



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No.370 of 2019
Decided on: 27.11.2025

Vijay Kumar Vishal

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

Whether approved for reporting?. Yes

For the petitioner: Mr. Adarsh K. Vashista,
Advocate.

For the respondents: Mr. Amit Kumar Chaudhary,
Deputy Advocate General.

Ranjan Sharma, Judge

Petitioner, Vijay Kumar Vishal, had initially filed an Original Application No.285 of 2007, before Learned State Administrative Tribunal and upon abolition of Tribunal, the matter stood transferred to this Court, as CWPOA No.370 of 2019, seeking the following reliefs :-

- “(a). That Annexure A-7, whereby the respondents have proposed to retire the applicant in an illegal manner may kindly be quashed and set-aside.
- (b). That the respondents may kindly be directed to allow the applicant to work as Lecturer College Cadre upto the age of 62 years as per U.G.C. Notification at Annexure A-8.
- (c). That the respondents may kindly be



directed to pay and release salary to the applicant at the rate admissible to the applicant as lecturer college cadre w.e.f. February 2006 till date.”

FACTUAL MATRIX:

2. Grievance of the petitioner is that he was appointed as Lecturer [English] in College Cadre privately managed in Goswami Ganesh Datt Sanatan Dharam College [G.G.D.S.D College 95% aided] and affiliated to Himachal Pradesh University in May 1971 and he joined as such on 25.07.1971, in the regular pay scale. During service, the petitioner was given Senior Scale and Selection Grade as College Lecturer by the respondents. On 04.01.2007, the State Government announced the taking over of Respondent No.3-College i.e. G.G.D.S.D. The Notification of taking over of the staff were issued on 08.02.2007 [*Annexure A-4*] whereby, State Authorities decided to take over the service of the petitioner as Lecturer [School Cadre] instead of Lecturer [College Cadre]. This Notification dated 08.02.2007 [*Annexure A-4*] was assailed by the petitioner in O.A. No.480 of 2007 wherein, State Administrative Tribunal vide order dated 02.03.2007 [*Annexure A-6*] directed to maintain status quo.



Pursuant to the passing of status quo orders the petitioner continued to serve as Lecturer in English under the Respondent No.3.

2(i) Grievance set up by the petitioner is that though the petitioner had been working as Lecturer in College Cadre but the respondents issued a communication on 10.10.2007 [*Annexure P-7*] proposing to retire the petitioner from service at the age of 58 years w.e.f. 31.10.2007, which was contrary to U.G.C. Notification dated 15.01.1999 [*Annexure A-8*], which provided for superannuation of College Teachers at the age of 62 years. In this backdrop, the instant petition was filed seeking quashing of the communication dated 10.10.2007 [*Annexure P-7*] with the prayer to allow him to serve till the age of 62 years [31.10.2011] with all consequential benefits.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice on 31.10.2007, the State Authorities have filed the Reply-Affidavit dated 24.03.2008 of Deputy Secretary (Education) to the Government of Himachal Pradesh.

3(i). Perusal of the Reply-Affidavit indicates



that after the services of the petitioner were taken over and by virtue of Interim Orders, the petitioner continued to work as Lecturer [College Cadre] till his superannuation on 31.10.2007 on attaining the age of 58 years. It is averred that the petitioner, on acquiring the status of a Government Servant was to be governed by the State Rules, which were notified or were made applicable to the State Government Employees, prescribe the age of superannuation as 58 years. It is averred that the U.G.C. Regulations dated 17.07.1998 [*Annexure P-8*] are not *ipso facto* applicable to the petitioner. In this backdrop, prayer is made for dismissing the writ petition.

NO REBUTTAL BY PETITIONER:

4. Petitioner has not filed any rejoinder, so as to rebut the stand taken in Reply-Affidavit by the State Authorities.

5. Heard, Mr. Adarsh K. Vashishta, Advocate, Advocate, for the petitioner and Mr. Amit Kumar Chaudhary, Learned Deputy Advocate General for the respondents-State.



ANALYSIS:

6. Taking into account the entirety of facts and circumstances and the material on record, this Court cannot accede to the prayer of the petitioner for allowing him to continue upto the age of 62 years [31.10.2011], whereas, the action of State Authorities in retiring the petitioner at the age of 58 years [on 31.10.2007] does not warrants any interference, *for the following reasons:-*

6(i). The U.G.C. Regulations dated 15.01.1999 [Annexure A-8] are not *ipso facto* applicable to State Government Employees alike the petitioner who was to be governed by the State Rules, which prescribed the age of superannuation for Government servants, including College Lecturers as 58 years. The U.G.C Regulations-Norms cannot apply to State Government Employees [including teaching or non-teaching] unless State Government incorporates the U.G.C Norms in State Rules by carrying out necessary amendment or until the U.G.C. Norms were expressly adopted by the State Authorities. Nothing has been placed on record by the petitioner to establish that the U.G.C Regulations-



Norms have been either incorporated in the State Rules or have been expressly adopted by the State Authorities. However, it is not the case of the petitioner that other similarly placed College Lecturers, whose services were taken over into Government Service had served under the State Government upto the age of 62 years.

UGC REGULATIONS CANNOT GOVERN STATE EMPLOYEES UNLESS SAME ARE ADOPTED AND IMPLEMENTED BY STATE-GOVERNMENT:

6(i-a). The issue as to whether the U.G.C. Regulations are *ipso-facto* binding on the State Authorities stands affirmed by the Hon'ble Supreme Court in **Jagdish Prasad Sharma and others versus State of Bihar and others, (2013) 8 SCC 633;** that the UGC Regulations of 2000 do not empower the U.G.C to alter the conditions of service prescribed by the State Rules modified under proviso to Article 309 of the Constitution of India. The State Authorities are not bound to follow or adopt the U.G.C Regulations. The operative part of the judgment read as under:

68. Another anxiety which is special to certain States, such as the State of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplus-age and providing an opportunity for others to



enter into service. On behalf of the State of Kerala, it had been urged that there was a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of job expectancy, similar to that prevailing in Kerala. **The State Governments of the said two States were, therefore, opposed to the adoption of the UGC scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.**

70. The authority of the Commission to frame Regulations with regard to the service conditions of teachers in the centrally-funded educational institutions is equally well established. As has been very rightly done in the instant case, the acceptance of the scheme in its composite form has been left to the discretion of the State Governments. **The concern of the State Governments and their authorities that the UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by the UGC relate to Entry 66 List I of the Constitution in the Seventh Schedule to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution.** Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will



have effect unless they are repugnant to any central legislation.

71. However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, the acceptance of the scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the scheme. The problem lies in the desire of the State and its Authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the scheme with its financial implications from 1st April, 2010.
72. As far as the States of Kerala and U.P. are concerned, they have their own problems which are localized and stand on a different footing from the other States, none of whom who appear to have the same problem. **Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by the UGC.** It is only natural that if they wish to adopt the Regulations framed by the Commission under [Section 26](#) of the UGC Act, 1956, the States will have to abide by the conditions as [laid down](#) by the Commission.

6(i-b). While dealing with the issue as to whether the U.G.C. Regulations were binding on States has been outlined by the Honb'le Supreme Court in, **Kalyani Mathivanan versus K.V. Jeyaraj and others,**



(2015) 6 SCC 363, mandating that U.G.C. Regulations are directory till the State Government adopts and implements the same and the State Rules/Legislation are amended in terms of U.G.C. Regulations and not otherwise, in the following terms:

62.4 **The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme.** Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.

62.5 The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. **Once they are adopted by the State Government, the State legislation to be amended appropriately.** In such case also there shall be no conflict between the State legislation and the Central legislation.”

6(i-c). While dealing with the issue regarding age of superannuation prescribed by the State Rules vis-à-vis the U.G.C. Regulations, the Hon’ble Supreme Court has mandated in **Dr. J. Vijayan and others versus State of Kerala and others, (2022) 17 SCC 177**, has held that the State was not bound to follow or accept



U.G.C. Regulations, in the following terms:

“28. The Division Bench of the High Court also found that the State Governments had the discretion to accept the scheme proposed under the UGC Regulations relying on the judgment in Jagdish Prasad Sharma (supra) and in particular Paragraph 72, thereof. The Division Bench held:-

18. It is in the light of the above authoritative pronouncement of the Apex Court, that the present contentions of the counsel for the appellants are required to be considered. The contention that the UGC Regulations were made in exercise of the power under Entry 66 List I Schedule VII of the Constitution, while the State enactments are made under Entry 25 List III Schedule VII and for the said reason, in the event of repugnancy, the Central enactment would prevail, has to fail for more reasons than one. In the **first place**, the State Laws prescribing the age of retirement of teachers are made in exercise of the power under Article 309 of the Constitution. The Apex Court has found Jagdish Prasad Sharma (supra) that such enactments would remain unaffected by the stipulations contained in the UGC Regulations. **Secondly**, it has been further held by the Court in the said decision that the UGC does not have any power to stipulate the service conditions of teachers. Therefore, such power is vested entirely in the State. **Thirdly**, obviously in recognition of the above position of law the UGC Regulations have conferred a discretion on the State Governments to decide whether to implement the Regulations or not. In view of the conferment of the discretion as noted above, no question of repugnancy arises in these cases. Therefore, we do not think it necessary to consider the above



contention in any further detail.

19. On the next contention that the Scheme under the UGC Regulations, 2010 has to be accepted in full as a composite one and that adoption of the Scheme without enhancing the retirement age of teachers was bad, we find that the said issue has been concluded by the Supreme Court. **Though a similar contention was put forward in Jagdish Prasad Sharma (supra) with respect to the Government Order dated 10.12.2010, the same did not find favour with the Court.** The said Government Order evidenced herein as Ext. P10 in W.A. No. 854 of 2016 provides at paragraph 6 as follows:

23. In the view that we have taken above, we do not consider it necessary to refer to or discuss the other decisions on which reliance has been placed. **The question of fixing the retirement age of teachers is essentially a matter of policy. The said policy would have to be adopted by the State Government taking into account a number of factors.** As contended before us by the learned Additional Advocate General, the State of Kerala does not suffer from a dearth of qualified candidates to be appointed as teachers. There are a large number of qualified teachers, including Ph.D. Holders who are waiting for employment. They are persons trained in advanced methods of instruction and teaching techniques. At the same time, teachers like the appellants who are approaching retirement age are not persons who could be described as aged or infirm. They are in their prime of life, endowed with the rich experience both in teaching as well as in guiding research projects. **The wisdom of the decision to superannuate them at such a prime point of time in their**



lives is also questionable. A decision can be taken only by balancing both the above aspects as well as other relevant factors that may require to be taken into account. Such an informed decision would have to be taken by the law makers and not by courts. As at present, the UGC Regulations, 2010 cannot affect the State laws governing the age of superannuation. UGC Regulations have in recognition of the above position granted a discretion to the State to take a decision with respect to the manner of implementation of the Regulations.

Accordingly, the State Government has decided not to enhance the age of retirement. We notice that, a similar claim for enhancement in retirement age has been considered by another Division Bench of this Court and rejected in Mathai M.M. vs. Elizabeth Xavier (2011) 2 K.L.T. 468. The said decision is also binding on us.”

29. Learned counsel appearing on behalf of the Appellants referred to paragraphs 68 and 72 of the judgment of this Court in **Jagdish Prasad Sharma (supra)** set out hereinbelow:

“68. Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of



job expectancy, similar to that prevailing in Kerala. **The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.**

72. As far as the **States of Kerala and U.P.** are concerned, they have their own problems which are localised and stand on a different footing from the other States, none of whom who appear to have the same problem. **Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by UGC. It is only natural that if they wish to adopt the Regulations framed by the Commission under Section 26 of the UGC Act, 1956, the States will have to abide by the conditions as laid down by the Commission."**

31. It is not understood how those paragraphs are of assistance to the Appellant. There is no finding in paragraph 68, but only discussion of facts, which led to the decision, and paragraph 72 is clearly against the Appellants. **This Court unequivocally held that the State was not bound to accept or follow the UGC Regulations.**

6(i-d). Recently, the Hon'ble Supreme Court **P.J. Dharmaraj** versus **Church of South India, (2024) SCC Online SC 3617**, held that unless the State Government adopts the U.G.C. Regulations, the same



cannot be made applicable to State Government

Employees, who are to be governed by State Rules for purposes of age of superannuation, in the following terms:

- “9. Having considered the submissions advanced, we do not find merit in the contention that merely because the UGC and AICTE regulations were subsequently amended in 2010 and the age of superannuation for teachers in Technical Institutions was increased to sixty-five years, the same benefit would automatically extend to the Appellant. The Appellant was working as Director in CSIIT which is affiliated with JNT University which is governed by the laws applicable in the State of Telangana. **In this case, the Government of Andhra Pradesh (now Telangana) has decided to not adopt the amendment increasing the age of superannuation to sixty-five in their universities or colleges** vide G.O.Ms.No.40, Higher Education & UE-II Department, dated 28.06.2012. The Respondent No.2 Institute is a self-financing, Minority Educational Institution administered by the Respondent No.1 Church of South India, and it is neither run nor funded by the Central Government. The regulations governing the age of superannuation throughout the State, the JNT University and its affiliated colleges including CSIIT is sixty years of age and therefore, when the teachers of JNT University are only to continue up to the age of sixty years, the Appellant cannot be given special consideration. CSIIT is an affiliated Institute of JNT University. Its teachers cannot have their age of retirement more



than that of the teachers of the affiliating University. It would create a serious anomaly, discrimination and inequality. **If the State Government itself has not adopted the amended regulations, the same cannot be applicable to the CSIIT. Even CSIIT has not determined the age of retirement of teachers to be 65 years.”**

Noting has been placed on record by the petitioner to establish that the U.G.C Regulations [Annexure A-8] were expressly adopted by the State Authorities and were implemented by incorporating the changes in State Rules in tune with the U.G.C. Regulations-Norms. Absence of these factors, negates the claim of the petitioner.

6(ii). On query by this Court, Learned Counsel for petitioner submits that all similar incumbents, whose services were taken over as College Lecturers and/or who continued as such, by virtue of Interim Orders passed in their respective cases, were allowed to continue till the age of superannuation of 58 years in accordance with the State Rules. This is not a case of any individuous discrimination qua the petitioner. Accordingly, this Court is not inclined to accept the prayer of the petitioner for continuity in



service up to the age of 62 years and the contention is devoid of any merit.

6(iii). During the course of hearing, Learned Counsel for the petitioner has placed on record a copy of the office order dated 20.10.2023 [*Taken on Record*], whereby, in compliance to the CWP No.1548 of 2009 and the LPA No.135 of 2012, filed by the petitioner, the benefit of higher Grade Pay was extended to the petitioner and his pay was fixed upto the date of his retirement on 31.10.2007. This Office Order dated 20.10.2023 also negates the claim of the petitioner, for the reason, that in compliance of the petitions filed by the petitioners [CWP No.1548 of 2009 and LPA No. 135 of 2012], the admitted age of superannuation of the petitioner is 31.10.2007. In these circumstances, this Court is unable to accede to accept the prayer of the petitioner, which is accordingly turned down.

6(iv). Plea of Learned Counsel for the petitioner that as per Clause 12 of Rules of the Himachal Pradesh University as in Annexure A-13, the petitioner had a right to continue upto 60 years, is also devoid of any merit, *for the reason*, that these Rules [Annexure A-13]



are not applicable to the teachers who have attained the status of a Government Servant, in a Government College. These Rules apply to the teachers of “Non-Government Affiliated Colleges. Once petitioner had ceased to be a teacher of non-government affiliated College on 08.02.2007, therefore, the petitioner has neither any right nor any valid claim for continuity in service upto the age of superannuation of 60 years on the basis of Rule 38.5 B(d) of University Ordinance as applicable to Non-Government Affiliated Colleges [Annexure A-13], when these Rules became inapplicable to the petitioner having been taken over or brought in Government Service w.e.f. 08.02.2007.

ADDITIONAL SUBMISSIONS DURING HEARING:

7. At this stage, Learned Counsel for the petitioner states that the State Authorities have not granted the benefit of Gratuity to the petitioner on attaining age of superannuation of 58 years on 31.10.2007.

Per contra, Learned State Counsel states that the prayer for gratuity is not a subject matter of the instant proceedings. However, he submits that in



case, the petitioner makes a fresh representation; the same shall be examined by the State Authorities, subject to eligibility/admissibility, if any, in accordance with law.

DIRECTIONS:

8. In view of above discussion and for the reasons recorded herein above, the instant petition is disposed of *in the following terms:-*

- “(i). Impugned order dated 10.10.2007 [Annexure P-7] superannuating the petitioner from service as Lecturer College Cadre at the age of 58 years needs no interference and is upheld;
- (ii). Claim of the petitioner for permitting him to continue in service upto the age of 62 years [till 31.10.2011] or upto 60 years [upto 31.10.2009] being devoid of any merit is rejected;
- (iii). As prayed, petitioner is permitted to make representation to Competent Authority for ventilating his grievance for Gratuity within six weeks from today;
- (iv). Upon making of representation as in (iii) above, the State Authorities shall examine the claim for Gratuity, subject to eligibility/admissibility in accordance with law within six weeks thereafter;
- (v). Needless to say, this Court has not been adverted to rival claims/contentions/entitlement for Gratuity which shall be examined by State Authorities hereinafter, in accordance with law;
- (vi). Parties to bear respective costs.



In aforesaid terms, the instant petition along with pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

27th November, 2025
[himani]