

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.A. No. 950 of 2015

Dr. S.C. Jain	Appellant
	Versus	
State of M.P. and others	Respondents

Coram:

**Hon'ble Shri Justice Hemant Gupta, Chief Justice;
Hon'ble Shri Justice J.K. Maheshwari, J; and,
Hon'ble Shri Justice Anurag Shrivastava, J.**

Shri L.C. Patne and Shri Abhay Pandey, Advocates
for the appellant.

Shri P.K. Kaurav, Additional Advocate General, Shri
Shri Samdarshi Tiwari, Deputy Advocate General,
Shri Swapnil Ganguly, Government Advocate and Shri
Amit Seth, Govt. Advocate for the respondents-State.

Shri Sandeep Shukla, Advocate and Smt. Nirmala
Nayak, Advocates for the respondent No.4-UGC.

Shri Rajendra Tiwari, Senior Advocate assisted by
Shri Nityanand Mishra, Advocate as Amicus Curiae.

Whether approved for reporting: Yes

ORDER

{ 8th May, 2017 }

Per Hemant Gupta, Chief Justice:

A Division Bench of this Court on 19.1.2017 referred the following two questions for decision by the Larger Bench in a

petition filed by the Teachers working in the aided private institutes in the State, seeking the benefit of enhanced age of superannuation i.e. 65 years, as has been granted to the Teachers working in the Government Institutes. The questions are:-

- “1. Whether in view of the provisions of statute 28 of the College Code as amended and brought into force w.e.f. 7th January, 2004 and whether in view of the provisions of U. G. C. Regulation 2010, teachers working in the aided private institutes are also entitled to the benefit of having their age of superannuation fixed at 65 as is applicable in the case of Government Teachers?
2. Whether the Co-ordinate Bench of this Court while deciding the writ appeal in the case of Dr. Arun Kumar has laid down the principle correctly?”

2- Before the aforesaid questions are examined, certain statutory provisions relating to the Teachers working in the aided institutes and that of the Teachers in the Government Institutes including members of teaching faculty of the Universities are required to be noticed.

3- The Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as ‘University Act’) was enacted on 23.4.1973, to consolidate and amend the law relating to Universities and to make better provisions for organization and

administration of Universities in the State. The Eight Universities as mentioned in the Schedule enacted by different statutes were now to be governed by the said Act after the enactments incorporating the said Universities were repealed.

4- The relevant provisions of the said University Act are extracted hereinafter:-

“Clause 4 – In this Act, unless the context otherwise requires:

xxx xxx xxx xxx

(xii) ‘College’ means an institution maintained by, or admitted to the privileges of the University by or under the provisions of this Act;

xxx xxx xxx xxx

(xvii) ‘University’ means:

(i) the University deemed to be established under this Act and specified in Part I of the Second Schedule; and,

(ii) the University which may be established after the commencement of this Act and specified in part II of the second schedule;

xxx xxx xxx xxx

(xx) ‘Teachers of the University’ means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research, with the approval of the Academic Council in the University or any College or Institution maintained or recognized by the University;

xxx xxx xxx xxx

(xxiv) ‘Affiliated College’ means an institution admitted to the privileges of the University in accordance with the provisions of this Act and the Statutes;”

5- The University Act also contemplated constitution of a Coordination Committee in terms of Section 34(1) of the said Act. The said Coordination Committee was to draw the first Statute and Ordinances within a period of one year. It is thereafter the Coordination Committee was to exercise the powers conferred in sub-section (4) of Section 34. The relevant provisions contained in Section 34 sub-sections (3) and (4) read as under:-

“34(3) On coming into force of this Act, notwithstanding the provisions of section 36 and section 38, the first Statutes and Ordinances shall be drawn up by the Co-ordination Committee. The first Statutes and Ordinances shall come into force from such date as the Kuladhipati may by an order specify;

Provided that the power conferred on the Co-ordination Committee to draw up the first Statutes and Ordinances shall be exercised within a period of one year from the date appointed under sub-section (3) of section 1.

34(4) The Co-ordination Committee shall exercise the following powers and discharge the following functions;

(i) to undertake from time to time examination of the Statutes and Ordinances

inforce in the various Universities and to suggest modifications;

- (ii) to approve or reject the statutes and Ordinances submitted by the Executive Council of the University;

6- Section 35 of the University Act provides for matters which can be included in the statutes to be framed by the Coordination Committee. The relevant clause reads as under:-

“35. Subject to the provisions of this Act and the rules made thereunder the Statutes may provide for all or any of the following matters, namely;

xxx xxx xxx xxx

(j) the conditions under which colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(l) qualifications of Professors, Readers, Lecturers and other teachers in affiliated colleges, and recognized institutions;

(n) the emoluments and terms and conditions of service of the officers and the emoluments and terms and conditions of service other than pay scales of teachers of the University, paid by the University;

7- Section 36 contemplates that first statutes of the University shall be prepared by the Coordination Committee, whereas sub-

section (2) empowers the Coordination Committee to amend or repeal any statute by a statute in the manner as to consider the proposal received from the Executive Council or on its own motion and then to approve the same. Section 36 reads as under:-

- “36. (1) The first statutes of the University shall be prepared by the Co-ordination Committee.
- (2) The Co-ordination Committee may, from time to time make amend or repeal any statutes by passing a statute in the manner hereinafter appearing.
- (3) The Co-ordination Committee may on receiving a proposal from the Executive Council of a University or on its own motion consider the draft of a statute that is in the interest of either one or all the Universities;
- (4) Where a draft is proposed by the Executive Council, the Co-ordination Committee may approve of such draft and pass the Statute or reject it or return it to the Executive Council for reconsideration either in whole or in part together with any amendment, which the Co-ordination Committee may suggest.
- (5) After any draft returned under sub-section (4) has been further considered by the Executive Council together with any amendment suggested by the Co-ordination Committee it shall again be presented to the Co-ordination Committee with a report of the Executive Council thereon and the

Co-ordination Committee may approve or reject the Statute.

(6) The Co-ordination Committee shall not take into consideration nor the Executive Council shall propose the draft of any Statutes or of any amendment of a statute or of the repeal of any Statute:

(a) Affecting the statutes, power or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal; or

(b) affecting the conditions of admission of colleges to privileges of the University, until the Academic Council has been given an opportunity of expressing an opinion upon the proposal and such opinion shall be forwarded by the Executive Council to the Co-ordination Committee along with any draft it may propose.

(7) Where the Co-ordination Committee approves the Statutes, they shall become effective from such date as the Co-ordination Committee may specify.”

8- In terms of such statutory provisions, the first statutes were framed by the Coordination Committee and approved on 20.4.1974, which came into force on 4.5.1974.

9- Statute 7 deals with Standing Committee of the Academic Council. It contemplates that the Standing Committee by

examination in consultation with the faculty concerned and such matters as may be referred to it by the Academic Council, the Executive Council or the Vice Chancellor.

10- Statute 27 deals with admission of colleges to the privileges of University and withdrawal thereof. It provides for procedure for admission, payment of fee in respect of colleges owned and maintained by the Government; Colleges owned or maintained by Association referred as ‘Foundation Society’; or, in cases of Colleges maintained solely by a person, referred to as ‘Founder’. In the application form, the application to seek affiliation contemplates submission of information regarding qualification and adequacy of the teaching staff, whereas sub-clause 8(ii) of the said statute enjoins upon a College to comply with the following provisions. The relevant provisions read as under:-

“8(2) Without prejudice to the generality of the provision contained in sub-para (I) the college shall in particular comply with the following provisions namely:

xxx xxx xxx xxx

(e) the qualification and adequacy of the teaching staff and the conditions governing their recruitment and term of employment shall be strictly according to the provisions of the Statutes;

xxx xxx xxx xxx

10. (1) The Principal and the teachers in a college admitted to the privileges of the University shall not be

appointed on scales of pay lower than those sanctioned by the State Government for the Principals and teachers of corresponding status in Government colleges.”

11- It is Statute 28 which is subject matter of consideration before this Court. Part II of the said Statute deals with the requirements to be followed by ‘Foundation Society’. The ‘Foundation Society’ is defined under Clause 1-sub clause (b) of the said statute. A ‘College’ in the said statute means an educational institution admitted to the privileges of University [Section 4 (24 of the University Act)].

12- Clause 22 of Statute 28 provides for parity in the pay scale whereas Clause 26 provides for the age of superannuation. The age of superannuation was initially fixed at 60 years. The Statute 28 (as published on May 1, 2002) appended as Annexure R-6 with the reply by State in Writ Appeal No. 950 of 2015 contains the following Clause 26 and the amendment carried out in 1998, reads as under:-

“26. A permanent teacher shall be entitled to be in the service of the college until he/she completes the age of sixty two.

Provided that if the Governing Body is satisfied that extension of service is in the interest of the college, it may extend his/her services upto a period of two years beyond the age of sixty.

Provided also that where the date of retirement of a teacher with or without extension falls due during the course of the academic session, the Governing Body shall allow the teacher to continue till the end of the academic year.

26* Age of superannuation has been raised from 60 years to 62 years w.e.f 7.8.1998 as per provision of the MP Shashkiya Sewak Adhivarshiki Ayu Dwitya Sanshodhan Adhiniyam No.27 of 1998 as approved by the Co-ordination Committee at its meeting dated 3.4.2002 and by the Executive Council at its meeting dated 25.9.2002 (Item No.6).”

13- The State Government enacted the Madhya Pradesh Shaskiya Sewak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, 1998 (Act 27 of 1998) published on 2.9.1998 amending the Madhya Pradesh Shaskiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967. By virtue of amendment, the age of Government Teachers was increased to 62 years with effect from 7.8.1998. The State Government issued a circular on 14.10.1998 that teachers in the aided institutions shall not be retired who attain the age of 60 years after 6.8.1998 (Annexure P-6) till further orders. Another circular (Annexure P-7 in Writ Appeal No. 674 of 2016) was issued on 1.1.2000 by the State Government to treat the teachers working in the private aided institutes to be at par with the teachers working in the Government Institutes. It appears

that the said decision of the State Government was approved by the Co-ordination Committee at its meeting on 3.4.2002 and by the Executive Council of Rani Durgavati Vishwavidyalaya Jabalpur at its meeting on 25.9.2002.

14- The claim of the appellants, teachers in the aided private institutions, is that on the basis of recommendations of the Standing Committee, dated 1.4.2003, the Coordination Committee enhanced the age of superannuation of the teachers working in the aided institution to 65 years. The exact language of the resolution dated 7.1.2004 of the Coordination Committee after its translation reads as under:-

“The Professors, Teachers and Employees working in Private Colleges – that it would be suitable/desirable to keep the age of superannuation of Professors, Teachers and Employees of the non-governmental colleges at par with the Professors, Teachers and Employees of the Government Colleges.”

15- Apart from the said resolution of the Coordination Committee, the reliance is on the Regulations framed by the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, 2010 (for short ‘Regulation of

2010'). The said Regulation of 2010 applies to every University established or managed by a Central Act, Provincial Act or a State Act, and every institute including an 'Affiliated College', recognized by the Commission in consultation with Section 2(f) of the University Grants Commission Act, 1956 and every institution deemed to be University under section 3 of the said Act. The University Regulation was notified on September 18th, 2010.

16- Clause 2.1.0 deals with the revised scale of pay and other service conditions, including the age of superannuation in Central Universities and other institutions managed or funded by the UGC, as contained in Appendix I, which reads as under:-

“2.1.0. The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in **Appendix-I.**”

17- Clause 8(f) of the Regulations deal with age of superannuation. The relevant conditions read as under:-

“Appendix I, Clause 8 – Other terms and conditions:

xxx

xxx

xxx

xxx

(f) Age of superannuation:

- (i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision in the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities), (ii) subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Reemployment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years

in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.”

18- The Ministry of Human Resource Development, Department of Higher Education, Government of India issued a Circular on 31.12.2008 and communicated to the UGC to revise the pay scales of Teachers in the “Central Universities”, as reproduced here-in-above.

19- After the said circular was issued, the Government of Madhya Pradesh issued a Circular on 16.4.2010 to revise the pay scale of Teachers in the Government Colleges and also decided to increase the age of superannuation from 62 to 65 years. Such office order was modified on 14.9.2012, whereby the benefit of revised pay scale was granted to Librarians etc, but in respect of Teachers working in Class room teaching, the age was resolved to be increased to 65 years, but the age of superannuation in respect of non-teaching staff, Librarians, Physical Education Teachers etc working in the Colleges were contemplated to be superannuated at the age of 62 years.

20- Later, the State Government enacted The Madhya Pradesh Shaskiya Sevak Adhivarshiki-Ayu Sansodhan Adhiniyam, 2011, which was published on 6.5.2011, increasing the age of superannuation of the teaching faculty in the Government Institutions. By the said Act, The Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 (No.29 of 1967) and Rule 56 of the Fundamental Rules were amended to increase the age of superannuation of teaching faculty of the Government Institutes to 65 years.

21- The State Government issued another Circular on 22.12.2014, indicating that age of superannuation in private institutions is 62 years only and has not been increased to 65 years.

22- The Ministry of Human Resource Development, Department of Higher Education, Government of India vide Circular dated 4th August, 2012, Annexure P/19 (in Writ Appeal No.674/2016), clarified that the Scheme circulated on 31.12.2008 was essentially for Teachers in the “Central Universities”, but the provisions of the Scheme could be made applicable by the State Government to the State Universities and Colleges under the purview of the State. Relevant Clauses read as under:-

“2. Although this Scheme was essentially for teachers in Central Universities, provisions of the Scheme could be made applicable by State Governments to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopt and implement the scheme as a composite scheme, including the enhanced age of superannuation and the regulations laid down by the UGC in this regard. The age of superannuation for teachers in Central Universities had been enhanced to 65 years vide this Ministry’s letter No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching.

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry’s letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letters cited above shall continue to apply.”

23- It may also be noticed that an enactment, The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ka Vetano Ka Sandaya) Adhiniyam, 1978 was enacted which contemplated to give grant-in-aid to the private institutions. Such Act was amended on 13.4.2000, whereby the payment of grant-in-aid to such institutions was curtailed vide Act No.2 of 2000. Legality of the said amending statute came to be finally decided by the Hon’ble Supreme Court vide its order-

dated 7.1.2014 passed in **Civil Appeal No.6362/2004 [State of MP Vs. Dr. Sharique Ali and others]** when the following order was passed:-

- “1. This order is in continuation of our earlier order dated 12.12.2013. Both the orders should be read together.
2. By order dated 12.12.2013 we had requested Shri Tankha, learned senior counsel to get appropriate instructions/clarification from the State Government insofar as Clause ‘C’ of the affidavit dated 26.11.2013.
3. Today, learned senior counsel, Shri Tankha has filed an affidavit on behalf of the State of Madhya Pradesh. In the said affidavit they have pleaded their inability to extend the 6th Pay Commission Scales to the Teachers/Lecturers/non-teaching staff working in private aided educational institutions in the State of Madhya Pradesh though their appointment is approved by the State Government.
4. After hearing Shri Tankha, Shri Shanti Bhushan and Dr. Rajeev Dhawan and other learned counsel appearing for the parties, we are of the opinion that the request of Shri Shanti Bhushan for extending the 6th Pay commission scales to the Teachers/Lecturers/non-teaching staff working in the private aided educational institutions should be accepted and granted. We are also of the view that whatever amount that is being paid pursuant to the orders passed by this court on 12.12.2013 and 07.01.2014 shall not be recovered from the Teachers/Lecturers/Non-Teaching staff working in the private aided educational institutions.
5. Accordingly, while setting aside the judgment and order passed by the High Court, we direct that the 6th Pay commission scales shall be given to the

Teachers/Lecturers/non-teaching staff working in the private aided educational institution in the State of Madhya Pradesh. We further direct that the amount that is already paid pursuant to the orders passed by this Court on 12.12.2013 and 07.01.2014 shall not be recovered from the Teachers/Lecturers/non-teaching staff working in the private aided educational institutions in the State of Madhya Pradesh.

6. It is clarified that the Madhya Pradesh Ashaskiya Shikshan Sanstha Adhiniyam, 1978, as amended by Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetno Ka Sandaya) Sanshodhan Adhiniyam, 2000 (for short “the Amended Act”) shall not be made applicable to the respondents and other similarly situated persons.

7. It is further clarified that the Amended Act is applicable to those Teachers/Lecturers/Non-Teaching staff, who are appointed by the private aided educational institutions, in the State of Madhya Pradesh, after promulgation of the Amended Act.”

24- After the order of the Hon’ble Supreme Court, the State Government passed an order on 19th/20th March, 2015, so as to grant benefit of pay revision on the basis of 6th Pay Commission to the teachers working in private aided institutions from 1.1.2006. It was specified that benefit of such pay revision would be available to only those teachers who were appointed prior to 1.4.2000, in terms of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ka Vetano Ka

Sandaya) Sanshodhan Adhyadesh, 2000 [Amending Act No. 27 of 2000]. Later, a clarification was issued on 16.8.2015 – Annexure P/8 that teachers of privately aided institutions would be granted pay as per 6th Pay Commission adopted by the Madhya Pradesh Government. The pay would be revised as per UGC Pay Revision Norms as circulated on 16.6.2011 and as modified on 14.9.2012. But, there is no decision of the State Government to extend age of the teachers in private aided institutions in the said Circulars nor was the issue raised before the Hon'ble Supreme Court in **Dr. Sharique Ali's** case.

25- With these background, the argument of learned counsel for the appellants is that the Coordination Committee was competent to frame statutes in terms of sub-section (3) of Section 34 read with Clause (j) of section 35 of the Act, to prescribe conditions under which the colleges and other institutions are admitted to the privileges of University. The conditions under which Colleges can be admitted to the privileges of University include the age of superannuation as well.

26- Reliance is placed upon Supreme Court judgment reported as **2008(1) SCC (L&S) 59 [Chairman, UP Jal Nigam and another Vs. Radhey Shyam Gautam and another]** to contend that the decision of the Coordination Committee to adopt the

same age of superannuation as the members of the teaching faculty in the government institutions would equally apply to the employees of the private aided colleges. Relevant paragraph 10 is reproduced here-in-under:-

“10. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendments in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to the age of the employees would not tantamount to amending Regulation 31 of the Regulations.”

27- Reliance is also placed upon a judgment reported as **1965 (2) SCR 173, [Prabhakar Ramakrishna Jodh Vs. A.L. Pande and another]** wherein in the case of an appellant – Lecturer in an affiliated college to the University of Saugar and managed by a Governing Body of an aided private institution, held that the College Code similar to Statute 28 has been framed by the University and is intra vires to the powers of the University contained in section 32 read with Section 6(6) of the University of

Saugar Act, 1946. It was held that the College Code does not merely regulate relationship between the University and the College alone, and that the power to fix pay scale falls within the statutory power of affiliation granted to the University under the Act. Thus, it was held that the College Code creates legal right in favour of the affiliated colleges.

28- Reference is also made to another Supreme Court judgment reported as **AIR 1989 SC 341 [Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and others]**, wherein the regulations framed by Board of Secondary Education, Madhya Pradesh under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1955 has statutory force and that a Higher Secondary School receiving 100% grant from the Government is amenable to writ jurisdiction.

29- It is thus argued that the College Code as framed by the Coordination Committee has the force of law and fixation of age of superannuation is part of the qualification required to be determined by the statute in terms of Section 35(j) of the University Act. It is further contended that the said clause of age of superannuation was provided in 1974, but the State Government never challenged the power of the Coordination Committee to prescribe the age of superannuation, therefore, at

this stage the State cannot contend that the fixation of age of superannuation does not fall within the scope of powers conferred on the Coordination Committee. It is also contended that age of 60 years fixed in the initial statute framed by the Coordination Committee, has been admittedly increased to 62 years by the State Government in the year 1998, therefore, it cannot be said that Clause 26 of Statute 28 is beyond the competence of the Coordination Committee. It is contended that the qualification prescribed under section 35(j) of the Act, will include disqualifications to hold post which would include the age of superannuation which would make the incumbent disqualified to hold the post thereafter. It is also contended that once the State Government has decided to extend the age of superannuation of the Government teachers from 62 to 65 years, in terms of the UGC Regulations, by Circular dated 16.4.2010 which was modified vide Circular dated 14.9.2012. The teachers of the aided private institutions are entitled to the same benefit as has been conferred on the members of the teaching faculty of Government Institutes.

30- It is contended that Statute 28 (College Code) and, the Regulations of the UGC were not brought to the notice of the earlier Benches of this Court, therefore, appellants/petitioners

are entitled to serve the colleges till they attain the age of 65 years.

31- On the other hand, the stand of the State as per the affidavit filed in **Writ Appeal No.950/2015**, which has been adopted as reply in all the writ appeals, is as under:-

“8. That it is also relevant to mention that a bare perusal of the resolution dated 7.1.2004 also goes to show that the aforesaid discussion took place in the year 2004 wherein there was no iota of recommendation of 6th Pay Commission. That an amendment was made in the year 2004 in College Code 28 and after the implementation of recommendation of 6th Pay Commission, no further deliberation in this regard was made by the Executive Council/ Coordination Committee. Hence the resolution dated 7.1.2004 cannot be relied upon by the appellant at this juncture. The recommendation of UGC, its applicability to the State Government, wisdom of the State Government to implement the recommendation of UGC etc, has been considered by the Hon’ble Apex Court in the case of **T.P. George Vs. State of Kerala, 1992 SCR (2) 311**. So far as the applicability of the resolution dated 7.1.2004 is concerned, it is respectfully submitted that the amendment has been incorporated as per decision of the Coordination Committee dated 7.1.2004, and the following amendment has been incorporated:

समन्वय समिति के निर्णय दिनांक 07.01.2014 में परिणियम 28 की कंडिका 26 में निम्नानुसार संशोधन किया गया है की सूचना ग्रहण करने पर विचार किया गया ।

“अशासकीय महाविद्यालयों के प्राचार्य, शिक्षकों और कर्मचारियों की सेवा निवृत्ति आयु शासकीय महाविद्यालयों के प्राचार्य, शिक्षकों और कर्मचारियों के समान रखा जाना उचित होगा ”

It is respectfully submitted that this amendment was incorporated in consonance to the recommendations of the UGC qua the Fifth Pay Commission, by which the age of superannuation of the teachers was increased from 60 years to 62 years. It is submitted that this amendment was suggestive in nature and it not binding for the State, moreover the same is not applicable in the matter of Six Pay Scale.”

32- In addition thereto, reliance is placed upon Supreme Court orders passed in the case of **Jagdish Prasad Sharma and others Vs. State of Bihar and others, (2013) 8 SCC 633; B. Bharat Kumar and others Vs. Osmania University and others, (2007) 11 SCC 58; T.P. George Vs. State of Kerala, 1994 Supp (3) SCC 191**; as well as a judgment of this Court in the case of **Sikandar Shabana Vs. State of MP and others, 2012 (1) MPLJ 386.**

33- We have learned counsel for the parties at length.

34- The first question which is required to be examined is *‘Whether the fixation of age of superannuation in the College Code [Statute 28] falls within the jurisdiction of the Coordination Committee’?*

35- An 'affiliated college' is defined in section 4(xxiv) of the University Act to mean 'an institution admitted to the privileges of the University in accordance with the provisions of this Act and the Statutes'. Section 34 of the University Act empowers the Coordination Committee to draw the first Statutes and Ordinances, within a period of one year. Section 35 (j) provides for fixation of qualification of Professors, Readers, Lecturers and other teachers in the affiliated colleges and recognized institutions, which include private aided institutions. The qualifications will include not only the educational qualifications but also the age up to which such persons would be qualified to discharge duties as a member of the teaching faculty. Therefore, fixation of the age of superannuation of a private aided college was within the jurisdiction of the Coordination Committee.

36- Still further, the decision to fix the age of superannuation was taken in the year 1974 and for the last more than 40 years; there is no challenge to the competence of the Coordination Committee to frame such regulations. A fact which has not been disputed for long period of time cannot be disputed at this stage when in the reply filed, there is not even an iota of assertion that Coordination Committee was not competent to fix the age of superannuation. It may be noticed that no statutory provision has

been brought to our notice, including the 1978 Act granting grant-in-aid, which contemplates the date of superannuation of a member of the teaching faculty of a private aided institution. Since there is no other provision of determining the age of superannuation, therefore, the Statute framed by the Coordination Committee, including the age of superannuation, cannot be permitted to be disputed at this stage.

37- Having said so, the next question which arises is as to *whether the Standing Committee could make recommendations for enhancing the age of superannuation or the Coordination Committee can amend the statute to enhance the age of superannuation.*

38- In terms of section 34(4) of the University Act, the Coordination Committee can suggest modification of the statutes in force in various Universities. On the other hand, sub-clause (2) of Section 36 of the University Act empowers the Coordination Committee to amend or repeal any statute by passing a statute as prescribed in Section 37. We find that the resolution dated 7.1.2004 is not passed by the Standing Committee nor is based upon a proposal of the Executive Council of the University. No doubt, the Coordination Committee is competent to consider the draft of the statute, but any amendment in the statute is required

to be sent to the Executive Council. The resolution dated 7.1.2004 has not been accepted or approved by the Executive Council of any of the Universities nor sent to the Executive Council of any of the Universities after the same was passed to give effect to such resolution by each of the Universities in respect of the Institutions affiliated to it.

39- Still further, the language of the resolution dated 7.1.2004 is in the nature of recommendations. Such recommendation was required to be accepted by the Executive Council of each or all of the Universities before the same can take the force of a statute. Such fact becomes relevant as some of the Universities as Devi Ahilya University, Indore in its communication dated 29.3.2017 has indicated to the State Government that the resolution dated 7.1.2004 was not approved by the Executive Council. Since the language of the resolution dated 7.1.2004 is not to enhance the age of superannuation, but is only a recommendation, therefore, such recommendation will not be effective till such time it is approved by the Executive Council of the Universities.

40- Earlier, the age of the members of the teaching faculty of the private institutions from 60 to 62 years was increased by the State Government, which decision was adopted by the Coordination Committee and by the Executive Council. Therefore, the

recommendation of the Coordination Committee on 7.1.2004 per se cannot be treated to mean that the age of superannuation of the members of the teaching faculty in the private aided institutions stands enhanced to 65 years as such decision has not been approved either by the Executive Council or by the State Government. Any financial liability on the State Government cannot be created impliedly, but has to be specifically accepted by the State Government.

41- We are not examining the question as to whether the decision of the Coordination Committee amounts to amendment of the Statute, if any, by reference or by incorporation, as it was not argued before this Bench. The other question which arises is as to whether said resolution of 7.1.2004 would amount to increase in the age of superannuation, as and when increased by the State Government, even, if amount to the decision of increase in age.

42- The State Government has increased the age of superannuation of the members of the teaching faculty in the Government Institutions firstly in the year 1998 and secondly in the year 2011: when it increased the age from 60 to 62 years; and, later from 62 to 65 years, respectively by amending the relevant Statute. The State Government has increased the age of the members of the teaching faculty of the private aided institutes

from 60 to 62 years when a circular to this effect was issued on 1.1.2000. But there is no conscious decision of the State Government to increase the age of superannuation of the members of the teaching faculty in the private aided institutions thereafter, therefore, the same cannot be deemed to be increased as and when the State Government extends the age of the members of the teaching faculty of its institutions.

43- Therefore, in respect of the first part of Question No.(1), it is held that resolution dated 7.1.2004 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the members of the teaching faculty of the private aided institutions.

44- In respect of second limb of the question as to whether in terms of the UGC Regulations, 2010, teachers working in the aided private institutions are entitled to the benefit of age of superannuation as 65 years, needs to be examined now.

45- The UGC Regulations of 2010 are applicable in respect of revised scale of pay and other service conditions, including age of superannuation in “Central Universities” and other Institutes maintained, aided or funded by the UGC. The Universities, to which the affiliated Colleges are entitled to privilege in terms of section 4(xxiv) of the University Act, are not “Central

Universities”, they are incorporated under the Statute enacted by the State, therefore, in terms of Clause 2.1.0, the UGC Regulations of 2010 are not applicable to affiliated colleges admitted to the privileges of University in terms of section 4(xxiv). Appendix I of Circular dated 31.12.2008, as reproduced above, also shows that it is applicable to teachers in “Central Universities”. In respect of age of superannuation, the Circular contemplates that age of superannuation of teachers in “Central Universities” has been enhanced to 65 years i.e. vide Circular dated 23.3.2007 to those teachers, who are involved in class room teaching. Members of the teaching faculty of the private aided colleges are not teachers engaged in class room teaching of “Central Educational Institutions”.

46- The Circular of the State Government dated 16.4.2010 as modified on 14.9.2012 pertains to revision of pay scale of the teachers of the Government Institutions. In terms of such decision, two amendments in the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhinyam, 1967 have been carried out so as to increase the age of the members of the teaching faculty working in the Government institutions firstly from 60 to 62 years and then from 62 to 65 years. There is no corresponding increase in the age of the members of the teaching faculty of the

private aided institutions to 65. The age was increased to 62 years in the year 1998 vide circular dated 1.1.2000. Still further, the circular dated 31.12.2008 has been clarified by the Ministry on 14.9.2012 that it is for the State Governments to accept the recommendation of the UGC to fix pay scale as circulated by the UGC, including the age of superannuation. The conscious decision taken by the State Government is to increase the age of superannuation of members of the teaching faculty of the Government Teachers, the same cannot be forced upon the State to pay grant-in-aid to the private institutions in the absence of any conscious decision by the State Government.

47- It may be noticed that earlier Grant-in-aid Act, 1978 was amended in the year 2000 so as to withdraw the grant-in-aid in a phased manner. The Hon'ble Supreme Court in **Dr. Sharique Ali's case (Supra)** has upheld the amendment, but clarified that same is applicable only to the members of the teaching faculty appointed after the said date. Since the appellants/petitioners were appointed prior to the amendment of the said Act, they are entitled to the benefit. The decision to withdraw the benefit of grant in aid was taken in respect of members of the teaching faculty of the private aided Institutes even before the recommendation of the co-ordination committee to recommend

the same pay as the pay of the teachers of the Government institutes. Therefore, it cannot be said that the decision of the coordination committee would be applicable to the private aided institutes so as to create financial liability on the State Government, when the amendment in the Act has been upheld. However, the fact remains that the State Government has taken a policy decision keeping in view its financial position that the benefits would not be payable to the teachers of the private aided institutes. Though, the State is bound to pay grant in aid to the teachers appointed prior to 2000, but to say that the decision of the Coordination Committee to increase the age of superannuation and to increase the financial burden of payment of grant in aid does not seem to be plausible.

48- Thus, we find that the UGC Regulations, 2010 and the Circular dated 31.12.2008 issued by the Government of India will not be *ipso facto* apply to the members of the teaching faculty of the private aided institutions.

49- Therefore, it is held that the benefit of age of superannuation at 65 years will not be applicable to the members of the teaching faculty of the private aided institutions.

50- Now, coming to Question No.(2) we find that though the provisions of the College Code and the UGC Regulations were

not brought to the notice of the Court, but in view of the discussions above, we do not find any error in the ultimate conclusion recorded by the learned Single Bench which were not interfered with by the Division Bench.

51- Infact, the Hon'ble Supreme Court in **T.P. George's** case (supra) was considering UGC Scheme of 1986. It was held as under in paragraph 5:-

“5. We may further point out that the teachers in Universities are governed in respect of their condition of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state (sic set) of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under Article 14 of the Constitution.”

52- Later, in respect of Regulations of 2010, the Hon'ble Supreme Court in the case of **Jagdish Prasad Sharma** (supra) held as under:-

“67. One of the common submissions made on behalf of the Respondents was whether the aforesaid scheme would automatically apply to centrally-funded institutions, to State universities and educational institutions and also private institutions at the State level, on account of the stipulation that the scheme would have to be accepted in its totality. As indicated hereinbefore in this judgment, the purport of the

scheme was to enhance the pay of the teachers and other connected staff in the State universities and educational institutions and also to increase their age of superannuation from 62 to 65 years. The scheme provides that if it was accepted by the concerned State, the UGC would bear 80% of the expenses on account of such enhancement in the pay structure and the remaining 20% would have to be borne by the State. This would be for the period commencing from 1.1.2006 till 31.3.2010, after which the entire liability on account of revision of pay-scales would have to be taken over by the State Government. Furthermore, financial assistance from the Central Government would be restricted to revision of pay-scales in respect of only those posts which were in existence and had been filled up as on 1.1.2006. While most of the States were willing to adopt the scheme, for the purpose of receiving 80% of the salary of the teachers and other staff from the UGC which would reduce their liability to 20% only, they were unwilling to accept the scheme in its composite form which not only entailed acceptance of the increase in the retirement age from 62 to 65 years, but also shifted the total liability in regard to the increase in the pay- scales to the States, after 1.4.2010.

69. To some extent there is an air of redundancy in the prayers made on behalf of the Respondents in the submissions made regarding the applicability of the Scheme to the State and its universities, colleges and other educational institutions. The elaborate arguments advanced in regard to the powers of the UGC to frame such Regulations and/or to direct the increase in the age of teachers from 62 to 65 years as a condition precedent for receiving aid from the UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame Regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be

denied. The question that assumes importance is whether in the process of framing such Regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions.

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 Schedule VII List I Entry 66 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 List III Entry 25, 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.”

53. Therefore, in the light of the discussion above, the questions of law referred for decision to the Larger Bench stands answered in the following manner:-

- (i) That Statute 28 of the College Code has not been amended with effect from 7.1.2004 as it was a recommendation, which recommendation has not been

accepted either by the Executive Council of the respective Universities or by the State Government.

- (ii) The UGC Regulations, 2010 are not applicable to the State Government *per se*, but could be adopted by the State Government. The State Government has accepted the revised pay scale in respect of members of the teaching faculty in the Government Institutes alone. Therefore, the teachers working in aided private institutes shall not be entitled to claim that their age of superannuation shall be 65 years.

54. In the light of the aforesaid opinion, the writ appeals shall be posted for hearing as per Roster.

(Hemant Gupta) (J.K. Maheshwari) (Anurag Shrivastava)
Chief Justice Judge Judge

Aks/-