

**HIGH COURT OF ANDHRA PRADESH**

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**WRIT PETITION No.404 OF 2023**

Between:

M. R.K. Polytechnic, rep. by its Secretary and Correspondent.

.....Petitioner.

AND

J.J.S. Prasad and others

.....Respondents

**DATE OF JUDGMENT PRONOUNCED: 16.10.2023**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**&**

**THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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|-------------------------------------------------------------------------------|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment?          | Yes/No |

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**RAVI NATH TILHARI, J**

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**DUPPALA VENKATA RAMANA, J**

**\* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
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! Counsel for the Petitioner: Sri. P. Durga Prasad

^ Counsel for the respondents: Sri Gangaiah Naidu, Sr.  
Advocate, assisted by Sri N.  
Bharat Babu.

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> Head Note:

? Cases Referred:

<sup>1</sup> AIR 2016 SC 204

2. (2021) 4 KantLJ 330 : (2021) 4 SCT 555

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**WRIT APPEAL No.404 OF 2023**

**JUDGMENT:-** *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri P. Durga Prasad, learned counsel for the appellant and Sri Gangaiah Naidu, learned Senior Advocate through virtual mode, assisted by Sri N. Bharat Babu, learned counsel for the respondent Nos.1 and 2, the writ petitioners in physical mode.

2. This Writ Appeal has been filed challenging the judgment/order dated 19.07.2022 passed by the learned Single Judge in W.P.No.19447 of 2016.

3. The 1<sup>st</sup> writ petitioner was working as Lecturer in Physics and the 2<sup>nd</sup> writ petitioner was working as Senior Instructor in M.R.K. Polytechnic, the appellant herein, the respondent No.4 in the writ petition. They were served with notice of retirement on attaining the age of 58 years in the year 2016, challenging the same the writ petition was filed, *inter alia* on the ground that the writ petitioners were entitled to continue upto 65 years as per All India Council for Technical Education (in short, AICTE) Regulations. Alternatively, it was also pleaded that writ petitioners would be entitled to continue upto 60 years

as per A. P. Education Act 1982 and Act 1 of 2015, which amended Section 78-A of the A. P. Education Act, 1982, to enhance the retirement age from 58 years to 60 years.

4. After contest, the learned Single Judge allowed the writ petition directing the respondents to continue the writ petitioners in service of the respondent No.4, the present appellant Institution till superannuation i.e. 65 years of age.

5. Sri P. Durga Prasad, learned counsel for the appellant submits that Section 78-A of the A. P. Education Act is not applicable to the writ petitioners. His submission is that the said provision applies to the private aided Educational Institutions, whereas the appellant is a private unaided institution.

6. However, we are not on the aspect as to whether the age of superannuation of the writ petitioners would be governed by Section 78-A of A.P. Education Act or not, in as much as the appellant Institution is certainly governed by the regulations framed by the All India Council for Technical Education.

7. The All India Council for Technical Education (Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010), apply to Technical Institutions conducting

technical education and such other courses/programmes and areas as notified by the council from time to time.

8. The Regulations, 2010, inter alia prescribe the age of superannuation. Such provision reads as under:-

**“Age of Superannuation:-**

*i) In order to meet the situation arising out of the shortage of teachers in Technical Institutions and the consequent vacant positions therein, the age of superannuation for teachers in Technical Institutions has been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-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.*

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Reemployment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years ie the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians, the increase in the age of superannuation from the

present sixty two years shall not be available to the categories of Librarians.”

9. A perusal of the aforesaid quoted provision clearly shows that the age of superannuation for teachers in Technical (Polytechnic) Institution was enhanced to 65 years. At that time, the writ petitioners were in service. There is no dispute on this aspect. There is also no dispute that these regulations are statutory in nature, having been framed in the exercise of power under Section 10 (i) and (v) r/w Section 23 (1) of the All India Council for Teachers Education Act, 1987. The Regulations, 2010, therefore, are binding on the appellant Institution.

10. In ***Pramod v. State of Maharashtra and others***<sup>1</sup>, the Hon'ble Apex Court on consideration of the same regulations, though the matter pertains to the State of Maharashtra, we are mentioning so because it has been submitted by the appellants' counsel that the said judgment related to the State of Maharashtra, but the regulations have the all India applicability, held that the age of superannuation for teachers of the polytechnic stand enhanced to 65 years with sole exception of librarian whose age of superannuation continues to be 62 years.

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<sup>1</sup> AIR 2016 SC 204

11. Paras 15 and 16 of **Pramod (supra)** are reproduced as under:-

**“15.** On the issue of age of superannuation, there was no occasion for the High Court to consider the relevant Rules or Notifications and before us there is a serious controversy as to whether the age of superannuation on the post of a teacher other than Principal ought to be 60, 62 or 65 years. According to respondent, the State Government had issued a Notification through the Higher and Technical Education Department dated 5th March, 2010 whereby the age of superannuation for non-government polytechnic institutions has been increased from 58 years to 60 years and it can be extended upto 62 years only after obtaining prior approval of the State Government. Similarly, for the post of Principal the age of superannuation has been increased to 65 years but with the rider that State Government should grant approval for any further extension beyond 62 years. On the other hand, the stand of the appellant is that he has been arbitrarily ignored and not considered for extension because of pending litigation against the Management of the respondent-society since several years. It is further case of the appellant that: State Government has never differed with the recommendation of the AICTE on the issue of age of superannuation; in exercise of its statutory powers under sub-section (1) of Section 23 read with Section 10(i) and (v), of the All India Council for Technical Education Act, 1987, the AICTE has issued the Regulations dated 5<sup>th</sup> March, 2010; and the Regulations, inter alia, provide for age of superannuation and since they apply to technical institutions conducting technical education and such other courses/programmes and areas as notified by the Council

***from time to time, the age of superannuation for teachers of the Polytechnic stand enhanced to 65 years with sole exception of Librarian whose age of superannuation continues to be 62 years.***

**16.** From the materials and rival contentions noted above, it is evident that even as a teacher the appellant's age of superannuation could have been considered for extension upto 62 years if steps had been taken for the **same in due course. Moreover, the Regulations of AICTE being statutory, unless these have been superseded or annulled by a competent authority, the appellant's age of superannuation stood extended upto 65 years. Lastly and** in any event, this Court had directed for maintenance of status-quo in respect of appellant's service and such order has been ignored by the concerned respondents by proceeding to superannuate the appellant at the age of 60 years. Yet another dimension requires special consideration in the interest of justice. As per the statutory MEPS Rules, the appellant should have been promoted as the Head of the School or in other words Principal of the polytechnic long back and in any case by the end of the year 2012, provided the respondent-Director had not passed an illegal and erroneous order on 17.10.2012, when he wrongly proceeded to apply the Government Rules 2012 to the private respondent polytechnic. If a correct view had been taken by the respondent-Director then by the end of 2012, the appellant would have been occupying the post of Principal in the respondent polytechnic and then he would not have superannuated before 65 years or in any case before 62 years of age."

12. Learned Senior Counsel for the writ petitioners also placed reliance in the case of **G. R. Bharath Sai Kumar vs. State of Karnataka**<sup>2</sup>, of the Karnataka High court and in the case of Dr.S.Kothandaraman of the Madras High Court to contend that the age of retirement would be 65 years.

13. Learned single Judge in the judgment under appeal placed reliance in the case of **Pramod** (supra) of the Hon'ble Apex Court. From the Regulations, 2010 as also the judgment in **Pramod** (supra), it is evidently clear that the age of superannuation of the writ petitioners would be 65 years.

14. We do not find any illegality in the judgment of the learned Single Judge.

15. The Writ Appeal is devoid of merits and is accordingly dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

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**DUPPALA VENKATA RAMANA, J**

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<sup>2</sup> (2021) 4 KantLJ 330 : (2021) 4 SCT 555

Note:-

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
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THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**WRIT APPEAL No.404 OF 2023**  
*(per Hon'ble Sri Justice Ravi Nath Tilhari)*

**Date: 16.10.2023**

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