEVELOPMENT DEPARTMENT

GUWAHATI- 781006.

3:ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
TRANSFORMATION AND DEVELOPMENT DEPARTMENT

GUWAHATI- 781006.

4:INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH (ICSSR)
MINISTRY OF EDUCATION
GOVERNMENT OF INDIA
(REPRESENTED BY ITS CHAIRMAN)
JNU INSTITUTIONAL AREA

ARUNA ASAF ALI MARG

NEW DELHI- 110067.

5:OMEO KUMAR DAS INSTITUTE OF SOCIAL CHANGE AND DEVELOPMENT
VIP ROAD
UPPER HENGRABARI

GUWAHATI- 781036

REPRESENTED BY ITS DIRECTOR.

6:THE GOVERNING BODY

OMEO KUMAR DAS INSTITUTE OF SOCIAL CHANGE AND DEVELOPMENT

REPRESENTED BY ITS SECRETARY
VIP ROAD
UPPER HENGRABARI
GUWAHATI- 781036.

7:THE DIRECTOR
OMEO KUMAR DAS INSTITUTE OF SOCIAL CHANGE AND DEVELOPMENT

REPRESENTED BY ITS SECRETARY
VIP ROAD
UPPER HENGRABARI
GUWAHATI- 781036.

8:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

DEPARTMENT OF EDUCATION

NEW DELHI- 110001

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. T. Chakraborty, Advocate

For the Respondent(s) : Mr. T. C. Chutia, Addl. Sr. GA, Assam
: Ms. J. Sarmah, Advocate
: Mr. R. K. D. Choudhury, Dy. S.G.I.
: Mr. D. Nath, Advocate

- Date on which Judgment was reserved : **18.08.2026**
- Date of Pronouncement of Judgment : **13.10.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : No

JUDGMENT AND ORDER (CAV)

Heard Mr. T. Chakraborty, the learned counsel appearing on behalf of the Petitioner and Mr. T. C. Chutia, the learned Additional Senior Government Advocate appearing on behalf of the Respondent Nos. 1, 2 and 3. I have also heard Mr. D. Nath, the learned counsel appearing on behalf of the Respondent Nos. 4, 5, 6 & 7 and Mr. R. K. D. Choudhury, the learned Dy. S.G.I. appearing on behalf of the Respondent No.8.

2. The present writ petition is filed by the Petitioner seeking a declaration that the age of superannuation of a professor of Omeo

Kumar Das Institute of Social Change and Development (for short, 'the Institute') be 65 years as per the extant UGC guidelines. In addition to that, the Petitioner has sought for a writ in the nature of mandamus thereby declaring and holding that the age of superannuation of the Petitioner shall be as per the Cabinet decision of the State Government adopted on 19.09.2012 and notification dated 26.09.2012 issued in pursuance thereof regarding the age of superannuation of the professor in educational institutions including medical colleges. The petitioner has also sought for consequential relief for setting aside and quashing the communication dated 09.08.2022 read with the communication dated 20.12.2024 issued by the State Government whereby the Government of Assam regretted to its inability to agree to the proposal for raising the age of retirement of professors of the Institute.

BRIEF FACTS OF THE CASE:

3. The Petitioner started his academic career as a Research Associate in the National Institute of Rural Development, North East Regional Centre, Guwahati in 1991. Subsequently, he joined as a Lecturer in the Department of Political Science, Dimoria College, Khetri in 1993. In the year 1994, the Petitioner was

awarded the Ph.D. In February 1998, the Petitioner joined as a Lecturer in the Center for Himalayan Studies, University of North Bengal.

4. Subsequent thereto, the Petitioner was appointed on 31.10.1998 as a Reader at the Institute and in pursuance thereto, the Petitioner joined the Institute on 09.11.1998. The Petitioner was promoted to the grade of Professor in the UGC scale of pay under the Career Advancement Scheme (CAS) and a notification to that effect was issued on 14.02.2007. When a post of Professor was advertised by the Institute in the year 2012, the Petitioner applied for it and vide order dated 15.03.2012, the petitioner was appointed as a Professor in the Institute in the UGC scale of pay. The Petitioner thereafter served as a Director of the Institute w.e.f. March, 2012 till 03.09.2018.

5. The records reveal that on 19.09.2012, a Cabinet decision was taken by the Government of Assam to raise the age of retirement of all professors of educational institutions including medical colleges to 65 years. Subsequent thereto, a notification dated 26.09.2012 was issued by the State Government giving effect to such Cabinet decision adopted by the Cabinet on 19.09.2012 by raising the age of superannuation of professors to the age of 65

years in educational institutions including medical colleges. In the 52nd Meeting of the Governing Body of the Institute held on 22.08.2014 under Agenda Item No.4.8 whereby the Governing Body of the Institute took a decision that the service conditions including the age of superannuation for the Faculty Members of the Institute shall be as per the rules and regulations laid down by the University Grants Commission. Further, the service conditions including the age of superannuation for all other staff of the Institute shall be as per the rules and regulations laid down by the Government of India for the Central Government employees. The said resolution taken in the 52nd Meeting of the Governing Body of the Institute was forwarded to the Planning and Development Department of the State of Assam. Vide the communication dated 20.12.2014 issued by the Secretary to the Government of Assam, Planning and Development Department, it was informed that after careful consideration of the retirement age of the employees of the Government of Assam, other institutes established by the Government of Assam, UGC circulars, Supreme Court verdicts, etc., on the subject, it was felt that the retirement of both the faculty members and other staff of the Institute should remain at 60 years of age.

6. Subsequent to the said communication, another Meeting of

the Governing Body of the Institute was held on 17.03.2015 wherein Agenda Item No.5 and more particularly 5.2, the retirement age of the faculty and non-faculty staff of the Institute came up for discussion. It was resolved in the 54th Meeting of the Governing Body held on 17.03.2015 that Shri Bhaskar Barua be requested to take up the issue of service condition and age of superannuation of faculty and staff of the Institute with the Government of Assam and to resolve the issue taking into account the history of the Institute, procedure of appointment it followed during the last 25 years, the service conditions and the rules of other similar institutes in the country.

7. In another special Meeting of the Institute held on 04.05.2015, it was resolved that the service conditions including the age of superannuation for the faculty members of the Institute should be as per the rules and regulations laid down by the University Grants Commission and further the service conditions including the age of superannuation for the other staff of the Institute should be as per the rules and regulations laid by the Government of Assam for its employees. In the said meeting, Shri K. V. Eapen, the Additional Chief Secretary, P&D, Government of Assam agreed to review its position in the light of the said recommendation.

8. Subsequent thereto, in the 56th Meeting of the Governing Body held on 15.12.2015, in Agenda Item No. 4.2, it was resolved to request the Chairman, ICSSR to kindly reconsider the amendments relating to the tenure of the Chairperson and the Director. Further, in view of the basic interests as well as the nature of the Institute which is responsible for conducting research covering the entire North East, the Governing Body also suggested the Director to request the Chairman, ICSSR to kindly ratify the resolution of the Governing Body relating to retirement age of the faculty and non-faculty staff of the Institute.

9. The records further reveal that these resolutions which were adopted by the Governing Body did not find favour for enhancing the age of superannuation. In the 59th Meeting of the Governing Body held on 16.08.2017, in the Agenda Item No. 4.8, the Governing Body resolved to request the Director to appeal to the Government of Assam to kindly reconsider its position on priority basis and to raise the age of retirement of the Professors at the Institute to 65 years in accordance with the Cabinet decision.

10. The records further reveal that various correspondences were exchanged with the Government of Assam. In the 66th Meeting of the Governing Body held on 20.01.2021, in the Agenda Item No.

4.13, the age of superannuation of the Professors at the Institute were again discussed. It was resolved in connection with the said Agenda that the Institute would urge upon the Transformation and Development Department, Government of Assam to pursue the matter of retirement age of Professors at the Institute keeping in view the long run interest of the Institute. Subsequent thereto, a communication was issued on 30.06.2021 to the Additional Chief Secretary, Transformation and Development Department urging that the age of superannuation of the Professors at the Institute should be made at par with the State Universities which is 65 years as per the UGC Regulations. Similar representations were submitted to the Chief Minister of Assam.

11. The records further reveal that, in the 69th Meeting of the Governing Body held on 29.07.2022, the Service Rules of the Institute were approved by the Governing Body. A perusal of the said Minutes of the Meeting shows that the Petitioner, who was a Member of the Governing Body, had placed a note of dissent in respect of Regulation 32.1 of the Omeo Kumar Das Institute of Social Change and Development Services (Faculty & Other Academic Staff) Regulations, 2022 (for short, "the Service Regulations, 2022").

12. It is of importance to take note of that in terms of Regulation 32.1 of the Service Regulations, 2022, the age of superannuation of the faculty and academic staff of the Institute in its permanent full time service is 60 years/as notified by the Government from time to time.

13. The records also show that on 09.08.2022, the Additional Secretary to the Government of Assam Transformation and Development Department informed the Director (In-charge) of the Institute that the Government of Assam had regretted its inability to agree to the proposal for raising the age of retirement of Professors of the Institute. It is under such circumstances, the Petitioner being aggrieved had filed the instant writ petition seeking for the reliefs as already mentioned hereinabove.

14. It is relevant to take note of that the writ petition was filed on 20.09.2022 and the Petitioner, as per the Clause 32.1 of the Service Regulations, 2022, was to retire in the month of February, 2024 upon attaining the age of 60.

15. The learned Coordinate Bench of this Court vide an order dated 23.09.2022 issued notice.

16. The Respondent No.3 had filed an affidavit-in-opposition

through the Secretary to the Government of Assam, Transformation and Development Department who had issued the impugned communication dated 09.08.2022 wherein it is mentioned that vide a communication issued on 26.09.2012 by the Commissioner and Secretary to the Government of Assam, Higher Education Department to the Vice-Chancellors of various Universities, the age of retirement of all professors of educational institutions including medical colleges were raised to 65 years. Subsequent thereto, vide another office memorandum dated 29.07.2021, on the basis of the Government of India Gazette dated 04.01.2016, Professors upgraded through Career Advancement Schemes and those directly recruited would be considered at par for the purpose of recruitment of Principal in Engineering College which shall be from the date of their eligibility. Further to that, the Government clarified that the superannuation age is 65 years for the faculties promoted Professor grade through Career Advancement Schemes.

17. In addition to that, another notification was brought on record dated 14.10.2014 issued by the Commissioner and Secretary to the Government of Assam, Higher Education (Technical) Department whereby Professors of all Engineering Colleges of Assam, namely: (i) Principals of Engineering Colleges of Assam; (ii) All Professor of

Engineering Colleges of Assam, their age of retirement was enhanced from existing 60 years to 65 years with immediate effect. Insofar as the Institute in question, it is mentioned that the Institute is an autonomous body established primarily for research and training under ICSSR and Government of Assam, Transformation and Development Department. It was averred that the policy decision of the Government of Assam Higher Education Department to raise the age of retirement of all professors of educational institutions including medical colleges to 65 years under the Higher Education Department was the decision of the Higher Education Department, whereas the Institute is not under the purview of the Education Department. It was, therefore mentioned that the communication dated 20.12.2014 was not violative of the Cabinet decision dated 19.09.2012.

18. The Respondent Nos. 5, 6, and 7 i.e. the Institute, had filed an affidavit-in-opposition through the Director (In-charge) of the Institute. It was stated therein that the Indian Council of Social Science Research, (ICSSR) was established in the year 1969 by the Government of India to promote research in social sciences in the country. ICSSR provides grants for projects, fellowships, international collaboration, capacity building, survey, etc. to promote research in social sciences in India. The ICSSR at

present assists 24 Research Institutes including the Institute. The Institute is sponsored by the Government of Assam and the ICSSR. The Institute is situated at Guwahati and is a registered society under the Societies Registration Act, 1860 (for short 'the Act of 1860'). The aims and objects for which the Institute was established are to undertake, aid, promote and coordinate research on problems and processes of social transformation and development of Assam and other States of the North Eastern region and to contribute to the formulation of strategies and programs for speedier regional development; to provide academic and professional guidance to agencies, institutions and scholars engaged in research in social sciences and developments, to offer on request advisory and consultancy services to the Government of India, the Government of Assam and other State Governments of the North Eastern region, Universities, Colleges and other Educational Institutions and organizations in business, industry or trade and to act as a clearing house of ideas and information on research in social sciences with special emphasis on the problems of Assam and other States of the North Eastern region. It was further averred that the Institute has collaboration with other agencies, institutions and organizations including universities, colleges and other institutions in India and abroad and in such a manner as may be necessary for the promotion of the objectives of

the Institute. The Institute also offers fellowship in furtherance of research in social sciences and provides programs of advanced training to teachers in universities and colleges with a view to improve the quality of teaching and research in social sciences and conduct training programs for government officials.

19. It was mentioned at Paragraph No.21 of the said affidavit-in-opposition that the Governing Body of the Institute on the basis of various resolutions adopted in a number of meetings had requested the State Government in the Transformation and Development Department, Government of Assam, to consider the age of 65 years for Professors of the Institute and the Director of the Institute had relentlessly pursued the matter but the final decision was with the State Government. The State Government was moved on 06.09.2021 with a comprehensive note about the increasing the age of superannuation of the Professors of the Institute. The State Government had communicated its decision vide the impugned communication dated 09.08.2022.

20. The Respondent No.4 had also filed an affidavit-in-opposition through the Deputy Director (Research). In the said affidavit-in-opposition filed by the of the Respondent No.4, it was stated that the ICSSR is an autonomous body of the Ministry of Education,

Government of India, which was established in the year 1969 as a society registered under the Act of 1860. It was averred that the ICSSR is fully funded by the Ministry of Education, Department of Higher Education, and the Government of India by way of grant-in-aid. It was stated that the ICSSR had recognized 24 research institutes in the country which amongst others includes the Institute at Guwahati. The Institute was brought under the ICSSR Grant-in-Aid Scheme in the year 1989-90 and since then has been receiving recurring and non-recurring grants from ICSSR. The Institute receives 45% Grant-in-Aid each from the State Government of Assam and the ICSSR and the remaining 10% is generated from its own resources. It was categorically mentioned that the Government of Assam in its notification dated 26.09.2012 had clearly stated that the age of retirement for Professors of all educational institutions including medical colleges is raised to 65 years. The Government of Assam, however, has not recognized the Institute as an educational institution. The Institute is recognized as a Research Institute by the Government of Assam. It was therefore contended by the Respondent No.4 that the notification dated 26.09.2012 is not applicable to the faculty of the Institute. Further to that, it is also mentioned that even the Memorandum of Association of the Institute does not define it to be an Educational Institution.

21. The Respondent No.4 further averred in the said affidavit-in-opposition that even in the Service Regulations of 2022 of the Institute, the status of the Institute is as a Research Institute and not as an Educational Institution. Further, referring to the communication dated 10.03.2011 of the Government of India, Ministry of Human Resource Development, (now Ministry of Education), Department of Higher Education, regarding revision of pay scales of employees of Research Institutes supported by ICSSR, it was mentioned that in terms with Para 6(l), the Research Institute cannot alter/modify under any circumstances, the emolument structure and service conditions, scales of pay of the posts without the prior approval of the Government of India, Ministry of Education, Department of Higher Education, New Delhi, which is the funding agency of the ICSSR and the Research Institutes, including the Institute.

22. The Respondent No.3 i.e. the Transformation and Development Department of the Government of Assam, filed an additional affidavit on 15.11.2023 wherein, apart from what has been already mentioned by the other Respondents, it is stated that the age of retirement varies amongst the 24 ICSSR recognized Institutes and is as per the decision of the respective State Governments. The age of retirement for faculty and other

employees of the ICSSR Institutes is decided by the respective State Governments and the Governing Bodies of the Institutes accepts the date of retirement approved by the State Government for these Institutes. The ICSSR concurs with the decision of the State Governments in respect of the age of retirement for the 24 Research Institutes under its domain. To the said additional affidavit, two documents were enclosed. First is the communication issued by the Joint Secretary, University Grants Commission to the Registrar, all Central/Deemed Universities dated 04.04.2007 whereby there was a directions issued for enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education for compliance. The said communication dated 04.04.2007 is based upon a communication dated 23.03.2007 issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India. In the said communication dated 23.03.2007, which was the second document enclosed, the Ministry of Human Resource, Department of Higher Education, had categorically mentioned that the enhancement of the retirement age and the provision for re-employment would apply only to persons in teaching positions against posts sanctioned in Centrally funded higher and technical educational institutions coming under the purview of the Ministry, in order to overcome the shortage of

teachers.

23. The records further reveal that the Petitioner had filed various affidavits-in-reply to the affidavits-in-opposition filed by the respective Respondents reiterating and reaffirming the statements made in the writ petition.

24. When the writ petition was taken up on 21.04.2026, this Court, upon hearing the various parties and after taking into consideration the communication dated 30.11.2010 issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India, and the clauses contained therein was of the opinion that the Ministry of Human Resource Development, Department of Higher Education, Government of India would be a necessary party to the instant proceedings and accordingly, impleaded the Secretary to the Government of India, Ministry of Human Resource Development, Department of Education as the Respondent No.8 to the present proceedings.

25. This Court vide the said order dated 21.04.2026, further directed the Respondent No.8 to bring on record its stand and more particularly as to the age of retirement of a professor in a Research Institute sponsored by the Central Government, the

details of which is available in the communication dated 30.11.2010 issued by the Director, (ICR) of the Government of India, Ministry of Human Resource Development.

26. On 06.08.2026, Mr. R. K. D. Choudhury, the learned Dy. S.G.I., had placed the instructions dated 14.07.2026 which was kept on record and marked with the letter "Y" containing what is averred in the affidavit-in-opposition filed by the Respondent No.8. It was stated in the said instructions that the Institute is a Research Institute receiving grant-in-aid from ICSSR and the Government of Assam. The Institute is not an Educational Institution. The notification issued by the Government of Assam on 26.09.2012 enhancing the retirement age of Professors to 65 years applies to Educational Institutions and not to Research Institute such as the Institute in question. As per the service conditions of the Institute, the age of superannuation is 60 years. Further to that, it was mentioned that in terms with the Ministry's communication dated 10.03.2011, Research Institutes receiving assistance from ICSSR cannot alter their service conditions without prior approval of the Government of India. In addition to that, the Government of Assam, through communications dated 20.12.2014, 13.05.2020 and 09.08.2022, reiterated that the retirement age of the faculty of the Institute in question shall remain 60 years. It was further

mentioned that the Clause 16(4) of the ICSSR Grant-in-Aid Rules provides that the pay scales and the service conditions of the employees of the Research Institutions require approval of the Government of India through the ICSSR. In addition to that, the Ministry of Education had not passed any independent order relating to enhancement of age of superannuation of the Petitioner or approval of any amendment to the Service Rules of the Institute in question.

SUBMISSIONS MADE ON BEHALF OF THE LEARNED COUNSELS FOR THE PARTIES:

27. Mr. T. Chakraborty, the learned counsel appearing on behalf of the Petitioner submitted that the Governing Body of the Institute had adopted the UGC Regulations and the Petitioner was getting his salary as per the UGC scale of pay, and therefore, for all intent and purposes, the Petitioner is entitled to retire at the age as prescribed by the UGC, which is 65 years. The learned counsel further submitted that the Service Regulations, 2022, though provides that the age of retirement would be 60 years but also stipulates that as may be decided by the Government and in that regard, the Government of Assam had decided that the age of superannuation of professors to be 65 years by way of a Cabinet decision taken on 19.09.2012 and therefore, the Petitioner's age of

superannuation has to be construed to be 65 years and not 60 years. The learned counsel for the Petitioner further submitted that, under the ICSSR, there are 24 Research Institutes, and the age of retirement of the faculty and Professors in all such Research Institutes is determined with reference to the age of retirement applicable to faculty and Professors in educational institutions. Therefore, in the instant case, as the age of retirement of a Professor in educational institutions in the State of Assam is 65 years, it is arbitrary on the part of the State Government not to enhance the age of retirement of the Professors employed in the Institute in question.

28. The learned counsel appearing on behalf of the Petitioner further submitted that the Research Institutes are part of the education policy. The Professors of the Institute also provide their services to the various Educational Institutions and in that regard, had referred to a Memorandum of Understanding for academic collaboration between the Dibrugarh University with the Institute in question. The learned counsel further referring to the judgment of the Supreme Court in the case of ***North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma and Others*** *reported in* ***(2021) 17 SCC 642***, submitted that the Supreme Court in the said judgment had equated the doctors both under AYUSH and CHS as

performing similar services and therefore, the age of retirement of 65 years for doctors in CHS was also applied to doctors of AYUSH. Relying on the said judgment, the learned Counsel for the Petitioner therefore had submitted that as the Professors in Research Institutes and Professors in Educational Institutions carry out similar work, the age of retirement for Professors in Educational institutions should also be made applicable to the Professors of Research Institutes.

29. Mr. R. K. D. Choudhury, the learned Senior counsel as well as the learned Dy. S.G.I. appearing on behalf of the Respondent No.8 submitted that the Institute in question is a society registered under the provisions of the Act of 1860. From a very perusal of the Memorandum of Association of the Institute in question, it would be seen that it is a Research Institute and not an Educational Institution. Under such circumstances, the Cabinet decision of the State of Assam dated 19.09.2012 which was notified on 26.09.2012 cannot be made applicable insofar as to the Professors of the Institute in question, inasmuch as the Cabinet decision was only in respect to Educational Institutions and including medical colleges.

30. The learned Senior counsel further submitted that from a

perusal of the appointment letter of the Petitioner dated 31.10.1998 as well as the subsequent notification dated 14.02.2007, it would be seen that only the UGC scale of pay plus other admissible allowances were provided to the Petitioner and nothing more. Further to that, referring to the communication issued by the Ministry of Human Resource Development, Department of Higher Education dated 23.03.2007, the learned Senior counsel submitted that the enhancement of the age from 62 to 65 was only provided to those persons in teaching positions against posts sanctioned to centrally funded higher and technical educational institutions coming under the purview of the Ministry in order to overcome the shortage of teachers. Under such circumstances, the learned Senior counsel submitted that the question of the Petitioner getting any benefit on the basis of the enhancement of the age by the UGC does not arise inasmuch as the Institute in question is neither a University or even a Deemed University.

31. Mr. Tarun Chutia, the learned Additional Senior Government Advocate submitted that the Service Regulations, 2022 makes it very clear that the age of superannuation of all faculty and academic staff of the Institute in question in its permanent full time service is 60 years or as notified by the Government from time to

time. There is no notification by the Government of Assam thereby increasing the age of superannuation and under such circumstances, the Petitioner cannot have any right or even a legitimate expectation that his age of retirement would be 65 and not 60 years.

32. Mr. D. Nath, the learned counsel who appears on behalf of the Respondent Nos. 5, 6, and 7 submitted that the instant writ petition filed by the Petitioner is without any merit inasmuch as unless the Government enhances the age of retirement, the question of the Petitioner being entitled to enhancement of his age of retirement does not arise. The Petitioner was bound in terms with the service regulations wherein the age of retirement was 60.

ANALYSIS AND DETERMINATION:

33. The Indian Council of Social Science and Research (ICSSR) was established in the year 1969. The said ICSSR is a society registered under the provisions of the Act of 1860. The said ICSSR is fully funded by the Ministry of Education, Department of Higher Education and the Government of India by way of grant-in-aid. The ICSSR had recognized 24 Research Institutes in the country which includes the Institute in question. The Institute in question receives 45% grant-in-aid from the ICSSR Grant-in-Aid Scheme. 45% grant-

in-aid is received from the State of Assam and the remaining 10% is incurred by the Institute from their own resources.

34. The ICSSR Grant-in-Aid Rules which have been approved by the Government of India categorically mandates the conditions of assistance. It further stipulates the scales of salaries and allowances of the staff of the Research Institutions shall be as sanctioned by the Council from time to time with the approval of the Government of India.

35. At this stage, it is relevant to take note of that on 10th of March, 2011, a communication was issued by the Director, (ICR), Government of India, Ministry of Human Resource Development, Department of Higher Education, whereby the Government of India conveyed the approval to the revision of pay scales of academic and non-academic employees of the various Research Institutes funded through ICSSR which included the Institute in question, with effect from 01.01.2006 and also to release of the share of the Government of India towards financial assistance to each Institute subject to various conditions. Clause 6(e) of the communication dated 30.11.2010 stipulated that the service conditions of the employees of Institutes/Regional centres specially those relating to hours of work, payment of OTA, medical

allowances, etc., should be identical to that of the State/Central Government employees. Clause 6(f) stipulated that the pay scales and allowances of the academic posts, qualifications, recruitment rules, etc., should be as per the UGC norms or State University norms. Clause 6(h) stipulated that the ICSSR would bear 45% where the funding is on 50:50 basis between Central Government/State Government. 10% additionality would be met by the Institute through its savings under various heads. Clause 6(l) of the communication dated 30.11.2010 is of relevance and as such, the same is reproduced herein under.

> "***6(l).*** *The Research Institute shall not alter/modify, under any circumstance, the emoluments structure and service conditions, scales of pay of the posts without the prior approval of the Government."*

36. It is of relevance to take note of that while Clause 6(e) specifically refers to certain service conditions i.e. relating to hours of work, payment of OTA, medical allowances, etc. but Clause 6(l) refers to the service conditions in general or, in other words, Clause 6(l) would include within itself the age of superannuation. The ICSSR in the affidavit categorically mentioned that the Institute in question is a Research Institute and not an Educational Institution. The State of Assam also categorically mentioned that the Institute in question is a Research Institute and not an Educational

Institution. Even the Institute itself in their affidavit also claims that it is a Research Institute.

37. In the backdrop of the above, let this Court now take note of the plea of arbitrariness and violation of Article 14 of the Constitution as urged by the learned counsel for the Petitioner. At the cost of repetition, it is relevant to again reiterate that it is the stand of the Writ Petitioner that there is no intelligible differentia between the Institute in question with that of the Educational Institutions including medical colleges. This submission is based upon the assumption that a Research Institute is always considered to be a part of the educational system. In the opinion of this Court, the said submission appears to be misconceived, inasmuch as an Educational Institution and Research Institute are different though they may have overlappings.

38. Further to that, the Memorandum of Association of the Institute in question stipulates the objectives of the Institute in question. The Institute in question has its own Service Regulations which are not subject matter of the present challenge wherein the age of superannuation has been categorically mentioned as 60 years or as may be notified by the Government. Therefore, in the opinion of this Court, the question of violation of Article 14 of the

Constitution does not arise when there is an intelligible differentia between the Research Institute and an educational institution inasmuch as discrimination would only arise when two persons are similarly situated and treated differently.

39. Regulation 32.1 of the Service Regulations, 2022 is reproduced herein under:

> "***32.1.*** *The age of Superannuation of all the Faculty and Academic Staff of the OKDISCD in its permanent full time service is 60 years/as notified by Government from time to time. Retirement is effective from the afternoon of the last day of the month in which age of superannuation is attained. Provided that those whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years."*

40. From a perusal of the above condition of service, it is apparently clear that the age of superannuation of all the faculty and academic staff of the Institute in question in its permanent full time service is 60 years/as notified by the Government from time to time. In other words, the age of superannuation is 60 years or as notified by the Government from time to time. The Government thus specifically notify any other age so that the age of 60 years mentioned in the Regulation 32.1 of the Service Regulations can be

altered. It is also of importance to observe that Regulation 32.1 refers to Government and not the State Government or Central Government. This aspect is of importance inasmuch as merely the State Government or the Central Government cannot unilaterally change the age of superannuation. In other words, for changing the age of superannuation, both the State Government and Central Government have to jointly take a decision. The natural corollary therefore is that the Cabinet decision of the State Government dated 19.09.2012 which was notified on 26.09.2012 would not suffice for changing/increasing the age of retirement. The Government of India has to agree to the same.

From the stand so taken in the affidavit-in-opposition filed by Respondent No.8, it is seen that the Government of Assam, through its communications dated 20.12.2014, 13.05.2020 and 09.08.2022 had reiterated that the retirement age of the faculty members of the Institute in question shall remain 60 years.

41. Under such circumstances, when there is no notification by the Government, the Petitioner's age of retirement would be 60 years in terms of Regulation 32.1 of the Service Regulations, 2022.

42. It is further contended by the learned counsel for the

Petitioner that the Government should notify the age of retirement for the professors of the Institute in question to be 65 years, and upon failure to do so, this Court should direct the Respondents to do the needful by issuing appropriate directions.

43. This Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences and Another Vs. Bikartan Das and Others*** *reported in* ***(2023) 16 SCC 462*** wherein the Supreme Court at Paragraph No.34 categorically observed that what should be the age of superannuation is a matter of policy and it is not within the domain of the Court to legislate. It is only if a policy decision or a notification is arbitrary, it may invite the frowns of Article 14 of the Constitution.

44. The Supreme Court in the said judgment observed that the age of superannuation is always governed by the statutory rules governing appointment on a particular post. It was further held that even if it is averred that the nature of work involved in two posts is similar, the same cannot be a ground to increase or alter the service conditions of employees, as each post is governed by its own set of rules. The Supreme Court in the said judgment, also took into consideration the judgment relied upon by the learned

counsel appearing on behalf of the Petitioner i.e. the case of ***Dr. Ram Naresh Sharma (supra)***, in respect of the enhancement of age for AYUSH doctors and observed that during the pendency of the writ petitions filed by the Petitioners therein, the Ministry of AYUSH issued the order dated 24.11.2017 enhancing the age of retirement of AYUSH doctors to 65 but with effect from 29.07.2017 and it is in that context, the Court held that the benefit of the order of AYUSH dated 24.11.2017 should be applied from 31.05.2016. Taking into account the relevance, this Court reproduces Paragraph Nos. 34, 35, 36, 41, 42, 43, 44, 45 and 46 of the judgment in the case of ***Bikartan Das (supra)*** herein under:

> "***34.*** *We are also not impressed by the submission canvassed on behalf of Respondent 1 that as the terms and conditions of the services of the employees of the Council on all other aspects like the Provident Fund/GPF, Pension, Gratuity, Leave Rules, Scales of Pay, Conduct Rules and other conditions of services are the same as applicable to the employees of the Central Government as set out in Clauses 31, 32, 33, 42, 44 and 47, respectively of the Bye-Laws, the matter of age of superannuation of Respondent 1 should not be treated differently. What should be the age of superannuation is a matter of policy. It is not within the domain of the court to legislate. It is only if a policy decision or a notification is arbitrary it may invite the frowns of Article 14 of the Constitution. In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay.*
>
> ***35.*** *We may at this stage, refer to the following decision in T.N. Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N.17 :*

(SCC p. 99, para 7)

> "*7. In service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to the Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional "excesses", judicial correction is not right."*

36. *It is too late in the day for Respondent 1 to raise all such issues including infringement of Article 14 of the Constitution on the ground of artificial distinction between the Research Assistant and AYUSH doctors. Respondent 1 knew from day one i.e. from the date of his appointment that he was being appointed as a Research Assistant. His service conditions and mode of recruitment are different compared to the AYUSH doctors. It is a different thing that he might have treated the patients but that by itself would not entitle him to claim that his age of superannuation should be on a par with the AYUSH doctors.*

41. *We must also look into the decision of this Court in Kerala Asstt. Public Prosecutors Assn. v. State of Kerala, wherein the Assistant Public Prosecutors were seeking parity with respect to the age of superannuation to that of Public Prosecutors. This Court took notice of the fact that the method of selection between the two posts is very different and that the former are considered to be government employees, whereas the latter are not. The Court thereafter, proceeded to hold that merely because the nature of work between the two is similar, the same does not imply that the age of superannuation ought to be similar as well. The relevant portion is produced hereunder : (SCC p. 317, para 6)*

> "*6. … The fact that the nature of duties and functions of Assistant Public Prosecutors and Public Prosecutors are similar, per se, cannot be the basis to claim parity with Public Prosecutors in respect of age of superannuation.*"
>
> *(emphasis supplied)*

42. *In Union of India v. E. Iacats, the respondent therein had filed a writ petition in the Gauhati High Court challenging her retirement at the age of 55 years on the ground that in other nursing services under the military establishment the age of retirement was 58 years. It was argued before the High Court that it was discriminatory to retire the nurses who were appointed for local service only at the age of 55 years. The petition was allowed by the High Court. The UOI came before this Court in appeal. This Court while allowing the appeal filed by the UOI, observed as under : (SCC p. 337, para 3)*

> "*3. … If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. Each will be governed by its own rules and regulations. The respondent is, therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55.*"
>
> *(emphasis supplied)*

43. *The age of superannuation is always governed by the statutory rules governing appointment on a particular post. Hence, even if it is averred that the nature of work involved in the two posts is similar, the same cannot be a ground to increase or alter the service conditions of an employee as each post is governed by its own set of rules. The same was held in Noida v. B.D. Singhal, wherein this Court held as under : (SCC p. 449, para 29)*

"*29. Since the enhancement of the age of superannuation is a "public function" channelised by the provisions of the statute and the service regulations, the doctrine of promissory estoppel cannot be used to challenge the action of Noida…."*

44. *We shall now look into the decision of this Court in Ram Naresh Sharma. This decision of this Court has been relied upon by Mr R. Bala, learned Senior Counsel appearing for Respondent 1. He has relied upon paras 22 and 23, respectively, which read thus : (SCC p. 652)*

"*22. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24-11-2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31-5-2016.*

23. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different

dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry [F. No. D. 14019/4/2016-E-I (AYUSH)] dated 24-11-2017 must be retrospectively applied from 31-5-2016 to all the respondent doctors concerned, in the present appeals. All consequences must follow from this conclusion."

45. *The aforesaid decision of this Court in Ram Naresh Sharma upon which strong reliance has been placed on behalf of Respondent 1 is of no avail for the simple reason that in the said case, the only question that arose was whether the benefit of enhancement of age of retirement from 60 years to 65 years granted in favour of allopathy doctors was available even for ayurveda doctors or not? The said decision was based upon an Order of the Ministry of AYUSH dated 24-11-2017.*

46. *As seen from para 22 of the said decision in Ram Naresh Sharma referred to above, the age of retirement of allopathy doctors was enhanced by an Order dated 31-5-2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since, Ayurveda doctors were not covered by the Ministry's Order dated 31-5-2016, the Ayurveda doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an Order dated 24-8-2017. The North Delhi Municipal Corporation (Employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an Order dated 24-11-2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but w.e.f. 27-9-2017. It is in that context that this Court held as aforesaid in Ram Naresh Sharma. Thus, this decision is in no manner helpful to Respondent 1."*

45. In addition to the above, this Court also finds it apropos that

the Institute in question is a society registered under the provisions of the Act of 1860. The employees of the Institute are regulated by their Service Regulation of 2022. They cannot claim a right beyond what is contemplated in Regulation 32.1 of the Service Regulation of 2022.

A submission was made by the learned counsel for the Petitioner that though Regulation 32.1 of the Service Regulations, 2022 stipulates the age of superannuation to be 60 years, but it also stipulates "as notified by the Government from time to time". The learned counsel therefore submitted that as the Petitioner was appointed as the Professor and carrying out work similar to the Professors in Educational Institutions including medical colleges, the Petitioner should get the benefit. The said submission is misconceived for two reasons.

First, the State Government had made it clear that the Professor of the Institute is not covered by the Cabinet decision dated 19.09.2012 which was notified vide notification dated 26.09.2012. It must not be forgotten that the age of superannuation is a policy decision of the State and the Courts cannot legislate by enhancing the age of superannuation.

Secondly, the term "as notified by the Government from time to time" would mean in the case of the Institute when the State Government agrees to enhance the age of superannuation and the Government of India concurs with such decision. Therefore, a Cabinet decision of the State Government insofar as it relates to the Institute, would not suffice. There has to be a concurrence of the Government of India.

Therefore, the submission of the learned counsel for the Petitioner is misconceived.

46. Now let this Court analyze the submission of the learned counsel for the Petitioner on the aspect of parity and violation of Article 14 of the Constitution. This Court finds it material to refer to the judgment of the Supreme Court in the case of ***T. M. Sampath and Others Vs. Secretary, Ministry of Water Resources and Others*** *reported in* ***(2015) 5 SCC 333*** wherein the Supreme Court while dealing with the case of parity amongst the employees of the National Water Development Agency (NWDA), which was a society established in the year 1982 and registered under the Act of 1860 with the Central Government employees observed that the principle of parity cannot be applicable to the employees of NWDA, inasmuch as NWDA cannot be treated as an instrumentality of the

State under Article 12 of the Constitution merely on the basis that it's funds are granted by the Central Government. The Supreme Court further observed that even if it is presumed that NWDA is a State under Article 12 of the Constitution, the employees of NWDA have failed to prove that they are on par with their counterparts with whom they claim parity. The Supreme Court observed that a case of discrimination cannot be invoked in a case where discrimination sought to be shown is between the acts of two different authorities functioning as State under Article 12 of the Constitution. Paragraph Nos. 16 and 17 of the said judgment being relevant are reproduced herein under:

> "***16.*** *On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In Zee Telefilms Ltd. v. Union of India, it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression "State" and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.*
>
> ***17.*** *Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with*

their counterparts, with whom they claim parity. As held by this Court in UT, Chandigarh v. Krishan Bhandari, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be "Central Government employees" as stated in the OM for its applicability."

47. In addition to that, in the case of ***State of Maharashtra and Another Vs. Bhagwan and Others*** *reported in* ***(2022) 4 SCC 193***, the Supreme Court also observed that employees of autonomous bodies cannot claim as a matter of right the same service benefits on a par with Government employees, inasmuch as the employees of such autonomous bodies are governed by their own service rules and service conditions. The Supreme Court also observed that, as a settled proposition of law, the Court should refrain from interfering with a policy decision which might have a cascading effect and have financial implications. Paragraph Nos. 26 and 28 of the judgment in the case of ***Bhagwan (supra)***, being relevant are reproduced herein under:

"***26.*** *As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on a par with the government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the*

Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the autonomous Board/body cannot be put on a par.

28. *As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences."*

48. The above referred two judgments are on the question of parity. The Supreme Court in unambiguous terms observed that parity cannot be claimed between employees working in two different establishment. More so when it is a case of an autonomous body or a society as these employees working there are regulated by their own service regulations like in the instant case, the Service Regulations of 2022.

CONCLUSIONS:

49. The Petitioner has failed to make out a case for enhancing his age of superannuation.

50. The Cabinet decision dated 19.09.2012 as well as the Notification dated 26.09.2012 are in respect to Educational Institutions including Medical Colleges and would not apply to the Institute.

51. Even assuming the Cabinet decision dated 19.09.2012 as well as the Notification dated 26.09.2012 are held to be applicable to the Institute, there is a further requirement of concurrence of the Government of India before the age of superannuation is altered/enhanced.

52. Enhancement of the age of superannuation is a policy decision of the Government and the Court cannot legislate to enhance the age of superannuation. The direction that can be passed is to set aside any action which is found be violative of Article 14 of the Constitution.

53. The question of parity and hence discrimination between Professors in the Institute and Professors in Educational Institutions including Medical Colleges does not arise as the Professors in the Institute are governed by the Service Regulations, 2022 and more particularly Regulation 32.1 of the Service Regulations, 2022.

54. The writ petition stands dismissed.

55. No costs.

Bijoy Saha

Digitally signed by Bijoy Saha
Date: 2026.10.13 19:36:54 +05'30'

JUDGE

Comparing Assistant