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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th December, 2023

+ W.P.(C) 3266/2012 & CM APPL. 6967/2012, CM APPL.52304/2019
CM APPL. 46632/2022

T.R.SRINIVASAN AND ORS

..... Petitioners

Through: Mr. Divyanshu Sahay with Ms. Shradha Narayan and Mr. Akshay Sahay, Advocates for P1 and P2.
Mr. S. Gopakumaran Nair, Senior Advocate with Ms. Priya Balakrishnan, Advocates for P3 and P4.

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY AND ORS

..... Respondents

Through: Mr. Aly Mirza, Advocate for IGNOU/R1-3.
Mr. Mukul Singh, CGSC with Ms. Ira Singh and Ms. Pranjal Mathur, Advocates for UOI/R4.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present judgment, this court proposes to dispose of W.P.(C) No. 3266/2012 and CM APPL. No. 46825/2022. The writ petition was filed in 24.05.2012; notice was issued *vide* order dated 31.05.2012; and the matter was admitted and placed on the Regular Board on 07.05.2013.



2. By way of the petition as originally filed, the petitioners had sought (i) implementation of UGC Guidelines dated 28.06.2010 titled as University Grants Commission (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 ('UGC Regulations 2010'); (ii) of order dated 23.03.2007 issued by the-then Ministry of Human Resource Development, Department of Higher Education, Government of India (now Ministry of Education) ('Ministry'); and (iii) implementation of resolution and circular dated 03.09.2010 which were meant to fix seniority as per the cadres specified in the UGC Regulations 2010. However, on 31.10.2022 the petitioners moved CM APPL. No. 46825/2022 seeking to amend the prayers made in the original petition for the reasons as detailed in the application.
3. Considering the long pendency of the petition, and the fact that all four petitioners have since superannuated, based on a retirement age of 62 years, as also recorded in order dated 30.05.2023, this court has considered it appropriate to take-up the amendment application as well as the writ petition for disposal together.

CM APPL. 46825/2022

4. As recorded above, by way of this application the petitioners have sought amendment *only* of the prayers made in the petition as originally filed. The petitioners have cited certain intervening events as the reason for seeking amendment of the prayers, as quoted below:



“5. That further subsequently during the pendency of the present writ petition —

a. the Respondent No. 1 University has amended Statute 17(9) of the Statutes of the University in pursuance of the directions of Respondent No.4 (vide letter dt. 23.03.2007 at page 40 of the writ petition), which received the approval of the Visitor on 15.12.2017. The said Statute 17(9) that governs the service conditions of Petitioners and stipulates the age of retirement to be 65 years. [reference to annexure removed]

b. The Respondent No. 1 University has also notified the 6th CPC Ordinance on Career Advancement Scheme of Academics on 07.12.2018 under Statute 17(14) of the Statutes of the University read with Section 2(p) of the IGNOU Act in pursuance of the aforesaid UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 that was prayed to be implemented by Petitioners. [reference to annexure removed]

c. That further by orders dated 30.05.2022, the Resp. No.1 University have promoted Petitioner No.3 and 4 w.e.f. the dates they were eligible, that is, 01.01.2009 and 23.07.2011 respectively in pursuance of the Career Advancement Scheme framed by them for the 7th CPC. But the Resp. No.1 University has not made similar promotion of Petitioner No. 1 and 2 even under the 6th CPC Ordinance on Career Advancement of Academics.

That it is relevant to state that Petitioner No.1 and 2 are also entitled for similar promotion in the AGP of Rs. 10,000 by operation of Para. III of the above Ordinance. Petitioners 1 and 2 are entitled to be promoted w.e.f. October 2005 and December 2011, respectively. [reference to annexure removed]”

5. It is contended by the petitioners that due to the foregoing events, the very framework governing the terms and conditions of their service has been amended by the Indira Gandhi National Open University (‘IGNOU’ or ‘University’), and it has therefore become necessary for them to amend the prayers in the writ petition. The petitioners further



contend that the essential reliefs they had sought by way of the petition as originally filed, are in fact substantiated by the amendments made by IGNOU. To be sure, the petitioners have not sought to delete any averment, allegation or prayer made in the writ petition; but have only sought to supplement the prayers in view of subsequent events that have transpired while the writ petition was pending before this court.

6. The prayers in the petition, as amended, read as follows :

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

(a) Summon the original records of the case;

(b) Implement the UGC Guidelines dated 28.06.2010 No.F.3-1/2009 28 June, 2010 titled as UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic staff in universities and colleges and measures for the maintenance of standards in higher education-2010 for the benefits of petitioners in respect of Age of Retirement, Career Advancement Scheme beyond the post of Dy.Director(PB IV with Grade Pay 9000/-) and principle of seniority.

(c) [there is no prayer clause (c)]

(d) Implement the order of Ministry of Human Resource Development, Department of Higher Education No. 1-19/2006-U.II dated 23.03.2007; and

(e) Implement the resolution No EC.16.2.31 and circular no.IG/TA/2/40/92/2377 dt. 3rd September’2010 titled Principles of Determination of Seniority under Statute - 24 of IGNOU Act for fixing seniority of the petitioners as per the Cadres specified in the UGC regulatlios-2010 (sic).

(e) (sic) Pass such other further order(s), as this Hon’ble Court may deem fit and proper in the facts and



circumstances of the present case and in the interest (sic) of justice.

(f) Declare that 'teachers and other academic staff' stipulated by Section 2(p) read with Section 24(d) of the IGNOU Act, Statute 17 of the Statutes of the University as well as Ordinance No. 16 dt. 20.06.2007, constitute one single class / cadre and it is not open to the University to differentiate or distinguish between teachers and other academic staff vis-à-vis their conditions of service regarding the age of retirement [Statute 17(9)], promotions under career advancement scheme beyond the level of Deputy Director [Statute 17(14)] or seniority [Statute 24 read with Circular dt. 03.09.2010 at page 91 of the writ petition];

(g) Declare that the Petitioners are entitled to continue in service till they attain the age of superannuation of 65 years stipulated by Statute 17(9) of the Statutes of the University and the Circular dt. 11.05.2012 issued by the University is vitiated by manifest arbitrariness and is also ultra vires the IGNOU Act and Statutes and Ordinances of the University and unconstitutional; and consequentially Petitioners No. 1 and 2 are entitled for all back wages and all consequential benefits on account of their illegal superannuation by Resp. No.1 University w.e.f 30.06.2012 and 30.04.2014, respectively.

(h) Declare that Petitioner No.1 and 2 will be deemed to have continued in service till they attained the age of superannuation of 65 years stipulated by Statute 17(9) of the Statutes of the University, that is to say, till 30.06.2015 and 30.04.2017, respectively, and are entieled (sic) for back wages for the said period and consequent revision of pension and all other consequential benefits and consequently issue writ, order or direction in the nature of mandamus directing Respondent No. 1 to 3 to pay the arrears of pay / back wages, revised pension and all other consequent emoluments to Petitioner No.1 and 2, within the time as may (sic, be) directed by this Hon'ble Court;



(i) Issue writ, order or direction in the nature of mandamus directing Respondent No. 1 to 3 to allow Petitioner No. 3 and 4 to continue in service till they attain the age of superannuation of 65 years stipulated by Statute 17(9) of the Statutes of the University;

(j) Issue writ, order or direction in the nature of mandamus directing Respondent No. 1 to 3 to promote Petitioner No.1 and 2 to Stage – 5 w.e.f. October 2005 and December 2011, respectively, in pursuance of Statute 17(14) of the Statutes of the University and Clause III of the Ordinance on Career Advancement of Academics notified thereunder on 07.12.2018 and cause further promotions thereupon in accordance with law.”

7. Notice on this application was issued *vide* order dated 03.11.2022 read with order dated 14.11.2022. Consequent thereupon, reply dated 28.03.2023 has been filed by IGNOU, opposing the amendments sought. The essential objections raised by IGNOU are the following :
- 7.1. That in view of the amendments sought, it is essential that the Ministry which was impleaded *vide* order dated 31.05.2012 as a party-respondent in the matter, be directed to file a counter-affidavit to the petition.
 - 7.2. That though factual matters, for instance, the amendments made to certain Statutes of the University and the issuance of the Ordinance on Career Advancement Scheme of Academics (‘Career Advancement Scheme’) are matters of record, however their applicability to the petitioners is not admitted;
 - 7.3. That the amendments sought by the petitioners to the prayer clause would change the entire case set-up by them, apart from



the fact that there is no cause, reason or justification to amend the writ petition at this stage;

- 7.4. That the amendment application is highly belated and suffers from delay and laches.
8. Though clearly the amendment application has been made long after the petition was filed, the fact remains that the amendments arise from the change in the statutory framework viz. the amendments to Statute 17(9) of the Statutes of the University which was approved by the Visitor on 15.12.2017; the notification by IGNOU of the 6th CPC and 7th Ordinance on Career Advancement Scheme of Academics on 07.12.2018 and 18.09.2020; and the promotion of petitioners Nos. 3 and 4 by IGNOU by order dated 30.05.2022.
9. It is observed that the last of the events that have necessitated the amendments occurred in May 2022, leading to the filing of the amendment application on 31.10.2022.
10. After duly considering the objections raised by IGNOU, in the light of the timelines indicated above, and being of the opinion that the amendments are relevant for a full and complete adjudication of the matter, this court is persuaded to allow the amendments. This court is also of the view that if the amendments are not allowed even at this stage, it would only lead to multiplicity of litigation and even further delay in deciding the issues on merits, which must be avoided.
11. Furthermore, it is for the Ministry (respondent No. 4) and not IGNOU (respondent No. 3) to file its reply to the application and assert its stand. But the record shows that despite notice on this application



having been issued *vide* order dated 03.11.2022 read with order dated 14.11.2022, on which dates the Ministry was represented, the Ministry has chosen not to file any reply. Therefore, that cannot be reason to dismiss the present application.

12. The application is accordingly allowed.
13. The amendments sought to be made are taken on record and shall be read as incorporated in the writ petition.
14. The application stands disposed-of.

W.P.(C) 3266/2012

BRIEF FACTS

15. The petitioners are all academics who were in service of respondents Nos. 1-3/IGNOU in various capacities. Some relevant details relating to their service are :

<i>Name & Petitioner No.</i>	<i>Date of joining</i>	<i>Date of superannuation</i>	<i>Post/designation last held</i>
<i>Dr. T.R. Srinivasan (Petitioner No. 1)</i>	<i>03.02.1987</i>	<i>30.06.2012</i>	<i>Jt. Director, Regional Services Division</i>
<i>Dr. Asha Khare (Petitioner No. 2)</i>	<i>04.12.1996</i>	<i>30.04.2014</i>	<i>Dy. Director, Regional Services Division</i>
<i>Dr. M. Chandrasekharan Nair (Petitioner No. 3)</i>	<i>24.12.1997</i>	<i>31.07.2023</i>	<i>Addl. Director</i>
<i>Dr. B.Sukumar (Petitioner No. 4)</i>	<i>02.09.1992</i>	<i>31.07.2023</i>	<i>Senior Regional Director</i>

16. Respondent No.1/IGNOU is an institution of higher education set-up by the Indira Gandhi National Open University Act, 1985 ('the Act' or 'IGNOU Act'), as a distance learning institution.



17. Respondents Nos. 2 and 3 are respectively the Vice Chancellor and Registrar (Administration) of IGNOU. Respondent No. 4 is the Ministry which was impleaded as a party-respondent to the present matter on 31.05.2012, since one of the prayers made in the original petition had sought implementation of letter dated 23.03.2007 issued by the said Ministry.
18. It is necessary to mention that by the time the present petition came-up for final hearing, respondents Nos. 1 and 2 had already superannuated; though respondents Nos. 3 and 4 were still in service. Since, at the time the petition was being heard finally, respondents Nos. 3 and 4 were scheduled to superannuate (based on a retirement age of 62 years) on 31.07.2023, *vide* order dated 25.07.2023, this court directed that respondents Nos. 3 and 4 shall continue in service during the pendency of the present petition. Order dated 25.07.2023 was impugned by the University *vide* LPA No. 609/2023; and *vide* order dated 12.10.2023, the Division Bench set-aside order dated 25.07.2023, whereupon respondents Nos. 3 and 4 have also now superannuated.
19. The court has heard Mr. S. Gopakumaran Nair, learned senior counsel appearing for petitioners Nos. 3 and 4 and Mr. Divyanshu Sahay learned counsel appearing for petitioners Nos. 1 and 2 in support of the prayers made in the petition. The court has also heard Mr. Aly Mirza, learned counsel appearing for respondents Nos. 1, 2 and 3/IGNOU and Mr. Mukul Singh, learned CGSC appearing for respondent No.4/Ministry, at length. Written submissions have also been filed on behalf of all the parties.



PETITIONERS' SUBMISSIONS

20. Shorn of unnecessary detail, the essence of the petitioners' grievance is that IGNOU is placing them in the category of '*other academic staff*' and is thereby treating them differently from '*teachers*', as a consequence whereof they are being denied parity as regards their terms of employment, and most importantly in relation to their age of superannuation from the service of the University. The petitioners are also aggrieved of being denied the benefit of the Career Advancement Scheme and proper seniority. The petitioners contend that the only reason they are facing discrimination is that they were not recruited under the designation of '*teachers*' but under other designations/nomenclature as detailed below :

Petitioner No.	Name	Post on which first appointed
1.	Dr. T.R. Srinivasan	Lecturer, Distance Education
2.	Dr. Asha Khare	Asst. Regional Director, Regional Services Division
3.	Dr. M. Chandrasekharan Nair	Dy. Director, Centre for Extension Education
4.	Dr. B. Sukumar	Asst. Regional Director, Regional Services Division

21. The petitioners contend that the role they performed *viz.* course development, preparation of instruction material, undertaking projects, guiding PHD thesis, acting as faculty and evaluating doctoral thesis, was essentially the same function as those who are designated as '*teachers*'; and, in fact, the petitioners' role was even more important in the pedagogical sense, since IGNOU is an institution of



distance learning and the work that the petitioners discharged was even more significant in such an institution than the physical role of in-class teaching, which (latter) is minimal in a distance learning institution.

22. On point of the statutory framework that governs them, the petitioners argue that the Act and the Statutes and Ordinances framed thereunder contain *only* two classes of employees at IGNOU viz. ‘*teachers and other academic staff*’ of the University and ‘*other employees*’ of the University. In this behalf, attention is drawn to the following sections of the Act, the Statutes and Ordinances made thereunder :

Indira Gandhi National Open University Act, 1985 :

2. In this Act, and the Statutes made hereunder, unless the context otherwise requires.

(a)-(d)

(e) “Distance education systems” means the system of imparting education through any means of communication such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more of such means;

(f) “Employee” means any person appointed by the University, and includes teachers and other academic staff of the University;

(g)-(i)

(j) “Regional Centre” means a centre established or maintained by the University for the purpose of co-ordinating and supervising the work of Study Centres in any region and for performing such other functions as may be conferred on such centre by the Board of Management;



(k)-(l)

(m) “Statutes” and “Ordinances” mean, respectively, the Statutes and Ordinances of the University for the time being in force;

(n)

(o) “Study Centre” means a centre established, maintained or recognised by the University for the purpose of advising, counselling or for rendering any other assistance required by the students;

(p) “Teachers” means Professors, Readers, Lecturers **and such other persons as may be designated as such by the Ordinances for imparting instruction in the University or for giving guidance or rendering assistance to students for pursuing any course of study of the University;**

* * * * *

5. (1) The University shall have the following powers, namely:

(i)-(v)

(vi) to institute professorships, readerships, lecturerships and other academic positions necessary for imparting instruction or for preparing educational material or for conducting other academic activities, including guidance, designing and delivery of course and evaluation of the work done by the students, and to appoint persons to such professorships, readerships, lecturerships and other academic positions;

(vii)-(xxvii)

(xxviii) to do all such acts as may be necessary or incidental to the exercise of all or any of the powers of the University as are necessary and conducive to the promotion of all or any of the objects of the University.

* * * * *



24. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:

(a)-(c)

(d) the appointment of teachers and other employees of the University, their emoluments and other conditions of service;

(e)

(f) the principles governing the seniority of service of the employees of the University;

(g)-(l)

25. (1) The first Statutes are those set out in the Second Schedule.

(2) The Board of Management may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1):

Provided that the Board of Management shall not make, amend or repeal any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given a reasonable opportunity to express its opinion in writing on the proposed changes and any opinion so expressed has been considered by the Board of Management.

(3) Every new Statute or addition to the Statutes or any amendment or repeal thereof shall require the approval of the Visitor, who may assent thereto or withhold assent or remit to the Board of Management for re-consideration in the light of the observations, if any, made by him.

(4) A new Statute or a Statute amending or repealing an existing Statute shall not be valid unless it has been assented to by the Visitor.

(5) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may make new or additional Statutes or amend or repeal the Statutes



referred to in sub-section (1), during the period of three years immediately after the commencement of this Act.

(6) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may direct the University to make provisions in the Statutes in respect of any matter specified by him and if the Board of Management is unable to implement such a direction within sixty days of its receipt, the Visitor may, after considering the reasons, if any, communicated by the Board of Management for its inability to comply with such direction, make or amend the Statutes suitably.

* * * * *

30. (1) Every employee of the University shall be appointed under a written contract and such contract shall not be inconsistent with the provisions of this Act, the Statutes and the Ordinances.

(2) The contract referred to in sub-section (1) shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

* * * * *

40. (1) Every Statute, Ordinance or Regulation made under this Act shall be published in the Official Gazette.

(2) **Every Statute, Ordinance or Regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the Statute, Ordinance or Regulation or both Houses agree that the Statute, Ordinance or Regulation should not be made, the Statute, Ordinance or Regulation shall thereafter**



have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Statute, Ordinance or Regulation.”

(emphasis supplied)

Statutes of the University :

7. Powers and functions of the Board of Management

(1) The Board of Management shall have the power of management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Board of Management shall, in addition to the other powers vested in it under the Statutes have the following powers, namely:

(a) to create teaching and other academic posts and to define the functions and conditions of service of Professors, Readers, Lecturers and other teachers and other academic staff employed by the University;

(b) to prescribe qualifications for teachers and other academic staff:

(c) to approve the appointment of such Professors, Readers, Lecturers and other teachers and academic staff as may be necessary on the recommendations of the Selection Committees constituted for the purpose:

(d)-(q)

(3)

* * * * *



17. Terms and conditions of service and code of conduct **of the teachers and other academic staff** of the University

(1) All the **teachers and other academic staff** of the University **shall** in the absence of any contract to the contrary, **be governed by the terms and conditions of service and code of conduct as are specified in the Statutes and the Ordinances.**

(2) - (4)

(5) Nature of duties—Every **teacher** shall take part in the activities of the University and perform such duties as may be required by, and in accordance with the Act, Statutes and Ordinances framed thereunder **and in particular his duties shall be:**

(a) **Preparation of the course material, content editing and scrutiny, linguistic editing etc. from the point of view of requirements of distance education and liaison of the work of outside experts associated ;**

(b) **His academic duties shall be to give guidance, and instruction to, students in the form of counselling, conducting of tutorials, seminars, practical and assessment/examination/evaluation and such other work assigned to him relevant to the academic activities of the University by its competent authority.** He shall not ordinarily remain absent from work without prior permission or grant of leave;

(c) A teacher in the University **shall fully and enthusiastically participate in the corporate life of the University;**

(d)

(6) - (8)



(9) Age of retirement – (a) Save as otherwise provided in the Act, Statutes and Ordinances all teachers of the University shall retire from service on the afternoon of the last date of the month in which he/she attains the age of 65 years.

(b)

(10) Variation in terms and conditions of service— Every teacher of the University shall be bound by the Statutes, Ordinances for the time being in force in the University;

Provided that no change in terms and conditions of service of a teacher shall be made after his appointment in regard to designation, scale of pay, increment, provident fund, retirement benefits, age of retirement, probation, confirmation, leave salary and removal from service so as to adversely affect him.

(11)

(12) Members of the teaching staff—The members of the teaching staff shall be designated as:

- (1) Professor
- (2) Reader
- (3) Lecturer (selection grade)
- (4) Lecturer (senior scale)
- (5) Lecturer

(13)

(14) **Career advancement** – The manner and the terms under which a Lecturer may be placed in the Lecturer (senior scale) and Lecturer (selection grade) and as Reader **will be prescribed through Ordinances.**

18. Terms and conditions of service and code of conduct of other employees of the University.

All the employees of the University, other than the teachers and other academic staff of the University, shall, in the absence of any contract to the contrary,



be governed by the term and conditions of service and code of conduct as are specified in the Statutes and the Ordinances.

* * * * *

26. Ordinances how made

(1) All ordinances, from the date of commencement of this Statute, shall be made by the Board of Management.

(2)

(3) Every Ordinance made by the Board of Management shall come into effect immediately.

(4) All Ordinances made by the Board of Management shall be submitted to the Visitor within three weeks from the date of its adoption. The Visitor may, within four weeks of the receipt of any Ordinance, inform the University about his objection, if any, to that Ordinance, and direct that its operation shall remain suspended until he has had an opportunity of exercising his power of disallowance. The Visitor may, after receiving the comments of the University, either withdraw his order of suspension or disallow the Ordinance, and his decision shall be final.

Ordinances :

4. ORDINANCE ON THE MANNER OF APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF (Under Statute 13(2))

1. The University may appoint a teacher or any other academic staff working in any other university or organization for course development, preparation of instructional material, delivery of service, or for undertaking a project, or any other work for a specific period.

2. – 7.

* * * * *



**16. ORDINANCE ON DESIGNATING PERSONS
HOLDING CERTAIN POSITIONS AS TEACHERS
(Under Section 2(p) read with Section 5(1)(vi) of the
IGNOU Act)¹**

The persons holding the positions indicated against each in the following divisions **are declared as Teachers** in the grade equivalent to that of Professors, Readers and Lecturers in terms of the provisions of section 2(p) and section 5(1)(vi) of the IGNOU Act.

S.NO.	Division	Name of the Position
1-2.
3.	<i>Regional Services Division</i>	<i>Director, Regional Director (in the Professor's Scale), Joint Director, Dy. Director/Regional Director, Assistant Director/Asst. Regional Director</i>
4-13.

2. The terms and conditions of service of teachers laid down in statutes and ordinances which include the scheme of pay scales, **career advancement**, **retirement age** etc. shall be applicable to the incumbents in these positions.

Brief note of reasons for making the Ordinance on designating certain positions in the University as Teachers.

Section 2(p) of the IGNOU Act states, "Teachers" means Professors, Readers, lecturers and such other persons as may be designated as such by the Ordinances for imparting instruction in the University or for giving guidance or rendering assistance to students for pursuing any course of study of the University. While defining the powers of the University, Section 5(1)(vi) of the Act lists the following: 'to institute professorships, readerships, lectureships and other academic positions necessary for imparting instruction or

¹ as approved at the 90th Meeting of the Board of Management held on 22.05.2007



for preparing educational material or for conducting other academic activities, including guidance, designating and delivery of course and evaluation of the work done by the students, and to appoint persons to such professorships, readerships, lectureships and other academic positions’.

These Sections assume that “teaching” in an Open University is different from that of a Conventional University, that the pedagogy of distance education encompasses activities such as, delivery of content and services to students, evaluation of student’s performance, system development, programme evaluation, planning, preparation and production of audio/video programmes ans (sic) so on. Keeping this in view, the University has made no distinction in selection procedure of teachers and academics.

*Various committees appointed by the University, from time to time in the past have confirmed the same view. These committees are – (i) Prof. Rais Ahmed Committee (1990), (ii) Prof. R.G. Takwale Committee (1992), (iii) Dr. A.J. Kidwai Committee (1993), (iv) Sh. N.V.K. Murthy Committee (1995), (v) Sh. C.R. Pillai Committee (1996), (vi) Prof. Afzal Mohammad Committee (2001) and (vii) Dr. A.S. Guha Committee (2007). **The Takwale Committee, appointed in 1992 has given a very clear and categorical opinion that IGNOU Act permits inclusion of all categories of persons participating in the process of guiding and assistance to students within the meaning of the term ‘teachers’. The Takwale Committee was also of the view that the role of an academic in the distance education system cannot be conceived only in the teaching associated with a class-room but he has to be a distance educator in the first place while also being a subject specialist or an experienced professional.** This change in the role should get reflected progressively in the qualification, methods of recruitment and the professional development of the academics in the distance education system.*



The proposal to consider and approve the Ordinance on designating certain positions in the University as Teachers were placed before the Academic Council at its 40th meeting held on 17.5.2007. The Council agreed that certain positions other than professors, readers, lecturers and those engaged in guidance or rendering assistance to students performances should be designated as teachers as the activities of such academics falls in the preview (sic) of the term ‘teachers’ as defined under Sections 2 and 5 of IGNOU Act referred to above. The Academic Council has further suggested that in future, positions with nature of duties such as giving guidance or rendering assistance to students in pursuit of their study in the University including the activities related to designing, delivery of programmes, evaluation (sic) of the students performance etc. may be considered for inclusion in the category of teachers.

The recommendations of the Academic Council were placed before the Board of Management at its 90th meeting held on 22.5.2007 and were approved by the Board. The Board approved the modified draft Ordinance on designating the positions in the University as teachers as per Annexure-III and directed that the Ordinance be submitted to the Visitor as per rules.

As per the provisions under Statute 26 (1) read with the provisions under Section 26 of the IGNOU Act, the Board of Management of the University has powers to make Ordinances from the date of commencement of the Statute ibid.

(emphasis supplied)

23. It is thus contended that, *firstly*, the petitioners fall in the class and rank of ‘teachers’ as defined in section 2(p) of the Act and section 5(1)(vi); *secondly*, Statute 17 *clearly constitutes ‘teachers and other academic staff’ as a single class*; and *besides*, if any qualms were to remain in that regard, Ordinance 16 as approved by the University’s



Board of Management on 22.05.2007 explicitly designates the petitioners as ‘teachers’ within the meaning of section 2(p).

24. The essential submission on behalf of the petitioners is that the conditions of service of the petitioners are therefore clearly governed and *unified* by Statute 17 read with sections 2(p) and 24(d) of the Act, as also by the provisions of Ordinance Nos. 4 and 16, a combined reading of which makes it clear that :

24.1. The object for which the petitioners were appointed was the same as that for ‘teachers’, inasmuch as both were appointed *inter-alia* for course development, for preparation of instruction material, delivery of service, or of undertaking a project or any other work for a specific period.

24.2. The manner of appointment of the petitioners was also the same and was governed by the same provisions *viz.* clauses 2 to 7 of Ordinance 4(1);

24.3. The terms and conditions of appointment, the nature of duties and code of conduct were also the same for petitioners as it was for teachers as specified in Statute 17(1) read with Statute 17(4) to (11).

24.4. Furthermore, by a Circular dated 02.06.1992 Group-A positions in the *Regional Services Division* of the University were classified as ‘other academic staff’; their age of retirement was equated to that of teachers; and the Career Advancement Scheme was also made applicable to such persons, in the following words :



“CIRCULAR

Sub.: Classification of Group ‘A’ positions in the Regional Services Division of the University as other academic Staff and appointment to these positions.

The University has decided that the following positions in the Regional Services Division should be classified as other academic staff :

<u>Designation</u>	<u>Scale of Pay</u>
A. <u>Regional Services (Headquarters)</u>	
i) Director	Rs. 4500-7300
ii) Joint Director	Rs. 4500-6300
iii) Deputy Director	Rs. 3700-5700
iv) Assistant Director	Rs. 2200-4000
B. <u>Regional Centres</u>	
i) Regional Director	Rs. 3700-5700
ii) Assistant Regional Director	Rs. 2200-4000
* * * * *	

The major terms and conditions of service of the other academic staff working in the Regional Services Division are as follows:

- i)
- ii) **The Career Advancement Scheme presently applicable to teachers of the University would also be applicable to the other academic staff.** Promotion to and placement in the higher positions will be subject to the fulfillment of all the conditions prescribed in the existing ordinances on career advancement for teachers. A separate ordinance for this purpose will be framed in due course along with a separate performance appraisal system.
- iii) **The age of retirement of the other academic staff shall be the same as that of teachers.**
- iv) * * * * *

(emphasis supplied)

24.5. A subsequent Circular dated 07.06.1994 issued by the University further reiterated what was said in Circular dated 02.06.1992, *inter-alia* in relation to the equivalence of retirement age and the applicability of the Career



Advancement Scheme to *other academic staff* in the Regional Services Division, notably recording the approval received from the Board of Management therefor. This circular reads as under :

“CIRCULAR

The following Group A positions with the Regional Services Division both at the HQrs. and the Regional Centres were constituted into as separate category designated as 'other academic staff' vide University's notification No.TA/2/15/90/990 dt. 19-08-93.

- (i) Regional Services (Head Quarters)
 a) Director
 b) Joint Director
 c) Deputy Director
 d) Assistant Director
- (ii) Regional Centres
 a) Regional Director
 b) Assistant Regional Director

The condition of service of these officers of the Regional Services Division at the Head Quarters and the Regional Centres as approved by the Board of Management shall :

- a)
- b) The Career Advancement Scheme presently applicable to teachers shall be extended to other academic staff. While the conditions for promotion to and placement in higher positions will remain the same in principal (sic), a separate ordinance will be framed to make appropriate provisions for this purpose in the context of the nature of their functions.
- c)
- d) The age of retirement of teacher and other academic staff shall be the same.
- e)
- f)
- g)

* * * * *

(emphasis supplied)



- 24.6. If any further clarity was required in this regard, *vide* Minutes of Meeting dated 22.05.2007 the Board of Management of the University considered and approved an ordinance ('Ordinance dated 22.05.2007') designating certain positions in the University as teachers, which included persons serving at the Regional Services Division.
- 24.7. Significantly, with the approval of the Board of Management accorded at its 98th Meeting held on 14.01.2009², *vide* notification dated 28.01.2009 the University adopted the revision of pay scales for teachers and equivalent cadres, with the following narration :

“6. The Assistant Regional Directors (ARD), the Regional Directors (RD) and the Senior Regional Directors in the Regional Services Division (RSD) and the corresponding levels of Academics/Other Academics in other Divisions will be governed by the same Recruitment Rules, Career Advancement Scheme and service conditions as those of Assistant Professors, Associate Professors and Professors. A Committee consisting of representatives from each of the different categories will be constituted by the Vice-Chancellor to finalize the recommendations on re-designation, revised Recruitment Rules, Career Advancement Scheme and the service conditions for Teachers.”

(emphasis supplied)

- 24.8. Lastly, *vide* communication dated 15.12.2017, which specifically relates to amendment of Statute 17(9) as regards the age of retirement of teachers under the Act, the Ministry communicated to the University the approval accorded by

² which was based on Ministry communication dated 31.12.2008



Hon'ble the President of India acting in his capacity as Visitor of the University, enhancing the age of retirement of *teachers* at the University. The relevant portion of the said communication reads as follows :

<p><i>Existing provision under Statute 17(9) on the age of retirement of teachers under IGNOU Act</i></p> <p>(1)</p>	<p><i>Approved Statute 17(9) [after amendment]</i></p> <p>(2)</p>
<p>(a) <i>Save as otherwise provided in the Act, Statutes and Ordinances all teachers of the University shall retire from service on the afternoon of the last date of the month in which he/she attains the age of 62 years.</i></p> <p>(b).....</p>	<p>(a) <i>Save as otherwise provided in the Act, Statutes and Ordinances all teachers of the University shall retire from service on the afternoon of the last date of the month in which he/she attains the age of 65 years.</i></p> <p>(b).....</p>

(emphasis supplied)

24.9. It is accordingly argued on behalf of the petitioners that *neither the Act nor Statutes 17 and 18 create any distinction between ‘teachers and other academic staff’, which constitute one and the same cadre as distinct from the cadre of ‘other employees’ who (latter) constitute a separate class and are governed by separate terms and conditions of service. The distinction sought to be drawn by the University as between teachers and other academic staff is an artificial distinction to discriminate between the two in relation to certain conditions of service, which distinction is vitiated by manifest arbitrariness. It is submitted that teachers and other academic*



staff cannot be treated differently with regard to (only) some of the conditions of their service *viz.* age of retirement, Career Advancement Scheme and seniority, since such classification is not based on any intelligible differentia, is irrational, manifestly arbitrary and therefore vitiated on the touchstone of Articles 14 and 16 of the Constitution of India. It is also argued that since teachers and other academic staff are treated exactly the same by the Statutes, the age of retirement of all such persons *is also the same* as stipulated in Statute 17(9), *viz.* 65 years; and so are the scales of pay as governed by Statute 17(13).

- 24.10. It is also pointed-out that since *vide* communication dated 07.12.2018 the University has already accorded career advancement to ‘other academic staff’ in terms of Statutes 14 and 15; and petitioners Nos. 3 and 4 have already been promoted with effect from the dates they became eligible for such promotion, petitioners Nos.1 and 2 also deserve to be treated similarly.
25. In support of their submissions, the petitioners have placed reliance on several judicial precedents. However, since those judgements are not central to the decision of the present case, as detailed hereinafter, it is not considered necessary to delve into the judgements cited.
26. Based on the aforesaid submissions, the petitioners pray that the petition be allowed, thereby directing that the petitioners would be deemed to have continued in service till the date they attained the age of 65 years, with all consequential benefits including back wages,



notional promotion under the Career Advancement Scheme with effect from the respective dates they became eligible, with consequential seniority, and post-retiral benefits.

IGNOU'S SUBMISSIONS

27. Contesting the prayers made in the writ petition, Mr. Mirza has made the following principal submissions on behalf of IGNOU :

27.1. Till the year 2007, the age of superannuation of 'teachers' and 'other academic staff' was the same *viz.* 62 years. However, *vide* O.M. dated 23.03.2007 the Ministry directed that the age of superannuation of teachers would be enhanced to 65 years. Subsequently, by way of a clarificatory Letter/O.M. dated 19.04.2007, the Ministry further clarified that the enhancement of age of superannuation was *only* in respect of persons occupying the *sanctioned post of teachers* and *not any other category of employees which were considered to be equivalent to teachers*.

27.2. Letters/O.M.s dated 23.03.2007 and 19.04.2007 were not exclusively meant to apply to the University *i.e.* IGNOU but also to other open universities and institutions of higher learning which are centrally funded and regulated by the University Grants Commission ('UGC'). It is pointed-out that neither letter/O.M. dated 23.03.2007 nor the clarificatory letter/O.M. dated 19.04.2007 have been challenged by way of the present petition; and therefore, no relief contrary to those O.M.s can be granted in the present proceedings.



- 27.3. In the course of arguments, the petitioners have expanded the scope of the petition, since, contrary to the limited relief prayed-for in the petition as filed, they are now seeking re-designation of *other academic staff* as *teachers*, which is impermissible.
- 27.4. A bare perusal of the relevant provisions of the Act would show that there is a clear distinction between *teachers* and *other academic staff*. In support of this contention, attention is drawn to the definition of ‘employee’ in section 2(f) of the Act and to section 2(p) which defines ‘teachers’. It is argued that *teachers* and *other academic staff* are separately included within the definition of employees; however, ‘teachers’ are defined to mean *only professors, readers, lecturers, (now referred to as professors, associate professors and other assistant professors) and such other persons as may be designated as such by the Ordinances* as specified in section 2(p).
- 27.5. Accordingly, the intention of the Legislature is clear, *viz.*, that though *other academic staff* are *employees*, they are not *teachers*. Attention is also drawn to the fact that there is no notification, amendment or Ordinance *approved by the Visitor* which designates *other academic staff* as *teachers* for fulfilling the requirement of section 2(p) of the Act.
- 27.6. In Statute 17(9) as amended in 2017, the enhanced age of superannuation of 65 years has, in so many words, been made applicable only to ‘teachers’ and not to ‘other academic staff’.



- 27.7. In fact, it is argued that the University had mooted a specific proposal as approved by the Board of Management of University at its meeting held on 21.04.2010, *proposing to amend* Statute 17(12) and (13) on re-designating certain categories of academics *viz.*, Assistant Director, Deputy Director, Joint Director, Director, Producer, Librarian, Deputy Librarian, Assistant Librarian and Research Officer of its various divisions/units/institutions/centres as teachers; but on the recommendations of the Ministry, this proposal was “not approved” by the Visitor of the University, since the Ministry was of the opinion that equating teachers with non-teaching staff/officers would have wide policy implications.
- 27.8. It is urged that even otherwise, the mode, manner and criteria of appointment/promotions for ‘teachers’ and ‘other academic staff’ are different. In this behalf, reference is made to various ordinances relating to career advancement of teachers and career advancement of academics, including Statute 12. The essence of the submission is that teachers are selected by subject experts; whereas other academics are selected by experts in the field of open and distance education and/or educational administration. In making selection of teachers, the emphasis is on subject specific knowledge of the candidate, whereas for other academic staff, candidates are judged on the basis of their acumen for educational administration and organizing skills.



- 27.9. Referencing Statute 17(5) which lists the duties of teachers, it is argued, that teachers are engaged in curriculum planning, design, development and transaction etc.; however other academic staff have a substantially different job profile, which includes facilitating students spread all over the country to successfully complete a course through a network of regional centres and study centres established by the University; and the majority of other academic staff are posted at such regional centres and their major role is to organize and monitor the academic and administrative support services to be provided for the students.
- 27.10. Insofar as promotions are concerned, it is submitted that other academic staff have a separate and distinct Career Advancement Scheme approved by an ordinance different from that which applies to teachers.
- 27.11. It is the University's submission, that even if the petitioners' argument that they are covered within the definition of 'teachers' is accepted, it must be noted that the amendment to Statute 17(9) was *formally notified only in 2017* (reference being to the Ministry's letter dated 15.12.2017 conveying the Visitor's approval for the enhancement of the age of superannuation); and therefore the enhanced age of superannuation cannot be made applicable to petitioners Nos.1 and 2, who have already superannuated in 2012 and 2014 respectively, *i.e.*, before the enhancement in the age of superannuation was notified.



27.12. Flowing from the aforesaid submissions, it is the University's stand that the petitioners are not entitled to enhancement of the age of superannuation from 62 years to 65 years.

27.13. In support of its contentions, the University has also cited certain judicial precedents. However, it is not considered necessary to delve into those precedents, in view of the basis on which the issues raised in the present petition are being decided.

MINISTRY'S SUBMISSIONS

28. Appearing for the Ministry, Mr. Singh, learned CGSC has made the following submissions :

28.1. By order dated 23.03.2007 issued by the Department of Higher Education of the then Ministry of Human Resource Development of the Government of India, the age of superannuation applicable to teachers was sought to be enhanced from 62 years to 65 years. However, since there was some confusion as to the scope and applicability of order dated 23.03.2007, *vide* its letter dated 19.04.2007, the Ministry clarified that the enhanced age of superannuation as referred to in that order was to be granted *only* to persons who were *actually teachers* and *to no other posts even if the other posts were considered to be equivalent to teaching positions*.

28.2. *Vide* its letter dated 31.12.2008 the Ministry has further clarified that there are only 03 designations of 'teachers' *viz.*, Professor, Associate Professor and Assistant Professor, which



designations are also recognized by the UGC in their regulations.

- 28.3. Admittedly, the petitioners in the present case did not hold any of the aforesaid 03 designations and have also not challenged letters/O.M.s dated 23.03.2007, 19.04.2007 or 31.12.2008 issued by the Ministry; and therefore, the petitioners cannot claim enhancement of the age of superannuation from 62 years to 65 years on that basis.
- 28.4. The University's proposal for re-designating certain categories of *academics viz.*, Assistant Director, Deputy Director, Joint Director, Director, Producer, Librarian, Deputy Librarian, Assistant Librarian and Research Officer as teachers by amending Statute 17(12) and (13), has been specifically 'not approved' and thereby rejected by the President of India acting as Visitor of the University *vide* communication dated 23.07.2013.
- 28.5. Also, the Visitor has approved the Career Advancement Scheme for *teachers* and for *other academics* by way of *two different Ordinances viz.*, the 6th and 7th CPC Ordinance on Career Advancement of Teachers *and* the 6th and 7th CPC Ordinance on Career Advancement of Academics, which shows that *teachers* and *academics* are *two different cadres* and cannot be clubbed together for enhancement of the age of superannuation.



28.6. The Ministry therefore also argues that the petitioners are not entitled to enhancement of their age of superannuation from 62 years to 65 years.

PETITIONERS' SUBMISSIONS IN REJOINER

29. In rejoinder, learned counsel appearing for the petitioners have reiterated their stand, submitting that :

29.1. The petitioners' right to relief is not dependent on the Visitor's approval or non-approval of the amendment to Statute 17(12) which relates to re-designation of *other academic staff* as *teachers*. In fact, the petitioners have neither sought *re-designation* of their posts, nor are they seeking parity with those who the University has called 'teachers'.

29.2. The essence of the petitioners' argument is that 'teachers' and 'other academic staff' constitute a *single, inseparable class or cadre*, whose conditions of service are stipulated only by one provision – that is Statute 17. In particular, emphasis is placed on Ordinance dated 22.05.2007 framed under the Statutes of the University, to urge that in the said Ordinance, it is specifically observed that the terms and conditions of service of *teachers* laid down in the statutes and ordinances, including the scheme of pay scales, career advancement, retirement age, *etc.* shall be applicable to the incumbents referred to in the table appearing in that ordinance, which includes members of the Regional Services Division *i.e.* the petitioners. It is argued that the only distinction is in relation to certain privileges admissible exclusively to teachers such as sabbatical leave and



vacation, which is not admissible to other academic staff. The Ordinance further clarifies that when teachers are posted to hold academic positions, they will also not be eligible for such privileges so long as they are holding such academic positions.

- 29.3. The petitioners only seek *enforcement* of the conditions of service as contained in Statute 17 *uniformly*; and for the University to abjure any discrimination in relation to their conditions of service *viz.*, retirement age under Statute 17(9); career advancement under Statute 17(14); and seniority under Statute 24. It is argued that since the University admits that the petitioners are governed by Statute 17, any such discrimination would amount to creating an artificial distinction between *teachers and other academic staff*.
- 29.4. The reliance placed by the University as well as the Ministry on the Ministry's letter/O.M. dated 19.04.2007, purporting to issue a clarification that the enhancement in the age of superannuation to 65 years is applicable only to teachers *who are actually engaged in teaching classes* but not to any other category of employees notwithstanding that such employees hold a post that is equivalent to a teaching position is misplaced; and in any case the restricted meaning sought to be ascribed to the word 'teachers' does not apply to an Open and Distance Learning ('ODL') institute, where persons such as the petitioners are in fact engaged in the process of teaching.
- 29.5. The reliance placed by the respondents on UGC's Regulations, 2010 is also misleading to the extent that it says that there shall



be only 03 designations for teachers *viz.*, Assistant Professor, Associate Professors and Professors. The petitioners argue that the reliance placed by the University on paras 8(f)(i) to (iii) of the Ministry's Letter dated 31.12.2008 is also misconceived. The petitioners submit that the University's contention that the superannuation age was enhanced to 65 years *only for teachers engaged in classroom teaching*, since there was a shortage of teachers, but that enhancement has no applicability to categories of librarians and directors since there is no shortage in those categories, also has no application to the petitioners. They submit that the University overlooks the fact that IGNOU was constituted by an Act of Parliament, *viz.*, the IGNOU Act which defines who is a teacher; how she is to be appointed; by whom; and the nature of duties to be performed; with provisions setting-out their emoluments and other conditions of service. It is argued that Statute 17 has been framed under the IGNOU Act to provide for conditions of service and code of conduct of '*teachers and other academic staff*' of the University; and Statute 17(9) stipulates the age of retirement for *teachers and other academic staff* and cannot be overridden by scheme dated 31.12.2008.

- 29.6. It is argued that even though Ordinance dated 22.05.2007 has not received the approval of the Visitor till date, that is of no consequence, since by operation of Statute 26(3), every Ordinance made by the Board of Management comes into effect immediately. It is also pointed-out that neither IGNOU



nor the Ministry has not brought to the notice of this court any communication to the contrary from the Visitor.

- 29.7. It is argued that reliance placed by the University upon Ministry's letter dated 19.04.2007 proceeds on a misinterpretation of that letter, since the earlier letter dated 23.03.2007 clearly covers all 'teaching positions' and even letter dated 19.04.2007 clearly says that it is applicable to "...
... *Teachers who are actually engaged in teaching classes/ courses/programmes of study in such institutions*" and clarifies that the exclusion applies only to posts 'equivalent' to teaching positions. It is argued that in the present case, since the University is an ODL institution, the petitioners are *in-fact* teachers and do not claim *equivalence* to teachers.
- 29.8. It is submitted that impugned circular dated 11.05.2012, which in effect says that *other academic staff*, such as the petitioners, may not continue in service beyond the age of 62 years, is *ultra-vires* Statute 17(9) and is therefore manifestly arbitrary. It is argued that as a result, the petitioners were illegally retired upon attaining the age of 62 years, though in view of Statute 17(9) they were entitled to continue in service till the age of 65 years.
- 29.9. It is also urged that in terms of Statute 17(14), petitioners Nos.1 and 2 are also eligible for grant of benefits of career advancement granted by notifications dated 07.12.2018 and 18.09.2020 *w.e.f.* 2005 and 2011 respectively, especially since



petitioners Nos. 3 and 4 have already been granted that benefit by the University by order dated 30.05.2022 with effect from their respective dates of eligibility.

29.10. Finally, it is argued that the distinction sought to be drawn by the University between *teachers* and *other academic staff* is artificial, *ex-facie* contrary to the Act, the Statutes and the Ordinances framed thereunder; and also does not pass muster of intelligible differentia and reasonable nexus with the objects sought to be achieved thereby, and is therefore violative of Articles 14, 16 and 21 of the Constitution.

30. It is pointed-out that *vide* order dated 02.04.2014 made in the present matter this court had observed that if petitioner No. 2 were to succeed in the writ petition, appropriate relief, if otherwise available, will not be denied to her only on the ground of her superannuation on 30.04.2014. Furthermore, by order dated 30.04.2014 made in LPA No.326/2014 titled *Dr. Asha Khare vs. Indira Gandhi National Open University & Ors.*, the Division Bench has also directed that in case the appellant (petitioner No.2 in these proceedings) succeeds in the writ petition, she shall be entitled to all benefits including emoluments which would be due to her as if she had continued in service; and that it would be open to the single Judge, *i.e.* this court, to mould the relief appropriately in that regard.

DISCUSSION & CONCLUSIONS

31. Before proceeding with the other aspects of the matter, since respondent No.1/IGNOU is a University governed by its own Statutes and Ordinances, apart from several office memorandums, circulars



etc. it would be necessary to understand how these various instruments govern and control the affairs of the University.

32. This aspect has been expatiated upon by the Supreme Court in *Govt. of A.P. vs. P. Laxmi Devi*³, in the following words :

“33. According to Kelsen, in every country there is a hierarchy of legal norms, headed by what he calls as the “grundnorm” (the basic norm). If a legal norm in a higher layer of this hierarchy conflicts with a legal norm in a lower layer the former will prevail (see Kelsen's *The General Theory of Law and State*).

“34. In India the grundnorm is the Indian Constitution, and the hierarchy is as follows:

- (i) The Constitution of India;
- (ii) Statutory law, which may be either law made by Parliament or by the State Legislature;
- (iii) Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc.;
- (iv) Purely executive orders not made under any statute.

“35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order. The Constitution is the highest law of the land, and no law which is in conflict with it can survive. Since the law made by the legislature is in the second layer of the hierarchy, obviously it will be invalid if it is in conflict with a provision in the Constitution (except the directive principles which, by Article 37, have been expressly made non-enforceable).”

(emphasis supplied)

³ (2008) 4 SCC 720



33. Section 5 of the Act lays down the framework under which the University has the power to *inter-alia* frame its Statutes. Section 24(d) states, that subject to the provisions of the Act, the Statutes so framed may provide *inter-alia* for the appointment of teachers and other employees of the University including their emoluments and other conditions of service.
34. Section 30(1) of the Act deals with the conditions of service of employees of the University and makes it clear that every employee must be appointed under a written contract and furthermore, that such contract “... *shall not be inconsistent with the provisions of this Act, the Statutes and the Ordinances.*”
35. The hierarchy of statutory instruments that govern the functioning of IGNOU is therefore clear. The Statutes and Ordinances of the University would take precedence over any Office Memorandums, Circulars or Notifications issued by the University or by any Government or its Ministry *unless* they can be harmoniously read together. Needless to add that every statutory instrument must answer to Constitutional principles and mandates.
36. Insofar as the petitioners’ grievances are concerned, the controlling statute is Statute 17, which specifically deals with the terms and conditions of service of *teachers and other academic staff*. The other cognate statute is Statute 18, which deals with the terms and conditions of service of *other employees* of the University.
37. Then comes Ordinance 4 which deals with the manner of appointment of teachers and other academic staff; and Ordinance dated 22.05.2007 which relates to designating certain positions in the University as



teachers; and also consequentially makes the terms and conditions of service of teachers applicable to those who are so designated.

38. Though the regulatory architecture that governs the functioning of the University is fairly complex inasmuch as there is an Act, *viz.*, the IGNOU Act under which the University frames its Statutes, under which the Board of Management frames Ordinances, which are further supplemented by Office Memoranda, Notifications and Circulars issued by the University and the Ministry from time-to-time, the following tabulated summary helps sift the relevant instruments, on which the decision of the present matter turns :

Date	Document	Issuing Authority	Effect
02.06.1992	Circular	IGNOU	Positions in Regional Services Division classified as <i>other academic staff</i> and career advancement scheme and age of retirement applicable to teachers made applicable to them.
07.06.1994	Circular	IGNOU	Positions in Regional Services Division classified as <i>other academic staff</i> and career advancement scheme and age of retirement applicable to teachers made applicable to them, <i>with approval of the Board of Management.</i>
23.03.2007	Office Memorandum	Ministry	Age of retirement of <i>persons holding teaching positions</i> enhanced from 62 years to 65 years in Centrally Funded Institutions.



19.04.2007	Office Memorandum	Ministry	Clarification that enhancement of retirement age from 62 to 65 years <i>applies only to 'teachers', who are actually engaged in teaching classes/ courses/ programmes of study</i> ; and not to any other categories of employees notwithstanding that they hold posts equivalent to teaching positions.
22.05.2007	Ordinance	Board of Management	Persons holding posts of Director, Regional Director, Joint Director, Deputy Director, Assistant Director <i>declared as teachers</i> ; career advancement and retirement age of teachers made applicable to them. Unlike Statutes, an Ordinance made by the Board of Management <i>comes into effect immediately</i> . Though amendment to Ordinance was submitted to the Visitor, no objection or response was received from the Visitor.
15.12.2017	Statute	Ministry	Amendment to Statute 17(9) enhancing retirement age of ' <i>all teachers</i> ' from 62 years to 65 years approved.

39. It is extremely pertinent to note the observations contained in the Minutes of Meeting dated 22.05.2007 of the Board of Management of the University, which explained how teaching in an Open University is different from that in a conventional university; and that *delivery of content and services, evaluation of student performance, development of systems, program evaluation, planning, preparation and production of study material form an integral part of the pedagogy in an ODL institution*. In the said minutes, the Board of Management



also recorded that the University had made no distinction in the selection procedure for teachers and academics, observing that this position was further corroborated by several committees appointed by the University in the past.

40. At this point, it is necessary to summarize and interpret certain twists and turns that the Draft Ordinance on designating certain positions as ‘teachers’ (*inter-alia* the positions held by the petitioners) went through, by way of communications exchanged between the University and the Ministry.
41. As recorded above, the Draft Ordinance was approved by the Board of Management at its meeting held on 22.05.2007 and was forwarded to the Ministry for the consideration of the Visitor as required under Statute 26(4) on 20.06.2007. Having not received any revert from the ministry, the Board of Management re-endorsed its decision at a subsequent meeting on 02.07.2007, which was also communicated to the Ministry on 20.07.2007. Thereafter, noting dated 25.07.2007 proceeded to record that though the period of 04 weeks stipulated in Statute 26 had elapsed since the draft ordinance was first received by the Ministry on 21.06.2007, and the University had not heard anything from the Ministry, it was therefore proposed that the Draft Ordinance be notified, thereby designating certain positions in the University as ‘teachers’ and to have a notification published in the Gazette.
42. After the file had circulated amongst various officers, it transpired that *vide* letter dated 01/02.04.2009, the Ministry advised the University not to implement the provisions of the ordinance “as it



may have wider financial as well as policy implications” without however specifying what the implications may be.

43. Apropos what the Ministry had said, in Minutes of Meeting dated 15.04.2009 (*i.e.* 2 years after the initial approval on 22.05.2007), the Board of Management of University noted that the University had already examined the financial implications, which had been approved by the Financial Committee and the Board of Management of the University; and that the policy decision contained in the ordinance was in accordance with the provisions of section 2(p) and 5(1) of the IGNOU Act. It was further recorded that the “..... *communications of the MHRD are silent on the approval of the visitor in advising the University not to implement the proposed amendments in both the cases.*” Finally, at the meeting of the Board of Management held on 15.04.2009, where one of the items for discussion was the Ordinance on designating certain positions in the University as ‘teachers’, the following came to be recorded :

“BM 99.29.1 Sh. Harvinder Singh, Dy. Secretary, MHRD informed that the MHRD was seized with both the aforesaid proposals and therefore, the same be deferred pending final clearance given by the MHRD. The Chairman informed that both the issues were already well settled insofar as IGNOU was concerned and therefore, necessary detailed clarifications in this regard would be provided to the MHRD suitably.

BM 99.29.2 The Board noted & approved the action as proposed above.”



44. It would appear therefore, that based on what was stated by the representative of the Ministry at the meeting, namely that the Ministry was seized of the proposal *inter-alia* of designating certain positions in the University as ‘teachers’, the Chairman of the Board of Management informed that the issues were “..... already well settled insofar as IGNOU was concerned” but then proceeded to say, that necessary detailed clarifications in that regard would be provided to the Ministry suitably; and this proposed action was approved by the Board of Management.
45. The aforesaid run of events is borne-out by the documents appended as Annexure P-20 (Colly) to Annexure P-22 to the petition.
46. Be that as it may, what is certain is that the decision taken by the Board of Management of the University at its meeting dated 22.05.2007, approving the Ordinance designating certain positions in the University as ‘teachers’, which decision was re-affirmed on 02.07.2007, was never recalled or modified or otherwise held in abeyance, either on the directions of the Visitor or by the Legislature. Nothing to the contrary has been brought to the notice of this court or suggested by learned counsel for the parties.
47. Therefore, in terms of Statute 26(4), the Ordinance as approved by the Board of Management on 22.05.2007 came into effect immediately; and regardless of what came to be recorded in Minutes of Meeting dated 15.04.2009, namely that the University would send necessary detailed clarification to the Ministry, the Ordinance that had already come into force, and its effect, could not have been ignored.



48. The dénouement of the above is that though the Ministry expressed certain reservations in relation to Ordinance dated 22.05.2007 (without giving any specifics of the so-called “wider financial as well as policy implications”), the *financial implications for IGNOU were duly considered and approved by its Financial Committee and its Board of Management*; and the Board of Management of the University *never recalled* Ordinance dated 22.05.2007.
49. In fact, a conjoint reading of sections 2(p) and 40(2) of the Act; and Statutes 7(2)(a), 26(1), 26(3) and 26(4) of IGNOU indicate that an Ordinance to be made by the Board of Management, can designate certain posts as teachers; and such ordinance come into effect immediately upon being made. Thereafter, it is only the Visitor or either House of the Parliament, who could interfere and whose decision to annul, disallow, suspend, or modify such ordinance; and further that, even a decision to annul, disallow, suspend, or modify an ordinance would not affect any action taken in terms of the ordinance prior to such decision.
50. Subsequently, *vide* communication dated 15.12.2017 received from the Ministry in relation to an amendment proposed to Statute 17(9), the Ministry communicated to the University the approval accorded by the Visitor confirming that the age of retirement of *teachers* would stand enhanced from 62 years to 65 years. *Though the University argues that this enhancement of retirement age applies only to teachers, this submission overlooks the fact that by its own circulars dated 02.09.1992 and 07.06.1994 the University had designated members of the Regional Services Division as ‘other academic staff’*



with the approval of the Board of Management, which circulars also specifically stated that the age of retirement of teachers and other academic staff would be the same. Subsequently vide Ordinance dated 22.05.2007, after a detailed discussion of the nature of teaching in an ODL, the University had declared persons holding certain positions in the Regional Services Division (among others) as teachers, including with specific reference to career advancement and retirement age. This Ordinance continues to remain in-force since it was never recalled by the University, nor was it held in abeyance at the instance of the Visitor or of the Legislature. The correct position therefore is, that even prior to when the Visitor accorded his approval to the proposal for enhancement of the retirement age of *teachers*, the petitioners had already been included within the definition of '*teachers*' and were therefore entitled to the retirement age of 65 years.

51. In this backdrop, it requires to be appreciated that the proposal made by the Board of Management of the University *vide* Minutes of Meeting dated 24.01.2010, proposing to amend Statute 17(12) and (13) on *re-designating* certain categories of academics as teachers, was itself *misconceived* and *unnecessary*; and therefore the fact that such proposal did not receive the approval of the Visitor is of no consequence.
52. Two more aspects require to be emphasised :



- 52.1. *Firstly*, ordinances made by the Board of Management come into effect immediately⁴ as opposed to Statutes (additions, amendments, or repeal) which require the assent of the Visitor before they come into effect⁵.
- 52.2. *Secondly*, what the Visitor has rejected is *only* the amendment to Statute 17(12) and (13); and there is nothing to indicate that the Visitor has rejected the Ordinance approved by the Board of Management on 22.05.2007. It must be stressed that for an Ordinance to be invalid, what IGNOU's statutory regime requires, is a suspension, rejection or modification by the Visitor⁶ or by the Houses of Parliament⁷. *The Ministry or its Departments have no power to give a go-by to what has been approved by the Board of Management.* Though the decision by the Visitor or by the Houses of Parliament is final, it is the Visitor or the Houses of Parliament who/which must make that decision and not the Ministry or any Department under it.
53. Most importantly, it is noticed that Statute 7 empowers the Board of Management *inter-alia* to classify and designate employees of the University. It was in exercise of this power that *vide* circulars dated 02.06.1992 and 07.06.1994 certain positions in the Regional Services Division were classified as *other academic staff*, further stipulating that the career advancement scheme shall be applicable to such other

⁴ Statute 26(3)

⁵ Section 25(4)

⁶ Statute 26(4)

⁷ Section 40(2)



academic staff and that their age of retirement shall be same as that of teachers.

54. For completeness, it may also be noted that section 40 of the IGNOU Act stipulates a ‘laying’ requirement, whereby every Statute, Ordinance or Regulation made under the Act is required to be laid before each House of Parliament for a total period of 30 days “..... *in one session or in two or more successive sessions*” as soon as may be after it is made; and that, if both Houses agree to make any modification in a Statute, Ordinance or Regulation or agree that it should not be made, such Statute, Ordinance or Regulation shall have effect only in such modified form or be of no effect, as the case may be. This provision further clarifies that *any action taken* under a Statute, Ordinance or Regulation previous to such modification or annulment by Parliament, *shall not be invalidated*.
55. The record reflects that the Draft Ordinance approved by the Board of Management on 22.05.2007 was forwarded to the Ministry on 20.06.2007 as required under Statute 26(4); and since the University did not receive any revert from the Ministry, the Board of Management re-endorsed its decision at its subsequent meeting on 02.07.2007, which (latter) decision was also communicated to the Ministry on 20.07.2007.
56. It is not the case here that Ordinance dated 22.05.2007 was either modified or annulled or invalidated by the Visitor or by the Legislature.
57. It must be presumed that the Ministry took requisite steps for placing the Ordinance before the Visitor and the Legislature. In any event,



any default on the part of the Ministry would not affect the validity of the Ordinance or any action taken thereunder, since by the express wording of section 40(2), even if the Ordinance was to be modified or annulled or invalidated, that would not invalidate anything previously done under the Ordinance.

58. From a perusal of the foregoing tabulated summary and the discussion, the following inevitable conclusions arise :

58.1. The University has 03 kinds of employees : teachers, other academic staff and other employees.

58.2. The Board of Management of the University is empowered to make new or additional Statutes or to amend or repeal existing Statutes⁸. Addition, alteration, amendment or repeal of a Statute is not valid unless it receives the assent of the Visitor⁹.

58.3. Furthermore, the Board of Management is also empowered to make Ordinances or to amend or repeal them¹⁰. Every Ordinance made by the Board of Management comes into effect immediately.¹¹ All Ordinances made by the Board of Management are to be submitted to the Visitor within 03 weeks from the date of adoption; and the Visitor may, within 04 weeks of receipt of an Ordinance, inform the University about any objection and direct that the operation of an Ordinance shall remain suspended until the Visitor has had the opportunity of exercising his power of disallowance. The Visitor may either

⁸ Section 25(2)

⁹ Section 25(4)

¹⁰ Section 26(1) and 26(2)

¹¹ Section 26(3)



withdraw such order of suspension or disallow the ordinance and the Visitor's decision is final. The Visitor is required to inform the University about any such objection or direction within 04 weeks of receipt of the Ordinance.¹²

58.4. As far back as on 02.06.1992, in exercise of its powers under Statute 7(2)(a) the University issued a circular stating that the positions in Regional Services Division be classified as *other academic staff* and that the career advancement scheme and retirement age applicable to *teachers* would also be applicable to such *other academic staff*. Circular dated 02.06.1992 was further reiterated by a subsequent circular dated 07.06.1994 issued by the University *with the approval of the Board of Management*. At this time, the retirement age of teachers was 62 years, which therefore also became the retirement age for other academic staff, by reason of the aforesaid two circulars.

58.5. Next came letter dated 23.03.2007 from the Ministry, which said that the retirement age of persons holding 'teaching positions' shall stand enhanced from 62 years to 65 years in all centrally funded institutions. To obviate some confusion that had arisen, by a subsequent letter dated 19.04.2007, the Ministry clarified that the enhancement of retirement age from 62 years to 65 years would apply *only to teachers who are actually engaged in teaching classes, courses and programmes, but shall not be applicable to any other categories of employees*

¹² Section 26(4)



in such institutions, notwithstanding the fact that the posts they hold may be considered equivalent to teaching positions.

58.6. Thereafter came Ordinance dated 22.05.2007 issued by the Board of Management of the University, which *inter-alia* *specifically declared persons holding posts of Director, Regional Director, Joint Director, Deputy Director, Assistant Director and Assistant Regional Director in the Regional Services Division as teachers* and thereby made the career advancement scheme and the retirement age of teachers applicable to the said persons. Notably, no objection was received from the Visitor nor was the operation of the Ordinance suspended or any disallowance thereto made by the Visitor under Statute 26(4); and therefore, the Ordinance, which came into effect immediately as per the mandate of Statute 26(3), has remained in-force ever since. Nothing to the contrary has been brought to the notice of this court in relation to Ordinance dated 22.05.2007. In fact, the brief note of reasons that accompanied the Ordinance gives a perfectly rational basis and justification for designating persons holding posts in the Regional Services Division as teachers – namely that teaching at an open university is very different from that at a conventional university; that the pedagogy of distance education encompasses activities such as delivery of content and services to students, evaluation of student’s performance, system development, program evaluation, planning, preparation and production of audio/programmes and so on. The note drew



upon the recommendations of the Takwale Committee appointed in 1992, to observe that the role of an academic in the distance education system cannot be conceived-of only in the sense of *teaching within a classroom* but as a distance educator in the first place, while also being a specialist and an experienced professional otherwise.

58.7. Then came the amendment to Statute 17(9) issued by the Ministry on 15.12.2017 enhancing the retirement age of ‘all teachers’ from 62 years to 65 years. Since persons holding positions in the Regional Services Division, earlier referred to as other academic staff, already stood designated as teachers by Ordinance dated 22.05.2007, the amendment to Statute 17(9) made on 15.12.2017 referring to all teachers ipso-facto also applied to members of the Regional Services Division – which included the petitioners – who had been designated as teachers.

58.8. Section 2(p) of the Act permits the University, acting through its Board of Management, to re-designate persons as teachers. This is precisely what the University did *vide* Minutes of Meeting dated 22.05.2007 of the Board of Management, whereby, removing all ambiguity in this behalf, by Ordinance the University re-designated specified persons serving in the Regional Services Division *as teachers*. To re-emphasise, there was therefore no further requirement to seek *equivalence* between teachers and specified persons serving in the Regional



Services Division, since the latter had already been *specifically included within the definition of 'teachers'*.

58.9. As for the subsequent proposal comprised in Minutes of Meeting dated 21.04.2010, seeking to amend Statute 17(12) and 17(13) purportedly to re-designate other academic staff as teachers, it can at best be said that the proposal was itself misconceived and contrary to the extant position, since other academic staff had already been included within the definition of teachers, as discussed above. Accordingly, communication dated 23.03.2017 received from the Visitor, declining to approve that proposal, is of no relevance in the present case, since the Board of Management of the University had already re-designated other academic staff as teachers by Ordinance dated 22.05.2007, as discussed above, which the Board of Management was empowered to do under Statute 7(2)(a) of the University.

58.10. Also, on point of fact, there cannot be any cavil that the petitioners were definitely engaged in teaching since they engaged in pedagogy – though in the format required in an open university.

59. For completeness, it must be noted that *vide* order dated 05.09.2023 made in these proceedings, two recent decisions of the Supreme Court relating to enhancement of retirement age were put to counsel, being judgments titled ***Central Council for Research in Ayurvedic***



*Sciences & Anr. vs. Bikartan Das & Ors.*¹³; and *Dr. Prakasan M.P. & Ors. vs. State of Kerala & Anr.*¹⁴ and counsel were directed to address this court on those judgements.

60. Upon considering the arguments put-forth by counsel for the parties, in the opinion of this court, both those cases are clearly distinguishable on facts. In those matters, relief was being sought based on the argument that the *role and function being performed* by the petitioners in those cases *was the same* as that of teachers. In the present case however, the petitioners who were members of the Regional Services Division, and were referred to as ‘other academic staff’ to begin with, were subsequently re-designated as ‘teachers’; and are therefore entitled to the same retirement age and career advancement scheme as ‘teachers’. It must be emphasised, that in the present case, the petitioners are *not claiming equivalence* to ‘teachers’ based on the role or function that they performed.
61. As a sequitur to the above discussion, the petition is allowed; thereby, holding that all four petitioners are/were entitled to continue in service and superannuate at the age of 65 years.
62. Since petitioners Nos.1 and 2 have superannuated in 2012 and 2014 respectively; and have now even crossed the age of 65 years, insofar as petitioners Nos. 1 and 2 are concerned, it is directed that they shall be entitled to all financial/monetary, pensionary benefits as well as full back-wages, to which they would have been entitled had they

¹³ 2023 SCC OnLine SC 996

¹⁴ 2023 SCC OnLine SC 1074



retired at the age of 65 years, including benefits under the career advancement scheme of the University.

63. Since petitioners Nos. 3 and 4 have not yet reached the age of superannuation *i.e.* 65 years, the University is directed to reinstate petitioners Nos. 3 and 4 in service till they attain the age of superannuation, *i.e.* 65 years. It is further clarified that petitioners Nos. 3 and 4 shall be entitled to all financial/monetary, pensionary benefits as well as full back-wages, including benefits under the career advancement scheme of the University; without counting any break in their service.
64. Petition stands disposed-of in the above terms.
65. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 12, 2023

ds/ak/uj