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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 699 OF 2012

Mr. Gaus Khan Usman Khan

Aged 60 years, Resident of
House No.88, Chaudi Village,
Canacona, P.O. Chuadi 403702, Goa.

...Petitioner

VERSUS

1. State of Goa,

Through Its Chief Secretary,
Having Office at Secretariat,
Porvorim, Bardez-Goa.

2. The Goa University,

Through Its Registrar Having
Office at Taleigao Plateau,
Goa-403 206.

3. The Director,

Directorate of Higher Education,
Government of Goa, Panaji, Goa.

4. University Grants Commission,

Through Its Secretary, Bahadur Shah
Zafar Marg, New Delhi-110002.

5. Ministry of Human Resource Development,

Department of Higher Education, Government of India,
Through its Secretary, Shastri Bhavan, New Delhi.

6. The Principal,

CES College of Arts & Commerce,
Cuncoim, Salcete, Goa-403703.

7. Chairman,

Cuncoim Education Society,
Cuncoim, Goa-403703.

...Respondents

Mr.Parikshit Sawant, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondent No.1-
State.

Ms. A. Agni, Senior Advocate with Mr. Junaid Shaikh Vahidullah
and Ms. A. Harihar, Advocates for the Respondent No.2.

**CORAM : PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

**RESERVED ON : 20th OCTOBER 2023
PRONOUNCED ON : 14th MARCH 2024**

JUDGMENT: (Per:- Prakash D. Naik)

1. The Petitioner invokes writ jurisdiction of this Court under
Article 226 of the Constitution of India for seeking following prayers:-

“(A) This Hon’ble Court also be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent No.1 to implement the The University Grants Commission (Minimum Qualification For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Other Measures For The Maintenance Of Standards In Higher Education) Regulation, 2010, including the age of superannuation, and, the Career Advancement Schemes [CAS].;

(B) This Hon’ble Court be pleased to declare:-

- (i) That Section 15A of the Goa University Act, 1984, as illegal, ultra vires, unconstitutional, null and void;*
- (ii) That the Petitioner is entitled to continue in service upto his attaining the age of 62 years;*

(C) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any

other appropriate writ, order or direction, commanding the Respondents to allow the Petitioner to continue in service beyond the age of 60 years upto the age of 62 years.;"

2. The Petitioner was appointed as Librarian with Respondent No.7 institution vide Appointment Order dated 1st December 1988, which was regularized by Goa University with effect from 20th June 1990. The Petitioner has served as Librarian in the library of Respondent No.7 institution from 1988 to 29th September 2012.

3. The Petitioner seeks direction to be issued to Respondents to implement the Provision 7.4.0 of the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010, thereby maintaining the age of superannuation of non-teaching cadre member i.e. Librarians/Directors of Physical Education etc. at 62 years.

4. The Petitioner has challenged Section 15A of Goa University Act, 1984 on the ground that, it is inconsistent with the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010.

5. The Petitioner is also seeking direction for implementation of the of Career Advancement Scheme (CAS) for the Librarian found at appendix-III of the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010.

6. The contention of the Petitioner can be summarized as under:-

(i) The Ministry of Human Resource Development, Department of Higher Education, Government of India vide letter dated 31st December 2008 proposed the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision pay scale of Central Government employees on the recommendation of the 6th Pay Commission, which was to be made applicable to the teachers of Central Universities.

(ii) The main objective of the above scheme was to revise the pay scale of teachers in the Central Universities and to enhance the age of superannuation of teachers to sixty five (65) years to meet the situation arising out of shortage of teachers in universities or other teachers institutions and to attract teachers, who are engaged in classroom teaching in order to eligible person to teaching career and to

retain experienced teachers in service for a longer period and to maintain the age of superannuation of Librarians/Directors of Physical Education at 62 years.

(iii) As per clause 8(p)(v) of the scheme, the said scheme can be extended to universities, colleges and other educational institutions under the purview of State Legislature, provided the State Government wish to adopt and implement the scheme subject to certain terms and conditions.

(iv) The Directorate of Higher Education, Government of Goa, vide order dated 21st May 2009, had accepted the said scheme in *toto* and implemented the benefits of revised pay scale as recommended by the said scheme, shall be governed by the guidelines, rules and regulations issued by UGC and Ministry of Human Resource Development. However, the Respondent No.3 did not enhance the age of superannuation as contemplated by the said scheme and continued it to remain at 60 years.

(v) The State of Goa amended Section 15A of Goa University Act, 1984 vide Goa University (Amendment) Act, 2009 by enhancing the age of superannuation of teaching staff of the Goa University and affiliated colleges of the Goa University from 60 to 62 years. However,

the age of superannuation of non-teaching staff was retained at 60 years.

(vi) The Executive Council of Goa University vide its Resolution dated 12th December 2009 resolved to recommend to the Government of Goa to adopt the terms and conditions as prescribed by the University Grants Commission.

(vii) The State of Goa ought to have amended Section 15A of the Goa University Act, 1984 in accordance with scheme where the age of superannuation was fixed at 62 years. The amendment to Section 15A of the Goa University Act, 1984 to the extent that the age of superannuation shall remain at 60 years was not in accordance with said scheme. Hence, the amendment to Section 15A is arbitrary, illegal and ultra vires.

(viii) The Ministry of Human Resource Development, Department of Higher Education, Government of India, addressed letter dated 11th May 2010 to the Education Secretaries of all State Government, drew attention to the decision by the Competent Authority to reimburse 80% additional requirement of the State Government consequent on revision of pay scale of the teachers in universities and colleges under the State Government for the period from 1st January 2006 to 31st March 2010.

(ix) The Ministry clarified that, in case the State Government implement the said scheme, which has to be on composite basis including the age of superannuation and the Career Advancement Scheme (CAS) together with all the conditions specified or to be specified by the UGC by regulations and other guidelines.

(x) The Respondent No.1 implemented the scheme in terms of revise pay scale on basis of the said scheme and in this regard the Petitioner has been given benefit of revise pay scale with effect from 1st July 2009. The pay scale of Petitioner has been revised. However, the Respondents failed to maintain the age of superannuation of Librarians at 62 years and also failed to implement the Career Advancement Scheme for Librarians found at appendix-III of UGC (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010.

(xi) The scheme has been implemented as composite package including the enhancement of age of superannuation of non-teaching staff i.e. Librarian/Director of Physical Education to 62 years together with all conditions specified or to be specified by the UGC by regulations and other guidelines shall be implemented to avail Central Financial

Assistance to the extent of 80% of the additional expenditure involved in the implementation of the revise pay scale.

(xii) Non-enhancement and maintenance of the age of superannuation by the Respondents is ultra vires and unconstitutional.

(xiii) The UGC framed regulations under Section 26(1)(e) and (g) of the UGC Act, 1956 and adopted the same to avail Central Financial Assistance to the extent of 80% of the additional expenditure involved in implementation of the revise pay scales, along with the conditionality of the said scheme including enhancement/maintenance of 62 years as the age of superannuation of Librarian/Director of Physical Education, and implementation of the Career Advancement Scheme. Since the Respondents have adopted scheme, they were bound to make appropriate amendment to the Goa University Act, 1984 so as to make the same in accordance with the such regulation.

(xiv) The Goa University is recognized by the UGC and the UGC Act, 1956 is applicable to the Goa University. The regulation framed under Section 26(1)(e) and (g) requires that, the universities/State Government shall modify or amend the relevant Act/Statutes of the University concern within six months of adoption of regulations.

(xv) Section 15A of the Goa University Act which provides the age of superannuation of non-teaching staff to be 60 years is in conflict with University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010 and therefore, it is ultra vires and unconstitutional.

(xvi) The scheme of Government of India vide letter dated 31st December 2008 provides for common revision of pay scale of teachers of universities and colleges. The scheme is part of UGC Regulation, 2010 and Career Advancement Scheme (CAS) incorporated in appendix-III of the UGC Regulation, 2010. The UGC Regulation, 2010 is mandatory and binding and would override Section 15A of the Goa University Act, 1984.

(xvii) The Petitioner had addressed representation dated 2nd June 2012 and 14th September 2012 and requested the Respondents to implement the scheme in *toto* by enhancing the age of superannuation of Librarian/Director of Physical Education to 60 years up to 62 years.

(xviii) The Petitioner is attained the age of 62 years on 17th September 2012 and served relieving order on 28th September 2012.

(xix) The Respondent No.3 forwarded reply dated 30th July 2012 and stated that as per Official Gazette, Series 1, No.23 dated 8th September 2009, the Government of Goa laid down that the superannuation of age of person other than teaching staff of Goa university and affiliated colleges whether aided or not shall be sixty (60) years.

7. Mr. Sawant, learned Advocate appearing for Petitioner in terms of the aforesaid contentions submitted that, the age of superannuation of Librarian is required to be enhanced at 62 years. The Ministry of Human Resource Development, Department of Higher Education, Government of India had proposed to the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following revision pay scale of Central Government employees on the recommendation of 6th Pay Commission which was to be made applicable to the teachers of Central Universities and the said scheme may be extended to universities, colleges and other educational institutions coming under the purview of State Legislature, provided the State Government with to adopt and implement the scheme subject to the terms and condition as specified under clause 8(p)(v) of the said scheme. The scheme is to be implemented and by the State Government and universities and colleges without any modification. The Respondent

No.3 accepted the scheme in *toto* but did not enhance the age of superannuation at 62 years. The amendment of 2009 to the Goa University Act, is ultra vires and in contravention of the scheme. This scheme is required to be implemented compositely including the age of superannuation together with all conditions specified by UGC. The scheme is binding on all universities. In view of implementation of the scheme by Respondent No.1, which has been submitted itself to the regulations, the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010, is Regulation relatable to Entry 66 of list-I, Schedule-VII of the Constitution of India and the said regulation covers entire field of service conditions of the university teachers and equivalent cadres. The State Government or the university have no legislative or executive competence to make any rules, regulations, statutes or ordinances. The Career Advancement Scheme incorporated in appendix-III of the University Grants Commission is an integral part of the Regulation and must be implemented as part of the composite scheme. The scheme framed by Government of India vide letter dated 31st December 2008 provides for common revision of pay scale of teachers and equivalent cadres of universities and colleges established under the Central, State or provisional Act with enhancements of age of

superannuation. This scheme is made under part of UGC Regulation 2010. The UGC framed the common regulation for teaching personnel of universities and colleges. UGC has been framed under the UGC Act, 1956 and is mandatory and binding and would override Section 15A of the Goa University Act, 1984.

8. Mr. Salkar, learned Government Advocate appearing for Respondent No.1 submitted that, Section 15A is not ultra vires the constitution. The age of superannuation of Librarian cannot be extended to 62 years. The Petitioner cannot be challenged validity of Section 15A of the Goa University Act to the extent it is repugnant to the provisions of University Grants Commission. The Petitioner could not explain as to how Section 15A is arbitrary, illegal or ultra vires. The Petitioner may be entitled for the other benefits but the age of superannuation of the Librarian cannot be enhanced to 62 years. It is prerogative of Respondent No.2 not to implement the scheme to the extent of enhancement of age of superannuation of non-teaching staff. Mr. Salkar has brought to our notice the circular dated 14th August 2012 issued by Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi, it was addressed to all State Education Secretaries, in-charge of Higher Education. The subject of the circular was scheme of revision of pay of

teachers and the equivalent cadres in universities and colleges following revision of pay scales of Central Government employees on the recommendations of the 6th Central Pay Commission wherein it is stated that, 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 31st December 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.

9. Ms. Agni, learned Senior Advocate appearing for Respondent No.2 submitted that, the UGC guidelines are not binding *per say* upon Respondents. The enhancement of superannuation was granted to the teachers up to 62 years. The Petitioner cannot seek direction to adopt the scheme of University Grants Commission. Section 15A of Goa University Act is not ultra vires the constitution. The mandamus commanding the Respondents to change the age of retirement on the ground that, the same are in conflict with the UGC regulations is untenable. This aspect has been examined by Apex Court in several decisions. It is open to the State Government or to the

University to adopt the scheme under the UGC regulations in part i.e. in so far as it pertains to pay scale and not to adopt all aspects of the scheme or the regulations. The UGC are re-commendatory and are in the form of guidelines. The UGC regulations are directory for the university, colleges and other higher Educational Institutions under the purview of State Legislation. It is left to the State Government to adopt and implement the scheme.

10. Ms. Agni has relied upon the following decisions:-

(i) Jagdish Prasad Sharma and Others Vs. State of Bihar and Others.¹

(ii) B. Bharat Kumar and Others Vs. Osmania University and Others²

(iii) Dr. A. K. Joshi Vs. State of Goa and Anr. delivered by Bombay High Court Bench at Goa in Writ Petition No.159 of 2003 decided on 12th November 2009.

(iv) Dr. J. Vijayan And Ors. Vs. State of Kerala and Ors.³

11. The Central Government through its Ministry of Human Resource Development, Department of Higher Education, Government of India vide its letter dated 31st December 2008 proposed the scheme to the revision of pay of teachers and equivalent cadres in universities and

1 (2013) 8 SCC 633

2 (2007) 11 SCC 58

3 2022 SCC OnLine SC 958

colleges which was to be made applicable to the teachers of Central Universities. One of the object was to enhance the age of superannuation of teachers to 65 years and the age of superannuation of Librarians and the Directors of Physical Education as 62 years. The Government of Goa accepted the said scheme vide its order dated 21st May 2009 by implementing the benefits of revised pay scale as recommended by the said scheme but State Government retained the age of superannuation for Librarians and other non-teaching staff as 60 years. The Government of Goa amended Section 15A of Goa University Act, 1984 by enacting the Goa University (Amendment) Act, 2006 whereby the age of superannuation for the Librarians and other non-teaching staff was made to 58 years and teaching staff to 60 years. By notification dated 8th September 2009, the State Government amended the provision of Section 15A of the Goa University Act by enacting Goa University (Amendment) Act, 2009 whereby the State Government enhanced the age of superannuation for non-teaching staff as 60 years and for teaching staff as for 62 years. The Petitioner availed benefit of Goa University (Amendment) Act, 2009 and chose to challenge the validity of Section 15A of the Goa University Act on the ground that, repugnant to the provisions of the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the

Maintenance of Standards in Higher Education) Regulation, 2010, much after enactment of Goa University (Amendment) Act, 2009. The University vide letter dated 11th December 2010 had written to the Director, Directorate of Higher Education bringing it to the notice that, the UGC regulations on minimum qualification for appointment of teachers, staff in universities and colleges and measures for the maintenance of education 2010 have been notified by the UGC in the Official Gazette of India dated 18th September 2010 and the university yet to receive the official copy of the Gazette from the University Grants Commission. The Directorate of Higher Education was requested to convey the approval of the Government for implementation of the same. No resolution was taken as recommendation made about non-teaching staff or to increase age of retirement of other teaching staff. The Executive Council has resolved vide Resolution dated 12th December 2009 to recommend to the Government of Goa to adopt recommendation of UGC and raise age of superannuation only for teachers and not for equivalent cadre. The provisions of Section 15B of Goa University (Amendment) Act, 2009 requires the Government University to take approval to the Government of Goa whenever the Goa University decides to frame any statutes or ordinances which are having financial implications. The State Government took a view that, the retirement age of superannuation of the person other than the teaching staff of the Goa

University and other affiliated colleges of the Goa University, whether aided by the Government or not shall be 60 years only and accordingly Goa University Act was amended. The Petitioner was not entitled to continue up to 62 years. The scheme relied upon by the Petitioner makes a distinction between the post of teachers and other staff like the Librarian and the Director of Physical Education and the parity of retirement which is available to the teachers could not be extended to the Librarian and the Director of Physical Education.

12. We do not find any reason to accept the contentions of the Petitioner that Section 15A of the Goa University Act is arbitrary or ultra vires. The constitutional validity of Section 15A of Goa University Act, 2009 can be challenged on the ground of legislative competence infringement of fundamental rights or violation of any provisions of constitution. We do not find existence of any of these factors in the provisions which is under challenge.

13. In the case of **Jagdish Prasad Sharma and Ors. Vs. State of Bihar and Ors.** (supra) has held that, regulation framed by UGC under UGC Act, 1956 which relates to Schedule-VII, List-I, Entry 66 cannot alter any terms and conditions of enactments by a State under Article 309. The State is entitled to enact any laws pertaining to service

conditions of teachers and other staff of State Universities, and the same would have effect unless repugnant to any primary Central legislation. The factual matrix of the said decision would indicate that, on 23rd march 2007, the Central Government in its Ministry of Human Resource Development, Department of Higher Education, communicated to the Secretary of UGC its decision regarding the age of superannuation of all persons, who were holding posts as on 15th March 2007, in any of the Centrally funded higher and technical education under the HRD Ministry, would stand increased from 62 to 65 years. It was also decided that persons holding such regular teaching positions, but had superannuated prior to 15th March 2007, on attaining the age of 62 years, but had not attained the age of 65 years, could be re-employed against vacant sanctioned teaching positions, till they attained the age of 65 years. Since, the decision of Union Ministry was not implemented, the writ petitions were filed by State teachers seeking enhancement of age of superannuation from 62 to 65 years. The petitions were dismissed on the ground that there was no conscious decision taken by UGC with regard to teachers working in State universities since the enhancement in age of superannuation was confined to employees of the Centrally funded universities. On 3rd October 2008, the pay review committee set up by UGC submitted its report to UGC, pursuant where to a conscious decision was taken by UGC to enhance the age of superannuation of all

the teachers throughout the country to 65 years. Consequently the aforesaid scheme dated 31st December 2008 was published. Letter dated 31st December 2008, was issued by the Central Government to the Secretary, UGC containing the said scheme of revision of pay of teachers and other equivalent cadres in all the Central Universities and colleges and deemed universities, following the revision of pay scales of the Central Government employees on the recommendation of the Central Sixth Pay Commission. The State Governments were given an option to adopt the scheme in its composite form. The UGC Scheme dated 31st December 2008 envisaged that in case the State Governments opted to revise the pay scales of teachers and other equivalent cadres covered under the Scheme, financial assistance from the Central Government to such State Governments would be to the extent of 80% of the additional expenditure involved in the implementation of the revision of pay scales. The scheme also indicated that the State Government which opted for revision of pay scales would have to meet the remaining 20% of the additional expenditure from its own sources. The payment of the Central Assistance for implementing the scheme was subject to conditions that the scheme of revision of pay scale, together with all the conditions to be laid down by UGC, by way of regulations and other guidelines, would have to be implemented by the State Government and universities and colleges coming under their jurisdiction, as a composite scheme without

any modification except in regard to the date of implementation. This entailed enhancement of the age of superannuation of teachers to 65 years. As again no action was taken of the State teachers, writ petitions were filed, which were allowed by the High Court and the said order was challenged before the Apex Court. The common thread running through all the matters was the question as to whether the regulations framed by UGC had a binding effect on educational institutions run by the different States under the State enactments. The Hon'ble Supreme Court held that it is undisputed that UGC is empowered to frame regulations for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research. There is no doubt that the regulations framed by relating to schedule-VII, List-I, Entry 66 to the Constitution but it does not empower UGC to alter any of the terms and conditions of the enactments made by the States under Article 309 of the Constitution. Under schedule VII, list-I, 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. The acceptance of the scheme in its composite form was made discretionary and there was no compulsory and its authority to adopt the scheme. This decision is squarely applicable in the present

case. The recommendation of UGC are not binding on the State Government or the University.

14. Thus, we do not find any substance in submission of the Petitioner that the Respondent No.1 be directed to implement the University Grants Commission (Minimum Qualification for appointment of Teachers and other academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010, to increase the age of superannuation of Librarian and other non-teaching staff.

15. We also do not find any substance in the contention of the Petitioner that Section 15A of the Goa University Act, 1981 is ultra vires the constitution. The submission is devoid of merits.

16. The other submission with regard to the implementation of Career Advancement Scheme (CAS), we do not find any serious counter by the Respondents with regard to implementation of CAS. The said aspect has been urged by the Petitioner for the first time in this petition, the Respondents may consider the said aspects in the event any representations is made by Petitioner. The Petitioner is at liberty to prefer representation only to the extent of the implementation of Career

Advancement Scheme. If such representation is preferred, it shall be decided by the concerned Respondents within a period of three months from its receipt.

ORDER

- (i) Writ Petition No. 699 of 2012 is dismissed.
- (ii) The Petitioner is at liberty to prefer representation to the concern authority with regard to implementation of Career Advancement Scheme (CAS) and in the event such representation is made, the same be dealt with in accordance with law within a period of three months from its receipt. It is clarified that we have not expressed any opinion about the maintainability or grant of relief in respect to Career Advancement Scheme (CAS).
- (iii) Writ Petition stands disposed off.

[BHARAT P. DESHPANDE, J.]

[PRAKASH D. NAIK, J.]

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