

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTY EIGHTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 5433 OF 2019

Between:

Sri D. Sivakumar, S/o. Sri D. Nagabhushanam, aged 59 years, Occ.
Associate Professor, (Mech. Engg.) MVSR Engineering College, Nadergul,
Rangareddy Dist.501510

...PETITIONER

AND

1. The State of Telangana, represented by the Principal Secretary, Technical Education Department, Secretariat, Hyderabad.
2. The University Grants Commission, represented by its Secretary, Bahadur Shah Jaffar Marg, New Delhi .
3. Osmania University, Represented by its Registrar Osmania University Campus Hyderabad
4. The All India Council for Technical Education, Indira Gandhi Campus Complex, IPE Estate, New Delhi. 110002
5. MVSR Engineering College, Nadergul, RR Dist. 501510 Represented by its Principal
6. MVSR Educational Society, Nadergul, RR Dist. 501510 Represented by its Secretary

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ Order or Direction more preferably in the nature of Mandamus **declare the relieving order dt.30.03.2019, bearing reference No. MVSREC/B11/19 as illegal, arbitrary, violative of regulations of A.I.C.T.E and also Telangana Admission and Fee Regulatory Committee (TAFRC) guidelines and consequently set aside the relieving order dt.30.03.2019 bearing reference No. MVSREC/B11/19.**

As per Court order dated 10.12.2024 vide I.A.No.1 of 2024 in W.P.No.5433 of 2019. Prayer is amended.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to forthwith withdraw the notice No. MVSREC/B-11/19, dated 23-2-2019 and continue the Petitioner in service till he attains the Age of 65 years as per the notification of AICTE published in the Gazette of India dated 1.3.2019, pending Disposal of this Writ Petition.

**Counsel for the Petitioner: SRI SURENDER RAO, Sr. COUNSEL, REP. FOR
SRI T.S.PRAVEEN KUMAR**

Counsel for the Respondent No.1: GP FOR HIGHER EDUCATION

**Counsel for the Respondent No.2: SRI RAMESH BABU VISHWANATHULA,
SC FOR UGC**

**Counsel for the Respondent No.3: SRI MALIPEDDI SRINIVAS REDDY,
SC FOR OU**

**Counsel for the Respondent No.4: Ms. MEGHA RANI AGAWARL,
SC FOR AICTE**

Counsel for the Respondent No.5 & 6: SRI SRINIVAS REDDY

The Court made the following: ORDER

THE HON' BLE SRI JUSTICE NAGESH BHEEMAPAKA**WRIT PETITION No.5433 of 2019****ORDER:**

The case of the petitioner, as per the writ affidavit, is that he was appointed as a Lecturer in 1984 in 6th respondent-MVSR Engineering College, Nadergul, Hyderabad, and later promoted to Associate Professor under the Merit Promotion Scheme w.e.f. 31-12-1993. He filed the present Writ Petition aggrieved by the notice issued by the Principal vide Ref. MVSREC/B-11/19 dated 23.02.2019 informing that he would attain superannuation on 20.03.2019 and would be relieved on 31.03.2019, despite the All India Council for Technical Education (AICTE) Notification dated 01.03.2019 explicitly prescribing the superannuation age of all faculty members as 65 years under Clause 2.1.2, with a possible extension to 70 years based on fitness and academic contributions. Though the Petitioner obtained a copy of the said Notification only on 09.03.2019 and immediately submitted a representation dated 11.03.2019 requesting withdrawal of the superannuation notice, no action was taken by the respondents. The petitioner earlier faced discriminatory pay fixation despite his 1993 promotion, and led to his filing W.P. No.23767 of 2002 which was allowed by this Court, and similar issues were upheld in W.P. Nos. 5426 and 36492 of 1998 by the High Court of A.P., reported in 2001 (6) ALT 757, directing parity between promoted and directly recruited Associate Professors, based on 5th Pay Revision Commission recommendations; however, pay anomalies remained unaddressed, and juniors were promoted to Professors in 2007 ignoring the petitioner,

compelling him to file W.P. No. 101 of 2007 and the same is pending, and no counter has been filed by the College yet. The petitioner is eligible, healthy and willing to serve till 65 years, and any premature retirement would deprive him of five years' service and related benefits including salary, PF, and gratuity. The College, affiliated to AICTE, is bound by its service regulations under Clause 1.2 and 1.4 of the said Notification. The petitioner therefore seeks a Writ of Mandamus, declaring the notice dated 23.02.2019 as illegal and violative of AICTE Notification dated 01.03.2019, and to consequently direct respondent Nos.5 and 6 to continue him in service till he attains the age of 65 years.

2. No counter affidavit has been filed by respondent Nos.1, 2 and 3 in spite of several opportunities granted by this Court. Counter affidavit has been filed by respondent No.4. Counter affidavit and additional counter affidavit has been filed by respondent Nos.5 and 6.

3. Heard Mr. Surender Rao, learned Senior Counsel appearing on behalf of Mr. T.S. Praveen Kumar, learned counsel for the petitioner; and Mr. Srinivas Reddy, learned counsel for respondent Nos.5 and 6. Perused the record.

4. Learned counsel for the petitioner would essentially contend that the petitioner, who was appointed as Lecturer in 1984 and promoted as Associate Professor with effect from 31.01.1993, was illegally retired by the 5th respondent college through the impugned notice dated 23.02.2019, stating that he would attain the age of superannuation on 31.03.2019, despite being entitled to continue in service till the age of 65 years as per Regulation 2.12 of the AICTE Regulations, 2019, which came into effect

from 01.03.2019. It is submitted that the writ petition is maintainable against the private unaided institution as per settled law and precedents including *S. Triveni vs Andhra Mahila Sabha*, *Vasavi College of Engineering vs A. Surnarayana*, and *Marwari Balika Vidyalyaya vs Asha Srivastava*, which recognize writ jurisdiction over private educational institutions discharging public functions and governed by statutory obligations. It is argued that the impugned action is not a private dispute but a violation of binding statutory regulations, and the college being a technical institution approved and affiliated by AICTE, is mandatorily bound by its regulations under Sections 10 and 23 of the AICTE Act, 1987. The contention of Respondents No.5 and 6 that such regulations require adoption by the State Government is untenable, as the applicability of AICTE Regulations is neither discretionary nor dependent on State adoption, as consistently held by this Court and also the Hon'ble Supreme Court in *Pramod vs State of Maharashtra*, *GR Bharath Sai Kumar vs State of Karnataka*, and *W.P. No.19447 of 2016*. It is further submitted that the constitutional scheme under Entry 66 of List I prevails over any contrary provision under Entry 25 of List III or Entry 41 of List II, and therefore the service conditions of faculty in technical institutions fall within the exclusive domain of Parliament. It is also submitted that the petitioner, having been wrongfully terminated at 60 years and not being gainfully employed thereafter, is entitled to full back wages till the age of 65 years, in light of decisions such as *Deepali Gundu Surwase*, *Dayanand Chakrawarthy*, *Pradeep Jain*, and *Katuri Rambabu*, wherein it was held that the principle of 'no work no pay' does not apply when an employee is prevented from discharging duties due to illegal action of the

employer. The petitioner, not being an employee of the State, University, or an aided institution, but of a private technical institution governed by AICTE Regulations, is entitled to the benefit of superannuation age of 65 years and all consequential reliefs, including salary and service benefits.

5. A counter affidavit is filed by respondent No.4 – Assistant Director and Regional Coordinator of All India Council for Technical Education (AICTE). It is stated that AICTE, a statutory body constituted under Act 57 of 1987, is responsible for the coordinated development and regulation of technical education across India, with powers under Section 10 of the AICTE Act including granting approvals for new institutions and programs under Section 10(k), and withholding grants from non-compliant institutions under Section 10(q). The petitioner challenges the impugned notice issued by respondents No.5 and 6, relying on the AICTE Notification dated 01-03-2019, wherein Clause 2.2 specifies the superannuation age for faculty as 65 years; hence, retiring any faculty member before attaining this age is contrary to said Notification. The Notification came into force upon publication in the Gazette on 01.03.2019 and remains applicable to the petitioner, who has not yet reached the prescribed age of retirement, making the notice issued by respondent No.6 unsustainable. The petitioner has already placed a copy of this Notification on record. The AICTE has historically issued several Notifications detailing service conditions, pay scales, and qualifications for technical education faculty, and in light of numerous disputes regarding retirement age, including the judgment passed in CWP No.17643 of 2003 by the Hon'ble High Court of Punjab and Haryana in *Dr. S.C. Dhawan & Others v. Union of India & Others*, AICTE was

directed to amend its regulations to clarify that service condition regulations, including superannuation age, are optional for State Governments unless specifically adopted. Pursuant to this directive, AICTE proposed an amendment to its Notification dated 01.03.2019, inserting a note below Clause 2.12 (Degree) and Clause 2.9 (Diploma) stating that the age of superannuation in State-owned or aided institutions shall be governed by the policy of the respective State Government. This amendment was approved by the Executive Committee on 28.11.2023 and is pending publication in the Gazette, to take effect thereafter.

6. A counter affidavit, and an additional counter affidavit, has been filed by respondent No. 5 and 6, stating that the writ petition filed against these respondents—being a private, unaided, self-financed educational institution—is not maintainable since the respondents do not fall within the ambit of “State” under Article 12 of the Constitution of India. The petitioner is not entitled to relief under Clause 2.12 of the AICTE Notification dated 01.03.2019, which was issued in pursuance of UGC Letter dated 30-01-2018 and the Government of India, Ministry of Human Resource Development, Department of Higher Education’s Letter dated 02-11-2017. The said documents clarify that the scheme of revision of pay of teachers and related benefits, including superannuation, apply only to Central Universities, Colleges under them, and Institutions Deemed to be Universities receiving UGC funding, and that the implementation of the scheme by State universities and colleges is contingent upon adoption by the respective State Governments. Pursuant to the 2010 AICTE Regulations dated 22-01-2010, the State Government of Andhra Pradesh constituted a Committee and subsequently issued G.O.Ms.No.14 dated

20-02-2010 and G.O.Ms.No.40 dated 28-06-2012, specifically declining to adopt the AICTE rule on superannuation, instead maintaining the retirement age as 60 years for university teachers and 58 years for college staff. Notwithstanding this, the petitioner was allowed to serve till 60 years, although the institution had the authority to relieve him at 58 years. The said AICTE Notification dated 01-03-2019, based on 7th Pay Commission recommendations, is not binding on these respondents unless adopted by the State through an express Government Order—similar to G.O.Ms.No.14 dated 20-02-2010 which implemented 6th Pay Commission norms. The petitioner's appointment was purely private and contractual, governed by the institution's Service Rules, especially Rule 15 which prescribes superannuation at 60 years, in line with the State Government norms, and not affected by any increase in retirement age applicable to public employees under The Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984. The relieving order dated 30-03-2019 was communicated to the petitioner effective from 31.03.2019 and has not been challenged, thereby rendering the writ infructuous. Additionally, the petitioner accepted retirement benefits, indicating acquiescence. The TAFRC guidelines dated 27-10-2021 referred to by the petitioner are non-binding, as TAFRC lacks authority to prescribe age of superannuation. Further, AICTE's power under Sections 23(1), 10(g), 10(h), and 10(i) of the AICTE Act, 1987 does not extend to prescribing service conditions like retirement age for unaided private institutions such as the respondents; and therefore the writ petition deserves to be dismissed.

7. Learned counsel for respondent Nos.5 and 6 would contend that the writ petition is not maintainable, as Respondent No. 5 is a private unaided educational institution, and the petitioner's employment was purely contractual; that the appointment and service conditions of the petitioner are governed exclusively by the institutional byelaws and not by any statutory framework; that no element of public law is involved in the dispute; that the Hon'ble Supreme Court held in *St. Mary's Education Society v. Rajendra Prasad Bhargava*, private unaided institutions are not "State" or "public authorities" within the meaning of Article 12, and disputes concerning private employment cannot be adjudicated under writ jurisdiction unless a public duty is involved; that the petitioner was employed on a contractual basis, and the service rules framed by Respondent No. 5 prescribed the age of superannuation as 60 years; that the petitioner was relieved on 30.03.2019 vide upon attaining the said age, and he accepted the relieving order without protest and drew all post-retirement benefits; that the petitioner is therefore estopped from challenging his retirement at this stage; that the AICTE Regulations dated 01.03.2019, prescribing the age of superannuation as 65 years, are not applicable to unaided private institutions like respondent No. 5 unless specifically adopted by the State Government; that in the instant case, the State of Telangana has not adopted these regulations nor issued any Government Order extending their applicability to private unaided technical institutions; that the regulations are thus not binding on Respondent No. 5; that AICTE is not empowered under Sections 10(g), 10(h), 10(i), or Section 23(1) of the AICTE Act, 1987 to frame binding regulations governing service conditions such as the age of

superannuation for institutions that do not receive any government aid. Courts have consistently held that such regulatory overreach is ultra vires the AICTE Act, and this is supported by judicial decisions including *K.J. Sudhir v. State of Kerala* (Kerala High Court), *Vidarbha Youth Welfare Society v. Dr. Mir Sadique Ali* (Nagpur Bench, Bombay High Court) wherein both the judgments both the judgments affirm that prescribing the age of superannuation is a matter within the exclusive domain of the State Government; that determination of age of retirement is a policy matter to be decided by the respective State Governments; that even for State-run or aided institutions, AICTE regulations are inapplicable unless specifically adopted by the State; that the petitioner has failed to demonstrate any such adoption by the Government of Telangana in the context of unaided private institutions; that The Telangana Admission and Fee Regulatory Committee (TAFRC) is a regulatory body concerned solely with fee structures and admissions, and it has no jurisdiction or statutory authority to prescribe or enforce service conditions, including the age of retirement, and this position is well-settled in *G. Pulla Reddy v. State of A.P.*, *Manam Sankara Rao v. State of Andhra Pradesh*; that even assuming without admitting that the AICTE's 2019 regulations were applicable, the writ petition has become infructuous as the petitioner was relieved on 30.03.2019 after attaining the age of 60 years and by 31.03.2024, he would have attained the age of 65 years and therefore, no relief of reinstatement or continuation in service survives; that the Government Order (G.O.Ms.No.3 dated 28.01.2025) enhancing the superannuation age to 65 years, applies exclusively to regular teaching staff of State Universities under the administrative control of the Higher

Education Department; that the petitioner, being an employee of a private unaided institution, is not covered under the said G.O., which is also prospective in operation and cannot be retrospectively applied to benefit the petitioner, who would have already retired; that the AICTE has proposed an amendment to Clause 2.12 of the 2019 Regulations pursuant to the judgment of the Punjab and Haryana High Court in *C.W.P. No. 17643 of 2003*, clarifying that the age of superannuation shall be determined by respective State Governments for State-owned or aided institutions; that the AICTE Executive Committee approved the amendment on 28.11.2023, and it is in the process of being notified, and this confirms the position that even the AICTE does not claim authority to fix superannuation ages for private unaided institutions; that the petitioner's reliance on the order in *W.P. No. 8552 of 2022* is misconceived, as that decision did not consider the binding Supreme Court clarification in *Pramod v. State of Maharashtra*, which held that no law was laid down regarding superannuation, and failed to examine the *St. Mary's Education Society* case. The recent judgment of the Hon'ble Supreme Court in *Dr. P.J. Dharmaraj v. Church of South India* further affirms the inapplicability of centrally prescribed retirement ages to institutions governed by State-specific policies.

8. Having considered the respective contentions and perused the record, it may be noted that the essential grievance of the petitioner is about his premature retirement from MVSR Engineering College, Hyderabad, on 31.03.2019, at the age of 60, despite the AICTE Notification dated 01.03.2019 prescribing a superannuation age of 65 years for faculty members. The petitioner contends that the college, being

affiliated with AICTE, is bound by its regulations, and thus his retirement was illegal. In **St. Mary's Education Society v. Rajendra Prasad Bhargava**, the Supreme Court held that private unaided institutions are not "State" under Article 12 of the Constitution, and writ petitions are not maintainable against them unless they perform public functions or duties. The Court emphasized that for a writ to be maintainable, the action complained of must have a public law element. In the present case, the petitioner's employment and retirement are governed by the college's internal service rules, specifically Rule 15, which prescribes a superannuation age of 60 years. There is no statutory provision or government order extending the AICTE's prescribed retirement age to private unaided institutions in the State. Furthermore, the AICTE's authority to enforce service conditions like retirement age on private unaided institutions is limited. In **Vidarbha Youth Welfare Society v. Dr. Mir Sadique Ali**, the Bombay High Court held that AICTE regulations regarding service conditions are not binding on private unaided institutions unless adopted by the State Government. Similarly, in **K.J. Sudhir v. State of Kerala**, the Kerala High Court observed that AICTE's role is advisory concerning service conditions, and its regulations do not have binding force on private unaided institutions.

11. The petitioner also relies on **Marwari Balika Vidyalaya v. Asha Srivastava**, where the Supreme Court held that a writ petition is maintainable against a private unaided institution performing public functions. However, this case is distinguishable as the school in question was receiving government aid, and the appointment and removal of teachers required approval from the State Government. In contrast,

MVSR Engineering College is a self-financed institution with no such governmental control over its internal affairs.

12. Regarding the petitioner's claim for back wages, the principle laid down in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya** is not applicable to the facts of the present case, as in **Deepali Gundu (supra)**, the Supreme Court awarded back wages to an employee who was illegally terminated without following due process. In the present case, the petitioner's retirement was in accordance with the college's service rules, and there is no evidence of any illegality or violation of due process.

13. It is relevant to refer to the judgment of the Hon'ble Division Bench of this Court in W.P.Nos.20542 and 20547 of 2010, wherein the matter was concerning with Chaitanya Bharathi Institute of Technology (CBIT) and the vires of AICTE Regulations, 2010 was the subject matter before the Hon'ble Division Bench. The Division Bench, while disposing of the writ petitions, observed as follows:

"There is no material on record to show that the CBIT is notified by the All India Council for Technical Education to be either a University or a technical institution which is governed by the provisions of the 2010 Regulations. Therefore, the provisions of the 2010 Regulations do not apply to the petitioner No.2. In any case, the petitioners being private unaided educational institutions, have a right to appoint teachers/staff and to prescribe the service conditions, including the salaries. Thus, it is evident that the provisions of the 2010 Regulations do not apply to the petitioner No.2..".

14. Further, a similar issue concerning retirement age, as the one in the present writ petition, came up before the High Court of Kerala in **K.J. Sudhir** (supra), wherein it was held as follows:

"15. In the instant case also, it is an admitted fact that the conditions prescribed in the AICTE regulations with regard to all matters concerning the co-ordination and determination of standards of technical education have been complied with by the State. The question would, therefore, only be whether the prescriptions of a uniform retirement age comes within the ambit of co-ordination and determination of standards of education. Though the learned counsel for the petitioner places reliance on several decisions of the High Court of Punjab and Haryana as well as the High Court of Maharashtra, in view of the fact that the question has been specifically considered by Division Benches of this Court and since there are no binding decisions of the Apex Court specifically on the point, I am bound by the judgments of this Court. The Division Bench has specifically considered whether the prescription of age of retirement would fall within the scope of "co-ordination and determination of standards of education" and has been specifically held that it would not. It is found that the fixing of retirement age of teachers is the prerogative of the State Government and a policy decision which the State has to adopt taking note of the prevailing factual situations availing in the State. I notice that the AICTE Regulations also proceed on the basis of lack of qualified hands being available for appointment as teachers. The State is on record stating that there is absolutely no such dearth in the State of Kerala and that it would not be in the interest of maintaining standards of education to deny opportunity to fully qualified youngsters to be appointed as teachers. In the above factual situation, I am of the opinion that the prayers, as sought for, in the writ petitions cannot be granted. The writ petitions fail and the same are accordingly dismissed."

16. In that view of the matter, this Court is of the view that the rationale in the Common Order dated 06.09.2024 passed by the Hon' ble Division

Bench of this Court in W.P.Nos.20542 and 20547 of 2010, and the rationale in the judgment in **K. J. Sudhir (supra)** of the High Court of Kerala, is applicable to the facts of the present case, and hence the writ petition, being devoid of merit, is liable for dismissal.

17. Accordingly, the writ petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

//TRUE COPY//

SD/-MOHD. ISMAIL
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. One CC to SRI T.S.PRAVEEN KUMAR, Advocate [OPUC]
2. One CC to SRI SRINIVAS REDDY, Advocate [OPUC]
3. One CC to SRI MALIPEDDI SRINIVAS REDDY, SC FOR OU [OPUC]
4. One CC to Ms. MEGHA RANI AGAWARL, SC FOR AICTE [OPUC]
5. One CC to SRI RAMESH BABU VISHWANATHULA, SC FOR UGC [OPUC]
6. Two CCs to GP FOR HIGHER EDUCATION, High Court for the State of Telangana at Hyderabad [OUT]
7. Two CD Copies

BSR
BS

[Signature]

HIGH COURT

DATED:28/05/2025

ORDER

WP.No.5433 of 2019



**DISMISSING THE WRIT PETITION,
WITHOUT COSTS**

(10)

Kpr
13/6/25