

# Dr. J. Vijayan vs The State Of Kerala on 2 August, 2022

**Author: Indira Banerjee**

**Bench: J. K. Maheshwari, Indira Banerjee**

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5037 OF 2022  
(ARISING OUT OF S.L.P. (C) NO. 24287 OF 2018)

DR. J. VIJAYAN & OTHERS

.... APPELLANT (S)

VERSUS

THE STATE OF KERALA & OTHERS

.... RESPONDENT (S)

JUDGMENT

INDIRA BANERJEE J.

Leave granted.

2. The University Grants Commission Act, 1956, hereinafter referred to as “the UGC Act”, was enacted to make provisions for the coordination and determination of standards in universities and for that purpose to establish a University Grants Commission, hereinafter referred to as “UGC”.

3. Section 20 of the UGC Act provides:

“20. Directions by the Central Government – (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of Central Government.

(2) If any dispute arises between the Central Government and the ARORA Date: 2022.08.02 19:01:28 IST Commission as to whether a question is or is not a question

of policy Reason:

relating to national purposes, the decision of the Central Government shall be final.”

4. In exercise of the powers conferred under Clauses (e) and (g) of sub- section (1) of Section 26 of the UGC Act 1956, the Ministry of Human Resource Development of the Government of India framed the University Grants Commission (Minimum Qualifications for Appointment of Teachers and Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010, hereinafter referred to as the “UGC Regulations”.

5. Regulation 2.0.0 of the UGC Regulations is reproduced hereinbelow :-

“2.0.0 PAY SCALES, PAY                      FIXATION              FORMULA              AND              AGE      OF  
SUPERANNUATION, ETC.

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.

2.2.0 The pay scale shall, in the central universities and other institutions maintained and/or funded by the UGC, be fixed in accordance with the pay “fixation formula” developed by the UGC and approved by the Ministry of Human Resource Development (MHRD), as contained in Appendix-II.

2.3.0 The pay fixation formula for teachers shall apply for other positions in the Library and Physical Education and Sports cadres in the Central Universities and Colleges thereunder and Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. 2.3.1. The revised scales of pay and age of superannuation as provided in Clause 2.1.0 above, may also be extended to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and in the MHRD letter No.F.1-7/2010-U II dated 11 May, 2010 with all conditions specified by the UGC in these Regulations and other Guidelines.

2.3.2. Subject to the availability of vacant positions and fitness, teachers such as Assistant Professor, Associate Professor and Professor only, may be re-employed on contract appointment beyond the age of superannuation, as applicable to the concerned University, college and Institution, up to the age of seventy years. Provided further that all such re-employment shall be strictly in accordance with the guidelines prescribed by the UGC, from time to time.

2.3.3. All other aspects which are not covered in these Regulations, on applicability, financial assistance, date of implementation of revised pay and allowances and payment of arrears, etc. shall be as laid down in the MHRD Notifications provided as Appendix-I of these Regulations and the MHRD letter No.F.1-7/2010-U II dated 11 May, 2010. “

6. The UGC Regulations provided that the revised scale of pay and other service conditions shall be in accordance with Appendix-I, the relevant extract whereof is reproduced hereinbelow :-

“APPENDIX I

8. Other terms and conditions :

(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 of 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.I-24/2006-Desk(U) dated 30.03.2007 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).

...  
(p) Applicability of the Scheme:

...  
(v) This Scheme may be extended to universities, Colleges and

other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions :

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty per cent) of the additional expenditure involved in the implementation of the revision.

(b) The State Government opting for revision of pay shall meet the remaining 20% (twenty per cent) of the additional expenditure from its own sources.

(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 1.04.2010.

...

(f) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 1.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).

(g) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above.”

7. The Government of India through the Ministry of Human Resource Development brought out a circular bearing No. F.1-7/2010-U.II dated 14th August 2012 under Section 20 of the UGC Act, paragraphs 4 and 5 whereof read :-

“4. After taking into consideration the views expressed by several State Education Ministers during the Conference held in 2010 the Central Government has now decided to de-link the condition of enhancement of age of superannuation from the payment of Central share of 80% arrears to the States.

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 age of retirement has been left to the State Governments to decide at their level. The condition of enhancement 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.”

8. The UGC Regulations have to be consistent with the directions on questions of policy relating to national purposes, as may be given by the Central Government as per Section 20 of the UGC Act, 1956. In the case of any dispute between UGC and the Central Government, as to whether a question is a question of policy relating to national purpose, the decision of the Central Government prevails over that of UGC.

9. In *P. Suseela & Ors. v. University Grants Commission & Ors.* 1, this Court held that directions in exercise of powers under Section 20 of the UGC Act are made to provide for coordination and determination of standards, which lies at the core of the UGC Act. It is, therefore, clear that any regulation made under Section 26 of the UGC Act must conform to the directions issued by the Central Government under Section 20 of the UGC Act.

10. By a Government Order dated 10th December 2010, the Government of Kerala adopted and implemented the UGC Regulations, 2010. Counsel appearing for the Appellants submitted that the State Government had accepted the enhancement of salary grant from the Central Government, but failed to comply with the condition of enhancement of the retirement age of the teachers.

11. Aggrieved by the failure of the State of Kerala to enhance the retirement age of the Appellants, the Appellants filed a writ petition being Writ Petition (C) No. 10257/2016(F) in the High Court of Kerala. By a judgment and order dated 28th March 2016, the Single Bench of the High Court dismissed the writ petition. The Appellants filed a writ appeal being Writ Appeal No. 734 of 1 (2015) 8 SCC 129 2016. The Writ Appeal has been dismissed by the Division Bench of the High Court, by the impugned judgment and order.

12. Learned Counsel appearing on behalf of the Appellants argued that the UGC Act and the UGC Regulations are enacted by the Parliament under Entry 66 of the Union List under the Seventh Schedule of the Constitution of India, which pertains to coordination and determination of standards for higher education, research, etc.

13. Counsel further argued that the Pay Revision Commission appointed by the UGC, regarding the pay-scale of teachers, eligibility of appointment, service and working conditions and promotional avenues of teachers in Universities and Colleges recommended that the age of superannuation throughout the country should be 65 years. Pursuant to the aforesaid recommendation, the UGC Regulations, were enacted.

14. Counsel further submitted that, as per the UGC Regulations, the salary of the teachers was proposed to be enhanced and in case of such enhancement, 80% of the enhanced salary was to be paid by the Central Government and the remaining 20% by the State Government. The Regulations also recommended that the age of superannuation of the teachers should be enhanced to 65 years. The scheme was a composite scheme which could not be altered or varied in terms.

15. It appears that after the State of Kerala adopted the UGC Regulations, the teachers of affiliated colleges claimed right of superannuation as per the UGC Regulations. However, the contention was rejected by the Supreme Court in *Jagdish Prasad Sharma & Others v. State of Bihar & Others*<sup>2</sup>.

16. The Appellants relied upon a judgment and order dated 23rd February 2016, passed by a Full Bench of the High Court of Kerala in Writ Petition (C) No. 29253 of 2012 (*Dr. Radha Krishnan Pillai v. State of Kerala & Others* ). The Full Bench of the High Court of Kerala held that irrespective of whether the Kerala University Act or the Mahatma Gandhi University Act were enacted under Entry 25 of List III of Seventh Schedule to the Constitution of India and irrespective of the fact that

statutes framed thereunder had been amended in line with the UGC Regulations, the universities and affiliated colleges in the State of Kerala were bound to comply with the UGC Regulations in view of its adoption by the State of Kerala with effect from 18th September 2010.

17. Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the State of Kerala argued that the UGC Regulations issued on 30th June 2010 relate to minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for maintenance of standards in higher education. Regulation 2.0.0 deals with the pay-scale, the pay-fixation formula and age of superannuation etc. Regulation 2.0.0 lays down the revised scale of pay and other service conditions including the age of superannuation in Central Universities and other institutions maintained and/or founded by the University Grants Commission. 2 (2013) 8 SCC 633

18. Mr. Gupta argued that Clause 2.3.1 made it clear that the revised pay scale and the age of superannuation may also be extended to universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Government, subject to the implementation of the scheme as a composite one in adherence to the terms and conditions laid down in notification issued by the Ministry of Human Resource Development provided in Appendix-1 and in the Ministry of Human Resource Development Letter No.F.1-7/2010-U.II dated 11th May 2010.

19. On 10th December 2010, the Government of Kerala implemented and adopted the pay scale with effect from 18th September 2010. Clause 6 of the Order of the Government of Kerala, expressly stated that where there were any provisions in the Regulations, inconsistent with the provisions of the Government Order dated 27th March 2010, the provisions of the Government Order would over-ride the provisions of the UGC Regulations to the extent of such inconsistency.

20. In any case, the UGC Regulations were modified by an order of Ministry of Human Resource Development dated 14th August 2012, whereby the regulation enhancing the age of superannuation to 65 years was treated as withdrawn.

21. Mr. Gupta pointed out that the age of superannuation of academic and other staff in the institutions in the State of Kerala was governed by the Rules issued under Article 309 of the Constitution of India and such Rules could not be overridden by the Government Order dated 10th December 2010.

22. In the context of the contention of the Appellants that the State of Kerala could not have given effect to the pay scales recommended by the UGC Regulations, without enhancing the age of superannuation, Mr. Jaideep Gupta, learned Senior Counsel argued that the adoption of pay scale by the State Government is not by itself exclusively referable to the UGC Regulations. The State Government was in any case free to adopt the pay scales, even otherwise and without reference to the UGC Regulations.

23. Refuting the contentions of the Appellants that the State Government was bound to accept the age of superannuation recommended by the UGC Regulation since it had to accept the contribution

from the Central Government under the UGC Regulations for enhancement of salary. Mr. Gupta argued that Central Government had itself made it clear that the age of superannuation was not to be linked to the benefits conferred by the UGC Regulations.

24. Mr. Jaideep Gupta finally argued that the issue is covered against the Appellants by the judgment of this Court in Jagdish Prasad Sharma (supra) clearly laying down that the age of superannuation fixed by the Rules under Article 309 of the Constitution of India could not be modified by the Regulations under the UGC Act. Mr. Jaideep Gupta stated that the argument that the State Government had availed contributions from the Central Government under the 2010 Scheme was not correct as recorded in the impugned judgment and order passed by the High Court. The Government does not receive any aid from the Central Government for the UGC Scheme. The expenses for salary of the college teachers are met by the State Government itself.

25. The Single Bench found, and in our view rightly, that there was no change in the law after the judgment of this Court in Jagdish Prasad Sharma (supra).

26. The Single Bench rightly noted that what was in issue before the Full Bench was Section 26 of the University Grants Commission Act and the Regulations framed under Clause (g) of Section 26, which dealt with regulation and maintenance of standards and the regulation of facilities in the Universities. The Single Bench was of the view that the decision could have no application in the case of statutory age of retirement as determined by the State of Kerala under Article 309 of the Constitution of India. The prescription of the age of superannuation of a faculty member could not affect the standards.

27. As found by the Single Bench of the High Court, the decision to issue the Circular dated 14th August 2012, withdrawing the regulation regarding enhancement of the age of superannuation, was taken by the Central Government, in consultation with the States and in deference to the powers given to the States to prescribe the service conditions of its employees, which would fall within the ambit of policy decision, undisputedly within the exclusive domain of the respective State Governments. The Single Bench held that the Policy of the State Government, which is evidenced by the statutory provisions mandating teachers of aided affiliated colleges to retire at the age of 56 years, and that of the Universities at the age of 60 years, has been crystalized by enactments under Article 309 of the Constitution of India.

28. The Division Bench of the High Court, after hearing the respective parties found, and rightly, that most of the issues raised in the appeals were concluded against the Appellants by the judgment and order of this Court in Jagdish Prasad Sharma (supra). The Division Bench observed that this Court had held that it was mandatory for the UGC to be guided by the directions issued by the Central Government on questions of policy relating to national purposes by discharging its functions under the UGC Act. The Division Bench found that the UGC was bound to follow the directions issued by the Central Government in view of Section 20 of the UGC Act.

29. The Division Bench of the High Court also found that the State Governments had the discretion to accept the scheme proposed under the UGC Regulations relying on the judgment in Jagdish

Prasad Sharma (supra) and in particular Paragraph 72, thereof. The Division Bench held:-

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

15. On the next contention that the Scheme under the UGC Regulations, 2010 has to be accepted in full as a composite one and that adoption of the Scheme without enhancing the retirement age of teachers was bad, we find that the said issue has been concluded by the Supreme Court.

Though a similar contention was put forward in Jagdish Prasad Sharma (supra) with respect to the Government Order dated 10.12.2010, the same did not find favour with the Court. The said Government Order evidenced herein as Ext. P10 in W.A. No. 854 of 2016 provides at paragraph 6 as follows “-

6. Government are also pleased to order that where there are any provision in the Regulations inconsistent with the provisions in the st G.O. read as 1 paper above, those provisions in the G.P. would override the provisions in the Regulations to the extent of such inconsistency.

Reference No. 1 in the said Government Order is to G.O.(P) NO. 58/2010/H.Edn. Dated 27.3.2010 (Ext.P8 in W.A. No. 854 of 2016). It is the said Government Order that is directed to prevail as per Clause 6 extracted above. It has been ordered by the said Government Order that the age of superannuation shall continue as at present. In the above context, it is necessary to notice that as per letter No. F.1- 7/2010-U.II dated 14.08.2012 of the MHRD (a copy of which has been handed over to us by the Counsel in the Court), it has been clarified that the issue regarding age of retirement has been left to the decision of the State Governments. Paragraph 5 that deals with the above aspect is extracted hereunder for convenience of reference :



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 age 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 letter cited above shall continue to apply.

Though a contention has been put forward by the counsel for the Appellants that, the condition has been withdrawn for the purpose of seeking reimbursement of the central share of arrears alone, we are not prepared to accept the same in view of the opening sentence in the said clause which declares in unambiguous terms that enhancement of age of retirement is exclusively within the domain of the powers of the State Government and that for the said reason, the issue of age of retirement has been left to the State Governments to decide at their level.

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

They are in their prime of life, endowed with the rich experience both in teaching as well as in guiding research projects. The wisdom of the decision to superannuate them at such a prime point of time in their lives is also questionable. A decision can be taken only by balancing both the above aspects as well as other relevant factors that may require to be taken into account. Such an informed decision would have to be taken by the law makers and not by courts. As at present, the UGC Regulations, 2010 cannot affect the State laws governing the age of superannuation. UGC Regulations have in recognition of the above position granted a discretion to the State to take a decision with respect to the manner of implementation of the Regulations. Accordingly, the State Government has decided not to enhance the age of retirement. We notice that, a similar claim for enhancement in retirement age has been considered by another Division Bench of this Court and rejected in *Mathai M.M. vs. Elizabeth Xavier* (2011) 2 K.L.T. 468. The said decision is also binding on us."

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

“68. Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.

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72. As far as the States of Kerala and U.P. are concerned, they have their own problems which are localised and stand on a different footing from the other States, none of whom who appear to have the same problem.

Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by UGC. It is only natural that if they wish to adopt the Regulations framed by the Commission under Section 26 of the UGC Act, 1956, the States will have to abide by the conditions as laid down by the Commission.”

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

32. It is well settled that a judgment is a precedent for the issue of law, which is raised and decided. Discussions in a judgment cannot be read out of context, and interpreted as the dictum of the Court.

33. For the reasons discussed above, we find absolutely no grounds to interfere with the concurrent findings of the Division Bench and the Single Bench of the High Court of Kerala.

34. The appeal is, therefore, dismissed.

.....J. [ INDIRA BANERJEE ] .....J. [ J. K. MAHESHWARI ] NEW DELHI;

AUGUST 02, 2022