

Before Augustine George Masih & Ashok Kumar Verma, JJ.

Dr. JOGENDER PAL SINGH AND OTHERS—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No.20447 of 2020

March 1, 2021

Constitution of India, 1950 – Art. 309 – All India Council for Technical Education Act, 1987 – S. 23 read with Section 10(g)(h)(i) – Conditions of Services of Union Territory of Chandigarh Employees Rules, 1992 – RI.2 – Restrain from retiring/superannuating till attaining age of 65 years and extension from service till age of 70 years – Held, services of petitioners are governed by AICTE Regulations, 2010/2019, according to which, age of superannuation of petitioners would be 65 years with provision for extension of 5 years subject to requirements of Regulations – Therefore, action of respondents in declining representations/claim of petitioners for continuing them in service till age of 65 years as per AICTE Regulations/Architecture Regulations unsustainable and set aside.

Held that, in view of the above, we are of the considered view that the services of the petitioners are governed by the AICTE Regulations, 2010/2019, according to which, the age of superannuation of the petitioners would be 65 years with provision for extension of 5 years subject to the requirements of the Regulations and, therefore, the action of the respondents in declining the representations/claim of the petitioners for continuing them in service till the age of 65 years as per the AICTE Regulations/Architecture Regulations is unsustainable.

(Para 47)

Rajiv Atma Ram, Senior Advocate, with
Arjun Partap Atma Ram, Advocate,
for the petitioners.

Arun Gosain, Senior Standing Counsel,
for respondents No. 1 and 2-Union of India.

Ravi Sharma, Advocate,
for respondent No. 3.

Suman Jain, Senior Standing Counsel and

Aditya Pal Singla, Advocate,
for respondents No. 4 to 7.

AUGUSTINE GEORGE MASHI, J.

(1) This writ petition has been filed by the Assistant Professors working in the Government College of Arts and Government College of Architecture, Chandigarh, challenging the judgment passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, dated 27.10.2020 (Annexure P-8), vide which the original application preferred by them seeking issuance of an appropriate order restraining the respondents from retiring/superannuating the petitioners till they attain the age of 65 years and to consider them for extension in service till the age of 70 years, stands dismissed.

(2) The primary contention of the petitioners before the Central Administrative Tribunal as well as this Court is that the regulations framed under the All India Council for Technical Education Act, 1987 (hereinafter referred to as 'AICTE Act, 1987') i.e. All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulations, 2010 (hereinafter referred to as 'AICTE Regulations, 2010') (Annexure A-10) and thereafter, 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 and Placement Personnel in Technical Institutions and Measures for the Maintenance of Standards in Technical Education (Degree) Regulations, 2019 (hereinafter referred to as 'AICTE Regulations, 2019') (Annexure A-11) would apply, according to which, the petitioners are entitled to continue in service till 65 years of age with further extension up to 70 years instead of The Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992, notified on 13.01.1992 (Annexure A-3) (hereinafter referred to as '1992 Rules'), according to which, the age of superannuation is 58 years.

(3) Similar would be the position with regard to petitioner No. 2- Sh. Bheem Sain Malhotra, who is working in the Government College of Architecture and his services would be governed by the UGC Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education Regulations, 2010 (hereinafter referred to as 'UGC Regulations, 2010') and the

Minimum Standards of Architectural Education Regulations, 2017 (hereinafter referred to as 'Architecture Regulations, 2017'), which have been promulgated by the Council of Architecture in accordance with the provisions of the Architects Act, 1972, according to which, again the age of superannuation would be 65 years with a provision for re-employment after superannuation up to the age of 70 years.

(4) Learned Senior counsel for the petitioners asserts that the respondents are wrongly retiring the petitioners from service by giving effect to the 1992 Rules which came into effect vide the Notification dated 13.01.1992 (Annexure A-3) issued by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution.

(5) He asserts that these rules i.e. the 1992 Rules issued under Article 309 of the Constitution would hold the field till the appropriate Legislature passes an Act for regulating the recruitment and conditions of service of persons appointed to public services. Once the provisions are made by the appropriate Legislature, the said provisions/regulations would hold the field and the rules framed under proviso to Article 309 shall cease to operate. He asserts that the Rules framed by Notification dated 13.01.1992 would cease to operate with the coming into force of AICTE Regulations, 2010 followed by the AICTE Regulations, 2019 (Annexures A-10 and A-11 respectively). Similarly, he asserts that with the coming into force of the UGC Regulations, 2010 and the Council of Architecture Regulations, 2017 qua petitioner No. 2, the above-mentioned notification would not apply. He, therefore, submits that the age of superannuation of the petitioners would be now 65 years with a further provision of extension up to 70 years in the light of these regulations and not 58 years which is being pressed into service by the respondents. The action of the respondent, thus, is not sustainable.

(6) On the other hand, the stand of the All India Council for Technical Education-respondent No. 3 is that the said respondent has been issuing notifications from time to time laying down the pay scales, service conditions and qualifications for teachers and other academic staff in technical institutions at both degree and diploma level. It has also been asserted that the provisions are extendable to AICTE approved institutions. The centrally funded institutions, which are under the direct administrative control of Ministry of Human Resource Development/Education, are outside the purview of the notification issued by the AICTE and their age of retirement will be the same which has been prescribed for centrally funded institutions by the aforesaid

Ministry.

(7) The stand of the Chandigarh Administration and its colleges is that the services of the petitioners are covered by the Rules framed under Notification dated 13.01.1992. It is asserted that the Notification dated 31.12.2008 (Annexure A-13) issued by the Government of India, which is being sought to be enforced by the petitioners working with the Administration, relates to the Central Educational Institutes/Centrally Funded Institutions/Central Universities and, therefore, cannot be made applicable qua the employees working under the Chandigarh Administration.

(8) As per the Notification dated 13.01.1992, the rules framed by the Punjab Government are *ipso facto* applicable to the corresponding posts of Chandigarh Administration. Since they have their own set of rules, which govern the service conditions which includes the age of retirement, any notification issued by the Government of India will not *ipso facto* be applicable without it being adopted by the competent authority.

(9) In the State of Punjab, the age of super-annuation of the college teachers is 58 years in terms of Rule 3.26 of the Punjab Civil Services Rules, Volume I, Part-I, which was subsequently amended and the age has now been increased to 60 years by granting benefit of two years of extension, which was also allowed in favour of the employees working in the Chandigarh Administration. There has been no decision by the Punjab Government to increase the age of superannuation for its employees working in colleges to 65 years as per the Notification dated 31.12.2008 issued by the Government of India. The said notification, therefore, would not be applicable qua the employees working with the Chandigarh Administration including the petitioners. The colleges under the Chandigarh Administration neither fall within the definition of "Central Educational Institutions" nor "Centrally Funded Institutions" and, therefore, would not be covered by the provisions of the AICTE Act, 1987 or the Architects Act, 1972 and the regulations framed thereunder. The employees of the colleges would not be covered, thus, by the regulations, which are being pressed into service by the petitioners. It has further been sought to be clarified that the colleges under the Chandigarh Administration are not governed by the Government of India and moreover, the Chandigarh Administration itself is a Union Territory and is competent to take its own decisions. Petitioners, who admittedly are working in the Technical Institutions/Colleges of the Chandigarh Administration, will

be governed by the 1992 Rules read with the Punjab Civil Service Rules and, therefore, their age of superannuation would also be regulated by the said rules.

(10) Counsel for the parties have referred to various judgments in support of their respective contentions. Counsel for the petitioners has relied upon the judgment of the Orissa High Court in *Rajendra Patra* versus *All India Council for Technical Education and others*¹, a judgment of the Gujarat High Court in *H.G.Modi and others* versus *State of Gujarat and another*², the judgments of the Hon'ble Supreme Court in *Parshavanath Charitable Trust and others* versus *A.I.C.T.E. and others*³ and *Foundation for Organizational Research and Education Fore School of Management through its Director* versus *A.I.C.T.E.*⁴.

(11) Mr. Suman Jain, learned counsel for the Chandigarh Administration and Union Territory of Chandigarh has placed reliance upon a judgment of the Hon'ble Supreme Court in *Jagdish Prasad Sharma and others* versus *State of Bihar and others*⁵ and *Pharmacy Council of India* versus *Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others*⁶.

(12) We have heard the counsel for the parties and with their assistance, have gone through the pleadings.

(13) The basic issue, which falls for consideration in the present writ petition, is “whether the Notification dated 13.01.1992 (Annexure A-3) issued under proviso to Article 309 of the Constitution i.e. the Conditions of Services of Union Territory of Chandigarh Employees Rules, 1992 (the 1992 Rules) would still hold the field even where it is in conflict with the provisions of the AICTE Regulations, 2010 and 2019, which have been promulgated under the powers conferred under sub-section (1) of Section 23 read with Section 10 (g) (h) (i) of the AICTE Act, 1987 and in the case of petitioner No. 2, the UGC Regulations, 2010 and the Council of Architecture Regulations, 2017 framed under the Architecture Act, 1972?”

¹ 2019 LIC 1841

² 2006 (10) SCT 159

³ 2013 (3) SCT 163

⁴ 2019 (3) SCT 307

⁵ 2013 (8) SCC 633

⁶ 2020 (5) SCALE 439

(14) Notification dated 13.01.1992 (Annexure A-3), which has been issued are the 1992 Rules framed under proviso to Article 309 of the Constitution of India governing the conditions of service of the employees of the Union Territory of Chandigarh, where it has been acknowledged that the persons appointed to the Central Civil Services and posts under the administrative control of the Administrator i.e. Groups A, B, C and D shall be subject to any other provisions made by the President in this behalf such as the conditions of service of persons appointed to the corresponding posts in the Punjab Civil Services. They shall be governed by the same rules and orders as are for the time being applicable to the respective category of persons in the Punjab Government. Similar was the position with regard to the pay scales subject, however, in this regard to the approval of the Administrator with regard to such revision of pay scales. The Punjab Civil Services Rules and the pay scales of the corresponding posts were, therefore, made applicable to the employees of the Chandigarh Administration by virtue of these rules.

(15) Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 (i.e. 'the 1992 Rules') were notified and they came into effect from 01.04.1991. According to Rule 2 of the said Rules, the Conditions of Service of persons appointed to the Central Civil Services and posts under the administrative control of the Administrator of Union Territory of Chandigarh shall be subject to any other provision made by the President in this behalf. These would be the same as the conditions of service of persons appointed to the corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the latter category of persons. The employees were also granted the corresponding pay scales of the posts of the employees of the Government of Punjab. The Administrator was the competent authority to revise their pay scales from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees.

(16) The acknowledged fact and not denied by the respondents is that these rules would hold the field as per the provisions of Article 309 of the Constitution. Chandigarh Administration has asserted that the 1992 Rules still hold the field qua the petitioners whereas the petitioners, on the other hand, press into service the respective regulations framed under the AICTE Act, 1987 and the Architects Act, 1972 to assert that these Regulations would apply from

the date of coming into force of these Regulations resulting in the 1992 Rules becoming non-operational from such date.

(17) To settle the above issue as projected by the parties in their respective submissions, the scope, ambit and operability of Article 309 of the Constitution will have to be gone into at the first instance and thereafter to ascertain the applicability or otherwise the respective Regulations viz-a-viz the Rules.

Article 309 of the Constitution of India reads as follows:-

“309. Recruitment and conditions of service of persons serving the Union or a State.- Subject to the provisions of this Constitution, **Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:** Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts **until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”** (emphasis applied)

(18) A perusal of the above would show that the recruitment and conditions of service of the persons is first of all subject to the other provisions of the Constitution and the Acts of the appropriate Legislature which may regulate the recruitment and the conditions of service of the persons appointed to the public services.

(19) Proviso to Article 309 is only a temporary or stop-gap arrangement which is pressed into service or brought about to hold the field for a limited period i.e. until provision is made by or under an Act of the appropriate Legislature regulating the recruitment and the conditions of service of the persons. In case of such an Act covering the field which was erstwhile being occupied by the rules framed under proviso to Article 309, the said Act of the appropriate legislature would come into effect from the date of its enforcement and the rules

framed under proviso to Article 309 will have to give way to the statutory provisions wherever found inconsistent to the statutory provisions of the Act and the regulations/rules framed thereunder. It can be said that life of the Rules framed under the proviso to Article 309 is limited and govern the service conditions of the employees till the relevant statutory provisions of the Act and/or the Rules or Regulations framed thereunder come into force.

(20) In other words, Article 309 is a transitional and an enabling provision conferring the power on the executive to make Rules with regard to conditions of service of the civil servants having a limited life span until the appropriate Legislature legislates on the subject. This is apparent from the language of the Article where the power to make provisions for regulating the services is left to the Legislature. Proviso to this Article thus, operates to fill the vacuum until appropriate legislation comes into force. Once any Act made by the appropriate Legislature, which is relatable to Article 309 comes into force, the Rules made under proviso to this Article must and would give way. The source of power which flows from the proviso to make Rules dries up the moment appropriate legislation covering the scope and ambit of the Rules so framed under Article 309 becomes operational. It requires to be pointed out here that the Rule making power under Article 309 cannot be exercised if the Legislature has already made a law occupying the field. If there is a conflict between the Rules framed under Article 309 and the law made by the Legislature, the law made by the Legislature will prevail.

(21) In the case of the Union Territories, the rule-making power, no doubt, belongs to the President. Therefore, in the case of Chandigarh, which is a Union Territory, this power to make Rules under Article 309 is in the President. This power has been exercised by the President while framing the 1992 Rules. This power under Article 309 and the rules framed under proviso thereto will operate and hold the field, having the force of law, unless and until Parliament chooses to legislate on the subject. Once the Parliament legislates, such Act and the Rules/Regulations framed thereunder, would take over the field resulting in the Rules framed by the President under proviso to Article 309 ceasing to operate forthwith.

(22) Article 246 of the Constitution of India deals with the subject matter of laws made by the Parliament and by the Legislatures of States. The Lists are contained in Schedule-VII of the Constitution. Entry 66 of List-I i.e. the Union List would be relevant for the present

case, which reads as follows:-

“Entry 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

(23) In terms of Entry 66 of the List-I of the Constitution, the Union of India has promulgated and notified the All India Council for Technical Education Act, 1987 (hereinafter referred to as the AICTE Act). Relevant provisions of the AICTE Act read as under:-

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) to (e) xxx

(f) “Regulations” means regulations made under this Act.

(g) “Technical Education” means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

2(h) “Technical Institution” means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(i) xxx

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

(a) to (h) xxx;

(i) Lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions,

assessment and examinations;

(j) xxx

(k) Grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) to (o) xxx

(p) Inspect or cause to inspect any technical institution;

(q) to (v) xxx

23. Power to make regulations-

(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(2) xxx” (emphasis applied)

(24) The above Section 23 gives the power to the Council to issue regulations. Exercising this power, AICTE Regulations, 2010 were notified on 22.01.2010 (Annexure A-10) initially by the Ministry of Human Resource Development, Department of Higher Education, Government of India. The age of super-annuation, which was provided therein, was 65 years with a provision for re-employment on contract appointment beyond the age of 65 years up to the age of 70 years.

(25) Subsequently, AICTE Regulations, 2019 were issued by Ministry of Human Resource Development, Department of Higher Education, Government of India vide Notification dated 01.03.2019 (Annexure A-11).

(26) Regulation 2.12 of these AICTE Regulations, 2019, deals with the age of superannuation, according to which, the age of superannuation of all faculty members and Principals/Directors of institutions was fixed at 65 years with a provision for extension of 5 years till the attainment of 70 years of age with certain other riders. This makes it clear that the age of superannuation for the faculty members of the Technical Institutions shall be 65 years.

(27) As regards petitioner No. 2 is concerned, who worked as an Associate Professor in Fine Arts of Chandigarh College of Architecture, the University Grants Commission under Section 26 of

the University Grants Commission Act promulgated regulations for the UGC Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other measures for the Maintenance of Standards in Higher Education Regulations, 2010, according to which, the age of super-annuation was 65 years and with re-employment option on contract basis, up to the age of 70 years.

(28) Similarly, under the Architects Act, 1972, Council of Architecture exercising the powers under Section 45 of the said Act had promulgated the Minimum Standards of Architectural Education Regulations, 2017.

Regulation 2.9 thereof reads as follows:-

“2.9 The Retirement Age including Superannuation for Teaching posts of Assistant Professor, Associate Professors and Professors, including professor (Design Chair) shall be 65 years or as stipulated by the Central/State Government from time to time. Re-employment after superannuation shall be permissible against sanctioned vacancies and the faculty may continue to serve until the age of 70 but shall not hold an administrative position.”

(29) A perusal of the above would show that the age of superannuation under these regulations also is 65 years extendable to 70 years.

(30) It cannot be disputed that the regulations issued by the AICTE, the UGC and the Council of Architecture are binding upon the colleges and institutions covered under these Acts, as has been held by the Supreme Court in the case of Parshavanath Charitable Trust vs. All India Council for Technical Education, 2013 (2) SCT 163 and in the Foundation for OREFore School of Management vs. AICTE, 2019 (3) SCT 307. Thus, it can clearly be said that the regulations issued under the Statute, which have come into force under the Central Act, would be operative qua the colleges/institutions which would fall within the said regulations and the rules framed under the proviso to Article 309 would, therefore, have to give way to the regulations in case of there being any conflict.

(31) In view of the above, the answer to the above posed question in para 8 would be that AICTE Regulations 2010/2019 and Architecture Regulations 2017 shall apply in case of conflict with the 1992 Rules.

(32) Now the question would be “As to whether the colleges, in which the petitioners served/are serving, are governed by the provisions of the above-referred to Acts and Regulations or not ?”

(33) The definitions as far as the AICTE Act, 1987 is concerned, as reproduced above, would show that Section 2 (g) defines 'Technical Education', which means programmes of education, research and training followed by various fields and trades which includes 'architecture' as well as 'applied arts and crafts'. Section 2 (h) defines 'Technical Institution', which means an institution which offers courses or programmes of technical education but not being a University.

(34) There is no denial to the aspect that the two colleges, where the petitioners are/were working, are being run by the Chandigarh Administration and are imparting education in the field of 'applied arts and crafts' and 'architecture' and, therefore, would fall within the definition of 'Technical Institution'.

(35) If that be so, the AICTE Regulations qua petitioners No. 1, 3 to 5 and Architecture Regulations, 2017 qua petitioner No. 2 would be applicable to the faculty members of these colleges. The age of superannuation, as per these regulations, shall be 65 years with a provision for extension of 5 years subject to fulfilment of the further requirements of the regulations as laid down therein.

(36) The stand of the respondents primarily is that these regulations are not applicable which appears to be without any basis. The respondents have tried to assert that the colleges, which are being run by the Chandigarh Administration, do not fall within the ambit of Central Government Institutions or centrally funded institutions. It has further been asserted that these colleges are not funded by the Central Government but are funded by the Chandigarh Administration.

(37) However, the aspect that all the funds are provided by the Central Government could not be disputed by the counsel for the Chandigarh Administration. Once the funds have been provided by the Central Government, merely because the same were being distributed and utilized by the Chandigarh Administration for running the colleges would not bring it outside the ambit of the centrally funded institutions and in any case, that would not be a requirement per se for the applicability of the AICTE and/or Architecture Regulations.

(38) The respondents have pressed into service and highlighted the aspect of enhancement of age of super-annuation to 65 years for teaching positions in the centrally funded institutions in higher and

technical education on the basis of the Letter dated 23.03.2007 (Annexure A-5) issued by the Ministry of Human Resource Development, Department of Higher Education, which would cease to operate with the coming into force of the AICTE Regulations, 2010 and then, AICTE Regulations, 2019 (Annexures A-10 and A-11 respectively) and the Architecture Regulations, 2017, which do not qualify the applicability of these regulations to the centrally funded educational institutions.

(39) That apart, the Government of India, Ministry of Human Resource Development, Department of Higher Education issued instructions/guidelines regarding revision of pay of teachers in the degree level Engineering Colleges and other degree level technical institutions including Architecture, Town Planning, Pharmacy and Applied Arts and Crafts Institutions etc., dated 07.10.2009 (Annexure A-6) followed by a Letter dated 12.10.2009 (Annexure A-7), which dealt with the enhancement of the age of superannuation to 65 years for teaching positions in educational institutions in higher and technical education. The said letter with regard to the revision of pay of teachers in the degree level Engineering Colleges and other degree level technical institutions including Architecture, Town Planning, Pharmacy and Applied Arts and Crafts Institutions etc. following the revision of pay scales of Central Government employees on the recommendations of the 7th Central Pay Commission was accepted by the Chandigarh Administration, however, with a rider that the age of retirement would continue as 58 years.

(40) It would not be out of way to point out here that on 09.07.2018 (Annexure A-15), a letter was addressed by the Government of India, Ministry of Human Resource Development, Department of Higher Education, Technical Section-II/TC to The Secretary, Technical Education, Chandigarh Administration (Home Department), Chandigarh, where in para No. 3, it was stated as follows:-

“3. The Ministry of Home Affairs' Gazette Notification issued on 13.1.1992 was a stop gap arrangement during that time for following the service conditions and Pay Scales of Punjab State Government. The AICTE norms are now being followed by all UTs, except Chandigarh UT, in the country. Hence, it is once again reiterated that AICTE norms for service conditions and pay scales needs to be followed by all technical institutes in the UTs. However, as the proposal of

up-gradation of the posts of Librarian have financial implications to be borne by Ministry of Home Affairs, Government of India, Chandigarh UT Administration may take a final call on matter in concurrence with Ministry of Home Affairs.”

(41) Vide decision dated 20.12.2019 (Annexure A-19), the recommendation made by the 7th Central Pay Commission relating to the revision of pay of teachers and other academic staff in degree level Engineering Colleges and other degree level technical institutions including Architecture, Town Planning, Pharmacy and Applied Arts and Crafts institutions etc. which fall under the purview of AICTE, was accepted. This clearly shows that the Government of India, Ministry of Human Resource Development, Department of Higher Education had all through been acknowledging and asserting the correct legal position with regard to the applicability of the AICTE regulations viz-a-viz the 1992 Rules.

(42) It would not be out of way to mention here that all the Union Territories of India have made applicable the regulations which have been framed after the passing of the Acts relating to the respective spheres of applicability except for the Union Territory of Chandigarh. The stand, which has been taken by the Chandigarh Administration and the Union Territory of Chandigarh, is unsustainable and not in accordance with law

(43) The judgments, which have been relied upon by the learned counsel for the respondents, would not be applicable to the case in hand as the same were rendered by the Hon'ble Supreme Court in the light of the relevant and applicable facts and circumstances of the said cases.

(44) In Jagdish Prasad Sharma's case (supra), the Hon'ble Supreme Court proceeded to hold in the light of the statutory provisions that the final decision to enhance the age of superannuation of teachers within a particular State would be of that State itself as the Scheme of UGC in its composite form was made discretionary by the Commission and there was no compulsion on the States to accept or adopt the said scheme which is not the position in the present case.

(45) In Pharmacy Council of India's case (supra), the Hon'ble Supreme Court concluded that the Pharmacy Act is a complete code in itself in subject of Pharmacy and enacted to make better provision for regulation of profession and practice of pharmacy and for that purpose to constitute Pharmacy councils. Since the subject of Pharmacy is a

special subject and not a general subject, AICTE Act could not be applicable as the same is a general law applicable to the technical institutions and technical education. The said judgment, therefore, would not be applicable to the case in hand.

(46) In the impugned order dated 29.09.2020/27.10.2020 (Annexure P-8) passed by the Central Administrative Tribunal, Chandigarh Bench in O.A. No. 60/392/2020, the learned Tribunal has failed to take into consideration the applicability, effect and ambit of operation of the Rules framed under proviso to Article 309 of the Constitution. It has proceeded to hold that the 1992 Rules will prevail as the regulations framed under the Act have not been adopted by the Union Territory of Chandigarh. The Tribunal has proceeded on a wrong tangent and assumption with regard to the applicability of the regulations viz-a-viz the 1992 Rules. The said impugned order passed by the Central Administrative Tribunal, thus, cannot sustain and deserves to be set aside.

(47) In view of the above, we are of the considered view that the services of the petitioners are governed by the AICTE Regulations, 2010/2019, according to which, the age of superannuation of the petitioners would be 65 years with provision for extension of 5 years subject to the requirements of the Regulations. and, therefore, the action of the respondents in declining the representations/claim of the petitioners for continuing them in service till the age of 65 years as per the AICTE Regulations/Architecture Regulations is unsustainable.

(48) As held above, the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 issued vide Notification dated 13.01.1992 (Annexure A-3) would not be applicable to the petitioners so far as they are inconsistent with the Architecture Regulations, 2017 qua petitioner No. 2 and AICTE Regulations qua other petitioners as they cease to operate from the date the above Regulations came into effect respectively. The action of respondents No. 4 to 7 retiring the petitioners at the age of 60 years i.e. 58 years with 2 years extension by applying the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 as notified on 13.01.1992 (Annexure A-3) is illegal and thus set aside.

(49) The writ petition stands allowed by setting aside the order dated 29.09.2020/27.10.2020 (Annexure P-8) passed by the Central Administrative Tribunal, Chandigarh Bench.

(50) A direction is issued to the respondents to take back the

petitioners who have been forcibly superannuated by them by giving effect to the 1992 Rules. They shall also be entitled to the all consequential benefits. The consequential benefits be released to the said petitioners within a period of two months from the date of receipt of certified copy of the order.

Ritambhra Rishi