

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.15421/2020 (S - R)

BETWEEN

DR.G.R.BHARATH SAI KUMAR
S/O G.V.RAJASHEKAR,
AGED ABOUT 59 YEARS,
WORKING AS PROFESSOR,
SIDDAGANGA INSTITUTE OF TECHNOLOGY,
B.H.ROAD, BATAWADI,
TUMAKURU - 572 103.

R/A NO.100, 2ND MAIN, VINAYAKANAGAR,
TUMAKURU - 572 101.

... PETITIONER

(BY SRI V.LAXMINARAYANA, SENIOR COUNSEL FOR
SMT.ANUSHA L., ADVOCATE)

AND

1. STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY,
HIGHER EDUCATION DEPARTMENT,
M.S.BUILDING, DR.AMBEDKAR ROAD,
AMBEDKAR VEEDHI, BENGALURU,
KARNATAKA - 560 001.
2. VISVESVARAYA TECHNOLOGICAL UNIVERSITY
REPRESENTED BY ITS REGISTRAR,

JNANA SANGAMA, VTU MAIN ROAD,
VISVESVARAYA TECHNOLOGICAL UNIVERSITY,

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MACHHE, BELGAUM
KARNATAKA - 590 018.

3. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
NELSON MANDELA MARG,
VASANT KUNJ,
NEW DELHI , DELHI - 110 070.

4. SIDDAGANGA INSTITUTE OF TECHNOLOGY
B.H.ROAD, BATAWADI,
TUMAKURU - 572 103
REPRESENTED BY ITS PRINCIPAL.

... RESPONDENTS

(BY SMT.M.C.NAGASHREE, AGA FOR R1;
SRI SANTOSH S.NAGARALE, ADVOCATE FOR R2;
SMT.SONA BADIGER, ADVOCATE FOR R3;
SRI S.M.CHANDRASHEKAR, SENIOR COUNSEL FOR
SRI S.ANILKUMAR, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
MEMO DTD.3.12.2019 AS PER ANNEXURE-B; FURTHER DIRECT
THE RESPONDENTS THAT THE PETITIONER'S SERVICES MAY BE
CONTINUED TILL THE PETITIONER REACHES THE AGE OF
SUPERANNUATION UP TO THE AGE OF SIXTY-FIVE YEARS AS PER
THE GOVERNMENT NOTIFICATION PUBLISHED IN OFFICIAL
GAZETTE ON 01.03.2019 AS PER ANNEXURE-C AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED

FOR ORDERS ON 01.04.2021, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT MADE THE FOLLOWING :-

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ORDER

The petitioner in this writ petition calls in question the memo dated 03.12.2019 by which the petitioner is sought to be retired on attaining the age of superannuation by the fourth respondent/Siddaganga Institute of Technology (hereinafter referred to as the 'Institute' for short), contrary to the regulations of the AICTE.

2. Brief facts of the case leading to filing of the petition as borne out from the pleadings are as follows:

Petitioner was appointed as a Lecturer on 01.04.1985 in the department of Mechanical Engineering of the Institute and was from time to time promoted to the higher echelons of office and was at the relevant point in time working as a Professor.

The petitioner was born on 18.12.1960. The Institute issued a Memo on 03.12.2019 declaring the staff of the Institute who would retire in the year 2020. The name of the petitioner in the said Memo was at Sl.No.17 to be retiring on 31.12.2020. On the verge of his retirement, the petitioner files this writ petition on the ground that he is working in the cadre of Professor and is entitled to continue in service up to the age of 65 years in terms of the guidelines of respondent-3/The All India Council for [Technical Education Act](#), 1987 (hereinafter referred to as "AICTE" for short) which depict that age of retirement of a Professor would be 65 years.

3. This Court by an order dated 30.12.2020 granted an interim order of stay of retirement of the petitioner on the strength of which, the petitioner continues to be in employment in the cadre of Professor even as on date. It is the Memo / communication seeking to retire the petitioner on 31.12.2020 that is called in question in this writ petition.

4. Heard Sri V.Laxminarayana, learned Senior Counsel appearing for the petitioner, Smt. M.C.Nagashree, learned Additional Government Advocate appearing for respondent No.1, Sri Satosh S. Nagarale, learned counsel for respondent No.2, Smt. Sona Badiger, learned counsel appearing for respondent No.3 and Sri S.M.Chandrashekar, learned Senior Counsel appearing for respondent No.4.

5. Learned Senior Counsel appearing for the petitioner would raise the following contentions, the Regulations of the AICTE are mandatory to be followed by the Institute on every facet of service conditions concerning its employees, which is condition precedent for grant of an approval or recognition by the AICTE; the age of retirement of all the faculty members of the Institute has to be at 65 years in terms of the Regulations of the AICTE; petitioner is entitled to continue up to the age of 65 years in terms of the AICTE

Regulations; and the Institute being an aided Educational Institution or a private Institution hardly matters.

6. On the other hand, the learned Senior Counsel representing the fourth respondent raises the following contentions, the Institute is an unaided Educational Institution and a writ petition against the action of an unaided Educational Institution is not maintainable; the determination of age of superannuation is a matter of policy of the Institute; there can be no application of any order of the Government or the AICTE directing enhancement of age of retirement as it receives no aid from the State and is free to regulate the service conditions of its employees ; all the employees of the Institute are to retire at the age of 60 years and no exception can be carved out to the petitioner who is also an employee of the Institute.

7. The learned counsel appearing for the AICTE would submit that in terms of the mandate of the Act the AICTE has been issuing notifications from time to time making it applicable to all degree level technical institutions and all service conditions including retirement as depicted in the Notification dated 01.03.2019 has come into force from the date of its Notification in the official gazette.

8. The learned Additional Government Advocate would toe the lines of the learned Senior Counsel appearing for the fourth respondent and would submit that the age of retirement of employees of the Institute is not being regulated by the State.

9. I have given my anxious consideration to the submissions made by the respective learned Senior Counsel appearing for the petitioner and the 4th respondent/Institute, the learned counsel appearing for the 3rd respondent, AICTE and the learned Additional Government Advocate appearing for respondent No.1 and have perused the material on record, in furtherance whereof , the point that arises for my consideration is "whether the petitioner is entitled to claim that his age of retirement should be 65 years in terms of the Regulations of the AICTE?"

10. Certain facts are not in dispute. The petitioner joined the services of the 4th respondent/Institute as a Lecturer, rose to the cadre of Professor and was working as a Professor at the relevant point of time. The Institute issued a memorandum directing that the petitioner would retire on 31-12-2020, the date on which he would attain the age of 60 years, which according to the 4th respondent/Institute is the age of superannuation of the faculty in the Institute. It is also not in dispute that norms and standards regulated by AICTE govern the Institute. Therefore, it is necessary to consider AICTE Act, the Regulations and norms and standards prescribed by the AICTE, obtaining from time to time.

11. AICTE Act was promulgated by the Government of India for a proper planning and coordinated development of technical education system throughout the country and also to regulate maintenance of norms and standards in technical education and other matters connected therewith. The AICTE Act came into effect from 23rd December 1987. Chapter III of the Act deals with powers and functions of the Council. [Section 10\(1\)](#), [10\(1\)\(g\)](#) and [10\(1\)\(i\)](#) of the Act which are germane read as follows:

"10. Functions of the Council - (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical

education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may -

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

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

[Section 10\(1\)](#) casts a duty on the Council to take all such steps for maintenance of standards for ensuring co-ordinated and integrated development of technical education. [Section 10\(1\)\(g\)](#) deals with the functions of the AICTE to evolve suitable performance appraisal systems for technical institutions and universities imparting technical education, incorporating norms and mechanisms for enforcing accountability; [Section 10](#) (1)(i) deals with laying down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualification, quality instructions, assessment and examinations.

12. [Section 23](#) of the Act empowers the Council to make Regulations and those Rules and Regulations are formulated by the AICTE from time to time. Therefore, the Act, Rules and Regulations are statutes. The AICTE from time to time has notified Regulations on pay scales, service conditions and minimum qualifications for appointment of teachers and other academic staff by its maintenance of standards in technical education - (Degree) Regulations and the one that is germane for consideration is what is notified by the AICTE on 1-03-2019 i.e., "AICTE Regulations on pay scales, service conditions and minimum qualifications for the appointment of teachers and other academic staff such as library, physical education and training & placement personnel in technical institutions and measures for the maintenance of standards in technical education - (Degree) Regulation, 2019." The AICTE notified the said Regulations in exercise of its powers under [Section 23](#) read with Section 10(1)(g) of the AICTE Act. Regulations which are germane are extracted for the purpose of quick reference:

"Regulation 1.2 deals with institutions to whom the Regulations would apply and reads as follows:-

1.2 Categories of Institutions to whom the regulations apply:

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

Regulation 1.3 deals with grant of revised AICTE pay scales and other allowances and reads as follows:

1.3 Date of Effect

a) Pay Scales and DA: The revised pay- scales shall be effective from 01-01-2016.

b) Other Allowances: Allowances such as Leave Travel Concession, Special Compensatory Allowances, Children's Education Allowance, Transport Allowance, House Rent Allowance, Deputation Allowance, House Building Allowance, Travelling Allowance etc. shall be applicable from the date as notified by the Central Government/respective State and UT Government from time to time"

Regulation 1.4 deals with effective date of application of Service Conditions and reads as follows:

1.4 Effective date of application of Service Conditions

a) All other service conditions including Qualifications, Experience, Recruitment, Promotions etc. shall come into force with effect from the date of this Gazette Notification.

b) The Qualifications, Experience, Recruitment and Promotions etc. during 01- 01-2016 till the issue of this Gazette Notification shall be governed by All India Council for Technical Education Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulation, 2010 dated 5th March 2010 and subsequent notifications issued from time to time.

c) Those who are eligible for promotions after the date of publication of this gazette, shall have to meet the necessary conditions such as additional qualification, undergoing industrial training, pedagogical training, faculty induction program, publishing research papers etc. However, these requirements shall be permitted to be fulfilled till 31st July, 2022 so as to enable faculty members in equipping them for requisite mandatory requirements of this gazette to avail the benefit of promotion retrospectively from the date of eligibility.

d) For incumbent faculty members, the date of eligibility up to 31st July, 2022 shall be allowed to be according to the 6th CPC Gazette notification published on 8th November, 2012. All the benefit of promotion to such candidates be permitted retrospectively on the date when he/she became eligible.

e) It may be noted that no further extension would be given beyond 31st July, 2022 and those who do not meet the essential criteria despite the above grace period, shall lose an opportunity for getting promotion retrospectively. However, they will be eligible for promotion from the date they meet these criteria thereafter.

f) In cases, wherein interviews are already conducted either for direct recruitment or for promotions but candidates did not join, such candidates may be allowed to join. Their further up-gradation will be governed by this notification.

g) In cases, where advertisement was published, applications invited but interviews have not been conducted till publication of this notification, the institutes/employers are required to publish corrigendum and processing of applications must be done in accordance with the provisions given in this notification."

Regulation 2.12 deals with age of superannuation and reads as follows:-

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

Regulation 2.14 deals with Pension, Gratuity, Family Pension etc. and reads as follows:-

2.11 Pension, Gratuity, Family Pension, GPF, Leave Encashment and Other Pensionary Benefits All pensionary benefits including leave encashment shall be extended to faculty members and other staff as Library, Physical Education and Training & Placement Personnel as per the revised norms recommended by the 7th CPC and implemented by the Government of India/State and UT Governments."

The afore-extracted Regulations deal with the faculty of an Institute to whom the Regulations would apply from appointment to retirement and they are all service conditions.

Approval is granted to an Institute by the AICTE in terms of the AICTE (Approval for granting new technical Institutions, introduction of courses or programs and approval of intake capacity of seats for the courses or programs) Regulations, 1994 (hereinafter referred to as the "approval Regulation" for short).

Regulation 6 deals with Conditions for Grant of Approval. Sub-

Regulation (v) of Regulation 6 reads as follows:

"v) the staff shall be recruited as per the norms and standards specified by the Council from time to time;"

A conjoint reading of both the Regulations would clearly indicate that the recruitment of staff in an Institute to be in terms of the norms and standards is a condition precedent for grant of approval. This clearly depicts the binding nature of both the afore- quoted Regulations.

13. The mandatory nature of the Regulations notified by the AICTE applicable to degree level institutions is considered by the Apex Court in the case of Parshvanath Charitable Trust v.

All India Council for Technical Education reported in (2013) 3 SCC 385, which reads as follows:

"25. It is also a settled principle that the regulations framed by the Central authorities such as AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act."

(Emphasis supplied) In terms of the afore-extracted judgment of the Apex Court it becomes unmistakably clear that AICTE Regulations notified by Government of India would have binding effect on the institutes to whom the Regulations apply.

14. The emphasis in the afore-extracted Regulations of the AICTE is that it regulates service conditions of faculty members of the Institutes regulated by AICTE. Regulation 1.2 mandates that it applies to all degree level Technical Institutes and Universities. Regulation 2.12 unequivocally depicts that age of superannuation of all faculty members, Principals and Directors of the Institutes which would mean degree level technical institutes shall be 65 years and discretion is vested with the Institutes to extend it up to 70 years. The mandatory nature of the direction is with regard to the age of superannuation being 65 years and the directory nature of the Regulations is an extension to 70 years from 65 years. Therefore, any Institute being regulated in terms of Regulation 1.2 would be bound by the service conditions stipulated in the Regulations.

It is not in dispute that norms and standards prescribed by the AICTE regulate the service conditions of the faculty of the 4th respondent/Institute.

15. It is also not in dispute and cannot be disputed that the faculty of the fourth respondent are appointed in terms of the norms of the AICTE from time to time and are in receipt of every benefit that is regulated in terms of the Regulations (supra) with regard to pay, allowances, facilities and all other service conditions. One such illustration is an advertisement issued by the Institute calling for applications for various posts which displays the following:

Siddaganga Institute of Technology (Estd:1963) B.H.Road, Tumkur -572 103, Karnataka
An Autonomous Institution affiliated to Visvevaraya Technological University, Belagavi.
Approved by AICTE, New Delhi and ISO 9001-2015 Certified INVITES APPLICATION
FOR THE FOLLOWING POSTS I. Professor - Civil Engineering II. Associate Professor

1) Computer Science & Engineering.

2) Civil Engineering III. Assistant Professors (Regular/Temporary)

1) Civil Engineering.

2) Electronics & Instrumentation Engg.

3) Computer Science & Engineering

4) Electronics & Communication Engg.

5) Electronics & Telecommunication Engg.

6) Electrical & Electronics Engineering Qualification & Scale of Pay: As per AICTE Norms.

For Regular Posts, Ph.D degree is compulsory For more details visit our website: www.sit.ac.in Applications on plain paper with copies of certificates and marks cards (10th& 12th standards and all degrees), pp size phone should reach the Principal, S.I.T., Tumkur-577

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Therefore, having accepted everything of the AICTE Regulations, insofar as it pertains to norms and standards, it is inexorable for the 4th respondent/Institute to adhere to Regulation 2.12 which deals with age of retirement.

16. In the light of the emphasis being on service conditions in the Regulations, what are service conditions is also delineated by the Apex Court in the case [State of Punjab v. Kailash Nath](#), reported in (1989) 1 SCC 321, which reads as follows:

"7. In the normal course what falls within the purview of the term "conditions of service"

may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings. Whether or not a Government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service. Making a provision that a Government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under [the Penal Code](#) or [Prevention of Corruption Act](#) or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for efficient work would not only be against public policy but would also be counter-productive. It is likely to be an incentive not for efficient work but for committing offences including embezzlement and misappropriation by some of them at the fag end of their tenure of service and making an effort that the offence is not detected within the period prescribed for launching prosecution or manipulating delay in the matter of launching prosecution. Further, instances are not wanting where a Government servant may escape prosecution at the initial stage for want of evidence but during the course of prosecution of some other person evidence may be led or material may be produced which establishes complicity and guilt of such Government servant. By that time period prescribed, if any, for launching prosecution may have expired and in that event on account of such period having expired the Government servant concerned would succeed in avoiding prosecution even though there may be sufficient evidence of an offence having been committed by him. Such a situation, in our opinion, cannot be created by framing a rule under [Article 309](#) of the Constitution laying down an embargo on prosecution as a condition of service."

(Emphasis supplied) In terms of the delineation by the Apex Court as to what would be the service conditions, retirement is undoubtedly a service condition. Therefore, every service condition that is in the Regulations is binding on the 4th respondent. The Institute cannot pick and choose what the Regulations mandate.

17. The submission of the learned Senior Counsel appearing for the 4th respondent/Institute is that age of retirement is regulated by the Service Rules of the 4th respondent/Institute. The only Rule where retirement is found in the entire service Rules produced is with regard to conditions governing voluntary retirement after attaining the age of 50 years or retirement of an employee in the interest of the Institute on attaining the age of 50 years or after completion of 20 years of qualifying service. No document is produced with regard to uniform application of age of retirement to all its faculty members. The contention that they

have adopted Government order is also unacceptable. There is no document produced by the Institute to demonstrate that they have adopted the Government order dated 26-07-2008 issued by the Government enhancing the age of retirement from 58 years to 60 years which related to Government servants and employees of aided educational institutions. Therefore, it cannot but be concluded that there is vacuum in the Service Rules insofar as it pertains to age of retirement.

18. The contention of the learned Senior Counsel appearing for the 4th respondent that no direction can be issued to the 4th respondent as it is not an aided Educational Institution is also unacceptable in the light of the judgment of the Apex court in the case of Marwari Balika Vidyalaya v.

Asha Srivastava reported in (2020) 14 SCC 449 while considering a case of a private unaided Educational Institution wherein it is held as follows:

"13. [In RajKumar v. Director of Education \[Raj Kumar v. Director of Education, \(2016\) 6 SCC 541 :](#)

(2016) 2 SCC (L&S) 111] this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed : (SCC p. 560, para 45) "45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school."

14. This Court has laid down in [Raj Kumar v. Director of Education \[Raj Kumar v. Director of Education, \(2016\) 6 SCC 541 : \(2016\) 2 SCC \(L&S\) 111\]](#) that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short "the DSE Act") was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

15. Writ application was clearly maintainable in view of aforesaid discussion and more so in view of the decision of this Court in [Ramesh Ahluwalia v. State of Punjab \[Ramesh Ahluwalia v. State of Punjab, \(2012\) 12 SCC 331 : \(2013\) 3 SCC \(L&S\) 456 : 4 SCEC 715\]](#) in which this Court has considered the issue at length and has thus observed :

(SCC pp. 336-37, paras 13 & 14) "13. In the aforesaid case [[Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani](#), (1989) 2 SCC 691] , this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukti Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under : (V.R. Rudani case [[Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani](#), (1989) 2 SCC 691] , SCC pp. 700-701, paras 20 & 22) '20. The term "authority" used in [Article 226](#), in the context, must receive a liberal meaning unlike the term in [Article 12](#). [Article 12](#) is relevant only for the purpose of enforcement of fundamental rights under [Article 32](#). [Article 226](#) confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in [Article 226](#) are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again, we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states:"To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract". [Ed. : S.A. de Smith, *Judicial Review of Administrative Action* (4th Edn., Stevens & Sons Ltd., London 1980) at p. 540.] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under [Article 226](#). We, therefore, reject the contention urged for the appellant on the maintainability of the writ petition.' The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in [Unni Krishnan \[Unni Krishnan, J.P. v. State of A.P.](#), (1993) 1 SCC 645 : 1 SCEC 523] and [Zee Telefilms Ltd. \[Zee Telefilms Ltd. v. Union of India](#), (2005) 4 SCC 649] brought to our notice by the learned counsel for the appellant Mr Parikh.

14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge [*Ramesh Ahluwalia v. State of Punjab*, 2009 SCC OnLine P&H 11755] as also the Division Bench [*Ramesh Ahluwalia v. State of Punjab*, 2010 SCC OnLine P&H 13111] of the High Court cannot be sustained on the proposition that the writ petition would not maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India."

(emphasis supplied)

16. It is apparent from the aforesaid decisions that the writ application is maintainable in such a matter even as against the private unaided educational institutions."

Long before the Apex Court rendered the afore-extracted judgment, maintainability of a writ petition against a Private Educational Institution was considered with regard to parity in pay scale and other service conditions in the case of K.

Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering, reported in (1997) 3 SCC 571 wherein the Apex Court holds as follows:

"3. The admitted position is that the appellant and six others had been appointed on daily wages to the post of Lab Assistants as non-teaching staff of the respondent-private college. They were being paid daily wages. A writ petition and appeal seeking equal pay having been dismissed, they have filed the present appeal for direction to pay them equal pay for equal work on a par with the other government employees.

4. It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the writ petition under [Article 226](#) of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent- Management paid the salaries on a par with the government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the [Industrial Disputes Act](#). When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under [Article 226](#); the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under [Article 39\(d\)](#) of the Constitution."

(Emphasis supplied) Therefore, the contention of the learned Senior Counsel for the Institute with regard to maintainability of the writ petition against the Institution deserves to be rejected in the light of the law laid down by the Apex Court that imparting education is a public function and writ petition would be maintainable.

19. It is not be mistaken that the petitioner is seeking a writ at the hands of this Court for a direction to the 4th respondent to implement a Government order. The case of the petitioner is that he is entitled to continue up to the age of 65 years on the strength of the Regulations of AICTE which bind the 4th respondent/Institute. It is, therefore, the writ petition would become maintainable even against the 4th respondent/Institute, more so, in the light of the fact that Professors in the VTU retire at the age of 62 years which is also governed by AICTE Act and the Norms and Standards and the Professors in the 4th respondent/Institute retire at 60 years which is also governed by the same provisions of the AICTE Act and Norms and Standards, which clearly depict different ages of retirement despite being governed by the very same Regulations.

Uniformity in application of statute in every case will drive away arbitrariness in action and would be in consonance with [Article 14](#) of the Constitution of India failing which, every Institute that is governed by a solitary Regulation would become free to adopt Service Conditions at their whim and fancy. This cannot be the purport of the mandate of the AICTE Act or the Regulations in notifying the Service Conditions applicable to all faculty of Institutes which come under its purview.

20. Insofar as judgments relied on by the learned Senior Council appearing for the 4th respondent is concerned, in the case of Jagdish Prasad Sharma, the issue that fell for consideration before the Apex Court was whether a communication of the University Grants Commission for enhancement of age of superannuation would become binding on the Institutes. The Apex Court in the very judgment clearly holds that the Central Government itself took a decision that discretion of the State Government should not be fettered by extension of financial initiative insofar as it pertains to directions issued by the UGC for implementation of enhancement of age of superannuation of teachers and other staff from 62 years to 65 years. The relevant portion of the judgment of the Apex Court reads as follows:-

"65. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by the State in such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those petitioners who have claimed that they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail."

(Emphasis supplied) The Apex Court clearly holds that there is no compulsion to accept or adopt the UGC scheme which enhanced the age of superannuation from 62 to 65 years. The Regulations of the AICTE applicable to the case at hand are mandatory in nature and do not leave any discretion to the degree level institutions to implement it or otherwise, as it is couched in such language that following mandate of the Regulations would be in consonance with the maintenance of minimum standards of teaching and appointment of faculties in all the degree level technical institutions. Therefore, the judgment in the case of Jagdish Prasad Sharma, in my considered view, would be inapplicable to the facts obtaining in the case at hand.

21. Wherefore, I deem it appropriate to follow the judgments cited by the learned Senior Counsel appearing for the petitioner quoted (supra) and not the one relied on by the learned Senior Counsel appearing for the 4th respondent/Institute. It is also apposite to refer to the Constitution Bench judgment of the Apex Court in the case of J.P.Unnikrishnan Vs. State of Andhra Pradesh reported in AIR 1993 SC 2178 wherein the Apex Court has held as follows:

"162. Private educational institutions may be aided as well as un-aided. Aid given by the Government may be cent per cent partial. So far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the Government and/ or recognizing/affiliating authorities and staff, their conditions of service, syllabus, standard of teaching and so on. In particular, in the matter of admission of students, they have to follow the rule of merit and merit alone - subject to any reservations made under [Article 15](#). They shall not be entitled to charge any fees higher than what is charged in Governmental institutions for similar courses. These are and shall be understood to be the conditions of grant of aid.

The reason is simple: public funds, when given as grant - and not as loan - carry the public character wherever they so. Public funds cannot be donated for private purposes. The element of public character necessarily means a fair conduct in all respects consistent with the constitutional mandate of Articles 14 and 15. All the Governments and other authorities in charge of granting aid to educational institutions shall expressly provide for such conditions (among others), if not already provided, and shall ensure compliance with the same. Again aid may take several forms. For example, a medical college does necessarily require a hospital. We are told that for 100 seat medical college, there must be a fully equipped 700 bed hospital. Then alone the medical college can be allowed to function. A private medical college may not have or may not establish a hospital of its own. It may request the Government and the Government may permit it to avail of the services of a Government hospital for the purpose of the college free of charge. This would also be a form of aid and the conditions aforesaid have to be imposed - may be with some relaxation in the matter of fees chargeable - and observed. The Government (Central and State) and all other authorities granting aid shall impose such conditions forthwith, if not already imposed. These conditions shall apply to existing as well as proposed private educational institutions.

... ..

169. We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. [In St. Xaviers College v. State of Gujarat](#) (1975) 1 SCR 173: (AIR1974 SC 1389) it has been held uniformly by all the nine learned Judge that there is no fundamental right to affiliation. Ray, J.C., stated that this has been "the consistent view of this Court." They also recognized that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But, he or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognized by the State

- much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance - the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognized by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognized and/or affiliated as stated above, its certificates will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the UGC Act, noticed hereinabove, no educational institution in this country except a University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University. The idea is that if such students pass the said examination, the Government/ University will award its degree/diploma/certificate to them. These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, follow the same method of teaching and training. They do not award their own degrees/ qualifications. They prepare their students for University/ Government examinations, request the University/ Government to permit them to appear at the examinations conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognized/affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to any other activity like building on roads, bridges etc. In short, the position is this: No educational institution except an University can award degrees (Sections 22 and 23 of the UGC Act). The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value inasmuch as they are not good for obtaining any employment under the State or for admission into higher courses of

study. The private educational institutions merely supplement the effort of the state in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing/ affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by [Article 14](#) of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well.

Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant, recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III, its activity is bound to be characterized as unconstitutional and illegal. To reiterate what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates. Accordingly, we have evolved - with the help of the counsel appearing before us and keeping in view the positive features of the several Central and State enactments referred to hereinbefore - the following scheme which every authority granting recognition/affiliation shall impose upon the institutions seeking such recognition/affiliation.

(Emphasis supplied) The afore- extracted judgment of the Constitution Bench clearly directs recognition/approval cannot be unconditional.

Therefore, in the light of the judgment of the Constitution Bench in the case of Unni Krishnan and all other judgments (supra) with regard to binding nature of the Regulations of AICTE upon the Institutes it governs, insofar as prescription of norms and standards, inter alia, the petitioner is entitled to succeed.

22. For the aforesaid reasons, I pass the following -

ORDER

(i) Writ Petition is allowed.

(ii) Impugned Communication/Memo dated 03.12.2019 issued by the 4th respondent insofar as it pertains to the petitioner stands obliterated.

(iii) The petitioner is entitled to continue in service till he attains the age of 65 years.

(iv) Petitioner is entitled to all the consequential benefits that would flow from quashing of the Communication/Memo dated 03.12.2019.

(v) No costs.

Sd/-
JUDGE

bkp
CT:MJ