



PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 9<sup>TH</sup> DAY OF AUGUST 2023 / 18TH SRAVANA, 1945

OP (KAT) NO. 51 OF 2023

AGAINST THE JUDGMENT DATED 23.1.2023 IN OA (EKM).NO.151/2023 OF THE  
KERALA ADMINISTRATIVE TRIBUNAL, ERNAKULAM

PETITIONER/APPLICANT:

DIVYA. S, AGED 44 YEARS, W/O. RAJEEV, AGED 44 YEARS,  
WORKING AS NON-VOCATIONAL TEACHER (SENIOR), GOVERNMENT HSS,  
CHALAKKUDY, CHALAKKUDY, THRISSUR DISTRICT -680 307,  
RESIDING AT KRRA - 127, KOLATHERI ROAD, MARADU P.O.,  
ERNAKULAM DISTRICT, PIN - 682304

BY ADV.SRI.GEORGE POONTHOTTAM (SR.)ALONG WITH  
ADVS.M/S.NISHA GEORGE & A.L.NAVANEETH KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001.
- 2 THE DIRECTOR OF COLLEGIATE EDUCATION, DIRECTORATE OF  
COLLEGIATE EDUCATION, 6TH FLOOR, VIKAS BHAVAN, VIKAS BHAVAN  
P.O., THIRUVANANTHAPURAM - 695 033, KERALA.
- 3 THE KERALA PUBLIC SERVICE COMMISSION, THULASI HILLS, PATTOM  
PALACE P.O., THIRUVANANTHAPURAM- 695 004, REPRESENTED BY  
ITS SECRETARY.

\*ADDL.4 THE UNIVERSITY GRANTS COMMISSION ( UGC ), BAHADUR SHAH  
ZAFAR MARG, NEW- DELHI - 110002, REPRESENTED BY ITS  
CHAIRMAN.

\*IS IMPEADED AS ADDITIONAL RESPONDENT AS PER ORDER DATED  
28/02/2023 IN I.A.1/2023 IN OP(KAT) 51/2023.

SRI.S.KRISHNAMOORTHY, CGC  
SRI. P.C. SASISIDHARAN, SC FOR PSC,  
SRI. SAIGI JACOB PALATY, SR.G.P.

THIS OP(KERALA ADMINISTRATIVE TRIBUNAL) HAVING BEEN FINALLY HEARD  
ON 09.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**(C.R.)**

ALEXANDER THOMAS &amp; C. JAYACHANDRAN, JJ.

O. P. (KAT) No. 51 of 2023

*(arising out of the impugned final order dated 23.1.2023 in  
O.A. (Ekm) No. 151/2023 on the file of the KAT, Ekm Bench)*

Dated this the 9<sup>th</sup> day of August, 2023**J U D G M E N T****ALEXANDER THOMAS, J.**

The instant Original Petition, instituted under Articles 226 & 227 of the Constitution of India, is directed against the impugned Ext.P-3 final order rendered on 23.1.2023 by the Kerala Administrative Tribunal, Ernakulam Bench, whereby O.A.No.151/2023 has been dismissed. The petitioner herein is the applicant in the O.A. and the respondents herein are the respondents in the O.A.

2. Heard both sides.

3. The prayers in the instant Ext.P-2 Original Application, O.A.(Ekm) No. 151/2023, filed by the petitioner herein, before the Kerala Administrative Tribunal, Ernakulam Bench, are as follows:

- “(i) To declare that respondents 1 to 3 cannot fix any upper age limit for appointment to the post of Assistant Professor in the services of respondents 1 and 2 contrary to the stipulations in the UGC Regulations;*
- (ii) To declare that the upper age limit fixed by respondents to the post of Assistant Professor has become redundant and inoperative in view of the UGC Regulations, 2018;*
- (iii) To direct the 3<sup>rd</sup> respondent to include the applicant Annexure-A6 short list prepared pursuant to Annexure A3 notification and enable her to*



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- participate in the recruitment process thereafter.*
- (iv) To declare that the applicant is fully qualified and eligible for appointment as Assistant Professor as per the stipulations in the UGC Regulations;*
  - (v) To declare that the exclusion of the applicant from Annexure-A6 short list citing the upper age limit for the post is totally arbitrary and contrary to the UGC Regulations;*
  - (vi) To pass such other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

4. The essential challenge made by the petitioner was against the prescription of the upper age limit of 40 years in Anx.A-3 selection notification dated 11.12.2019 issued by the Kerala Public Service Commission (PSC), for selection to the post of Assistant Professor in History and other subjects, under the Department of Collegiate Education of the Government of Kerala.

5. The Tribunal, after hearing both sides, has held that, the matter relating to fixation of upper age limit, for recruitment and appointment to a post in Government Colleges of the State, is a matter which is exclusively lying within the policy domain of the State. Further, the Tribunal has also noted that, there are statutory provisions, in the statutory special rules, relating to the eligibility and qualifications of Assistant Professors in Government Colleges in Kerala, which prescribe the said upper age limit and it is on that basis, the PSC has issued Anx.A-3 selection notification prescribing the said upper age limit of 40 years.



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6. According to the petitioner, he attained the age of 41 years as on the cut-off date of 1<sup>st</sup> of January of the year in which the selection notification has been issued, *i.e.* as on 1.1.2019, since Anx.A-3 selection notification has been issued on 11.12.2019. It is also common ground that, going by the statutory regulations framed by the State, the upper age limit is to be determined with effect from the first day of January of the year in which the selection notification is issued.

7. The Tribunal has also noted that, mere non prescription of upper age limit, in the University Grants Commission (UGC) Regulations, will not confer any right on the petitioner to claim that no upper age can be prescribed by the State authorities. Further, the Tribunal has also noted that, no regulation whatsoever has been framed by the UGC, prescribing any such upper age limit for selection of Assistant Professors in various colleges. It is on this basis that the Tribunal has dismissed the above O.A.

8. We have heard both sides and considered the rival pleas and the pleadings and materials on record. After hearing both sides, we are of the view that the Tribunal cannot be faulted



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with for having dismissed the above O.A. and we proceed to give our reasons for arriving at the said conclusion.

9. It is common ground that, going by the prescriptions in the statutory special rules, framed by the State Government, the upper age limit, for appointment to the post of Lecturer/Assistant Professor in various Government Colleges, is 40 years, subject to certain other age relaxations for SC/ST/backward classes, etc. Further, there are certain general regulations, framed by the State, laying down the criteria for determining the upper age limit, wherein, it is stipulated that the upper age limit is to be determined with reference to the first day of January of the year in which the selection notification is issued. In the instant case, on this basis, the PSC has stipulated, in Anx.A-3 selection notification dated 11.12.2019, that the upper age limit is 40 years. The said upper age limit is to be determined with reference to the first day of January of the year in which the selection notification has been issued, which, in the instant case, is 1.1.2019. The applicant has, admittedly, crossed the age of 40 years as on 1.1.2019. It is on this basis that the PSC has rejected the application and candidature of the petitioner for selection to the post of Assistant Professor in



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History in various Government Colleges.

10. One of the prime arguments raised by the petitioner is that the UGC Regulations are silent about the upper age limit and that, therefore, the UGC has not intended any upper age limit at all and that, the Officers of the UGC have issued certain clarifications, as per Anx.A-5, that the UGC has not prescribed any upper age limit, as eligibility, for appointment to the post of Assistant Professor in various colleges. So, the contention is that, since the UGC has not prescribed any explicit provision in that regard, the State is denuded of its competence to prescribe any upper age limit, as otherwise, it could be impinging upon matters which fall exclusively within the zone of co-ordination and determination of standards in institutions for higher education referable to Entry 66 of List I of the Seventh Schedule of the Constitution of India. The argument is that, the University Grants Commission Act has been enacted by the Parliament, on the basis of its legislative competence referable, primarily, to Entry 66 of List I (Union List) of the Seventh Schedule of the Constitution of India and that the impugned norms of the State is repugnant to the afore Union Law.

11. Earlier, there were quite a few litigations wherein the



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State, after receiving the grants from the UGC, had insisted that the superannuation age of college teachers would be 55 years, which is now 56 years. Whereas, the UGC Scheme has envisaged that the retirement age will be 65 years, etc. A plea was taken up by the teachers that, after having received the grants from the UGC, the State cannot accept a part of the UGC Scheme and then reject the other provisions of the UGC Scheme and insist that the State has the prerogative to prescribe a lower retirement age. The said plea has been rejected by the Apex Court in decisions as in ***Dr. J. Vijayan & Ors. v. State of Kerala & Ors.*** [2022 SCC OnLine SC 958]. The Apex Court has held, in ***Dr.J.Vijayan's*** case supra, that fixation of superannuation age for college teachers in the State of Kerala is, essentially, a policy decision of the State Government and that, the UGC Regulations will have to be consistent with the directions on the questions of policy, etc., and that, the State has the legislative competence and correspondingly, it will also have the executive competence to deal with issues, like superannuation age. It will be profitable to refer to paras 8, 9, 27 to 29 of the decision of the Apex Court in ***Dr.J.Vijayan's*** case supra [2022 SCC OnLine SC 958], which read as follows:



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

**9.** *In P. Suseela v. University Grants Commission [(2015) 8 SCC 129], this Court held that directions in exercise of powers under Section 20 of the UGC Act are made to provide for coordination and determination of standards, which lies at the core of the UGC Act. It is, therefore, clear that any regulation made under Section 26 of the UGC Act must conform to the directions issued by the Central Government under Section 20 of the UGC Act.*

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

**28.** *The Division Bench of the High Court, after hearing the respective parties found, and rightly, that most of the issues raised in the appeals were concluded against the Appellants by the judgment and order of this Court in Jagdish Prasad Sharma [(2013) 8 SCC 633]. The Division Bench observed that this Court had held that it was mandatory for the UGC to be guided by the directions issued by the Central Government on questions of policy relating to national purposes by discharging its functions under the UGC Act. The Division Bench found that the UGC was bound to follow the directions issued by the Central Government in view of Section 20 of the UGC Act.*

**29.** *The Division Bench of the High Court also found that the State Governments had the discretion to accept the scheme proposed under the UGC Regulations relying on the judgment in Jagdish Prasad Sharma (supra) and in particular Paragraph 72, thereof. The Division Bench held:—*

*“14. It is in the light of the above authoritative pronouncement of the Apex Court, that the present contentions of the counsel for*



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

*15. On the next contention that the Scheme under the UGC Regulations, 2010 has to be accepted in full as a composite one and that adoption of the Scheme without enhancing the retirement age of teachers was bad, we find that the said issue has been concluded by the Supreme Court. Though a similar contention was put forward in Jagdish Prasad Sharma (supra) with respect to the Government Order dated 10.12.2010, the same did not find favour with the Court. The said Government Order evidenced herein as Ext. P10 in W.A. No. 854 of 2016 provides at paragraph 6 as follows-*

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

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



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*Paragraph 5 that deals with the above aspect is extracted hereunder for convenience of reference:*

*5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letter cited above shall continue to apply.*

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

\* \* \*

*17. In the view that we have taken above, we do not consider it necessary to refer to or discuss the other decisions on which reliance has been placed. The question of fixing the retirement age of teachers is essentially a matter of policy. The said policy would have to be adopted by the State Government taking into account a number of factors. As contended before us by the learned Additional Advocate General, the State of Kerala does not suffer from a dearth of qualified candidates to be appointed as teachers. There are a large number of qualified teachers, including Ph.D. Holders who are waiting for employment. They are persons trained in advanced methods of instruction and teaching techniques. At the same time, teachers like the appellants who are approaching retirement age are not persons who could be described as aged or infirm. They are in their prime of life, endowed with the rich experience both in teaching as well as in guiding research projects. The wisdom of the decision to superannuate them at such a prime point of time in their lives is also questionable. A decision can be taken only by balancing both the above aspects as well as other relevant factors that may require to be taken into account. Such an informed decision would have to be taken by the law makers and not by courts. As at present, the UGC Regulations, 2010 cannot affect the State laws governing the age of*



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*superannuation. UGC Regulations have in recognition of the above position granted a discretion to the State to take a decision with respect to the manner of implementation of the Regulations. Accordingly, the State Government has decided not to enhance the age of retirement. We notice that, a similar claim for enhancement in retirement age has been considered by another Division Bench of this Court and rejected in Mathai M.M. v. Elizabeth Xavier [(2011) 2 KLT 468]. The said decision is also binding on us. ”*

12. A reading of para 29 of **Dr.J.Vijayan's** case supra would indicate that Their Lordships of the Apex Court has referred to para 14 of the impugned judgment of the Divison Bench of this Court, wherein, it has been held, *inter alia* that, in view of the rulings of the Apex Court, relied on therein, the UGC does not have the power to stipulate the service conditions of teachers and that, such power is vested entirely with the State, etc. This aspect of the matter was also held in the earlier decisions of the Apex Court in cases as in **Jagdish Prasad Sharma & Ors. v. State of Bihar & Ors.** [(2013) 8 SCC 633]. It will be profitable to refer to paras 68 to 72 **Jagdish Prasad Sharma's** case supra, which read as follows:

**“68.** *Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is*



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one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.

**69.** To some extent there is an air of redundancy in the prayers made on behalf of the respondents in the submissions made regarding the applicability of the Scheme to the State and its universities, colleges and other educational institutions. The elaborate arguments advanced in regard to the powers of UGC to frame such regulations and/or to direct the increase in the age of teachers from 62 to 65 years as a condition precedent for receiving aid from UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be denied. The question that assumes importance is whether in the process of framing such regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions?

**70.** The authority of the Commission to frame regulations with regard to the service conditions of teachers in the Centrally-funded educational institutions is equally well-established. As has been very rightly done in the instant case, the acceptance of the Scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any Central legislation.

**71.** However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, the acceptance of the Scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the Scheme. The problem lies in the desire of the State and its authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the Scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the Scheme with its financial implications from 1-4-2010.

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



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

A reading of the said decision of the Apex Court in **Jagdish Prasad Sharma's** case supra would clearly show that the policy considerations of the State, in the matter of such aspects, will have to be duly taken into account in adjudicating such issues.

13. After hearing both sides, we are of the view that the prescription in the statutory special rules, relating to Government College Teachers, promulgated by the State Government, in the instant case, would exclusively or predominantly lie within the legislative competence of the State, as per Entry 41 (Public Services) of List II (State List) of the Seventh Schedule. The State will also have the legislative competence, referable to Entry 25 of List III (Concurrent List) of the Seventh Schedule, which deals with Education. The instant case is one dealing with the prescription for upper age limit for recruitment to the entry level post of Government College Teachers in Kerala, which are Colleges owned and managed by the State of Kerala. Therefore, there could not be any doubt that the State will have its legislative



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competence, essentially, on the basis of Entry 41 of List II (State List) of the Seventh Schedule of the Constitution of India read with Entry 25 of List III. Certainly, matters relating to minimum standards of education, which may fall within the zone of Entry 66 of List I (Union List), which deals with co-ordination and determination of standards in institutions for higher education will not come under the purview of the State. The prescription of upper age limit cannot be said to be a matter which would inevitably lead to reduction of minimum standards of education. On the other hand, the learned Senior Government Pleader has argued that, if the plea of the petitioner is accepted, then even a person, who is of the age of 55, should be treated as eligible to apply through the PSC process for the post of Assistant Professor, inasmuch as the superannuation age is now 56 years. The learned Senior Government Pleader would point out that, ordinarily, it is matters of common knowledge that, at least for entry level posts, like Assistant Professor, a personnel of younger age may be more preferable than a personnel who is much elder in age. We need not get into those issues, as we are of the considered view that the prescription of upper age limit for selection to the post of Assistant Professor in



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Government Colleges would fall within the legislative competence of the State referable to Entry 41 of List II read with Entry 25 of List III of the Seventh Schedule.

14. Even going by the case set up by the petitioner, the UGC Regulations has not prescribed any upper age limit whatsoever for the post of Assistant Professor. On the other hand, what the said Regulation has prescribed, regarding age limit, is retirement age, which the Apex Court has, unequivocally, held to fall within the domain of the legislative competence of the State Government, even if the State Governments receive grant from the UGC and even if the said UGC Scheme stipulates a condition regarding higher superannuation age.

15. In that regard it may also be pertinent to refer to the dictum laid down by the Seven Judge Bench of Apex Court in the celebrated decision in ***Gujarat University and Anr. v. Krishna Ranganath Mudholkar and Ors.*** [AIR 1963 SC 703], which has dealt with the various aspects regarding the impact of Union Law referable to Entry 66 of List I, *vis-a-vis* the State enactments. It may be pertinent to refer to paras 24 to 27 of ***Gujarat University's*** case supra, which read as follows:



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**24.** Counsel for the University submitted that the power conferred by Item 66 of List I is merely a power to coordinate and to determine standards i.e. it is a power merely to evaluate and fix standards of education, because, the expression “coordination” merely means evaluation, and “determination” means fixation. Parliament has therefore power to legislate only for the purpose of evaluation and fixation of standards in institutions referred to in Item 66. In the course of the argument, however, it was somewhat reluctantly admitted that steps to remove disparities which have actually resulted from adoption of a regional medium and the falling of standards, may be undertaken and legislation for equalising standards in higher education may be enacted by the Union Parliament. We are unable to agree with this contention for several reasons. Item 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in Item 66 or elsewhere in the Constitution which supports the submission that the expression “coordination” must mean in the context in which it is used merely evaluation, coordination in its normal connotation means harmonising or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to coordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by Item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power.

**25.** There is nothing in the entry which indicates that the power to legislate on coordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to coordinate, and of necessity, implied therein is the power to prevent what would make coordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. It is true that “medium of instruction” is not an item in the Legislative List. It falls within Item 11 as a necessary incident of the power to legislate on education : it also falls within Items 63 to 66. Insofar as it is a necessary incident of the powers under Item 66 List I it must be deemed to be included in that item and therefore excluded from Item 11 List II. How far State legislation relating to



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*medium of instruction in institutions has impact upon coordination of higher education is a matter which is not susceptible, in the absence of any concrete challenge to a specific statute, of a categorical answer. Manifestly, in imparting instructions in certain subjects, medium may have subordinate importance and little bearing on standards of education while in certain others its importance will be vital. Normally, in imparting scientific or technical instructions or in training students for professional courses like law, engineering, medicine and the like existence of adequate text books at a given time, the existence of journals and other literature availability of competent instructors and the capacity of students to understand instructions imparted through the medium in which it is imparted are matters which have an important bearing on the effectiveness of instruction and resultant standards achieved thereby. If adequate textbooks are not available or competent instructors in the medium, through which instruction is directed to be imparted are not available, or the students are not able to receive or imbibe instructions through the medium in which it is imparted, standards must of necessity fall, and legislation for coordination of standards in such matters would include legislation relating to medium of instruction.*

*26. If legislation relating to imposition of an exclusive medium of instruction in a regional language or in Hindi, having regard to the absence of text books and journals, competent teachers and incapacity of the students to understand the subjects, is likely to result in the lowering of standards, that legislation would, in our judgment, necessarily fall within Item 66 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by Item 11 of List II.*

*27. It must be observed, that these observations have been made by us on certain abstract considerations which have been placed before us. We have no specific statute the validity of which, apart from the one which we will presently mention, is challenged.”*

16. In this regard, it is pertinent to consider as to whether the prescription of upper age limit, for appointment to entry level post of Government College Teachers, could inevitably and directly lead to reduction of minimum standards or disparity of standards in such institutions of higher education. By no such other



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imagination, can it be conceived that prescription of upper age limit for entry level teaching posts in Government Colleges would directly and inevitably lead to reduction of minimum standards or disparity of standards of such institutions of higher education. In that regard, it is to be noted that if the plea of the petitioner is accepted, then it will lead to highly unreasonable consequences, inasmuch as a person, even of the age of 55 years, will have to be considered to be eligible to apply for the post of Assistant Professor in Government Colleges, even though the retirement age prescribed by the State is 56.

17. In the light of these aspects, we are of the view that, the Tribunal is fully justified in concluding that the State has the necessary legal competence to prescribe the abovesaid condition of upper age limit, which has been followed by the PSC in the instant case.

18. An alternate plea has also been made by the counsel for the petitioner, stating that in Anx.A-3 selection notification, issued by the PSC, there is no provision for upper age limit for provisional employees. That, the said relaxation is not extended in the case of the petitioner merely on the ground that he is a regular



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employee, though his probation has not been declared.

19. The counsel for the petitioner would submit that, it is true that the petitioner has been regularly appointed to the said post of vocational teacher, but his probation has not been declared and therefore, the relaxation in Anx.A-3 selection notification, which is meant for provisional/temporary employees, should also be extended to him.

20. Per contra, Sri.P.C.Sasidharan, learned Standing Counsel for the PSC, would point out that the said age relaxation in the selection notification is only for provisional/temporary employees, in the light of the previous verdict of the Apex Court in ***Narayani & Ors. v. State of Kerala & Ors.*** [1984 KLT 17 (SC) = AIR 1984 SC 534] and the said benefit cannot be extended in the case of the petitioner, who is admittedly a regular employee and merely because his probation has not been declared.

21. After hearing both sides, we are not impressed with the said argument of the petitioner and we overrule the said plea. Further, we note that the petitioner has not challenged the legality and validity of the said relaxation provision made by the PSC in Anx.A-3 selection notification, which is now permitted only for



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..19..

provisional employees. In other words, no grounds are made out to interfere with the well considered verdict of the Tribunal. The petition fails and hence, the Original Petition will stand dismissed.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C. JAYACHANDRAN, JUDGE

MMG

APPENDIX OF OP (KAT) .NO.51/2023PETITIONER'S ANNEXURES :

- ANNEXURE-A1 TRUE COPY OF THE ORDER NO.E7/6129/2012 DATED 01.06.2016 ISSUED BY THE DIRECTOR OF VOCATIONAL HIGHER SECONDARY EDUCATION.
- ANNEXURE-A2 TRUE COPY OF THE ORDER NO.E7/1771/2021 DATED 17.04.2021 ISSUED BY THE DIRECTOR OF GENERAL EDUCATION.
- ANNEXURE-A3 TRUE COPY OF THE NOTIFICATION DATED 11.12.2019 FROM CATEGORY NO. 283/2019 TO 304/2019 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.
- ANNEXURE-A4 . TRUE COPY OF THE RELEVANT PORTION OF THE 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, 2018 DATED 18TH JULY 2018
- ANNEXURE-A5 TRUE COPY OF THE SCREENSHOT TAKEN FROM THE WEBSITE OF THE UGC REGARDING AGE LIMIT AND RELAXATION
- ANNEXURE-A6 TRUE COPY OF THE NOTIFICATION PUBLISHED BY THE 3RD RESPONDENT UNDER CATEGORY 298/2019 DATED 03.12.2022
- ANNEXURE-A7 TRUE COPY OF THE RELEVANT PORTIONS OF THE GENERAL GUIDELINES ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION AND OBTAINED FROM THE WEBSITE VIZ. [HTTPS://WWW.KERALAPSC.GOV.IN/SITES/DEFAULT/FILES/INLINE-FILES/N-GENERAL-CONDITIONS"](https://www.keralapsc.gov.in/sites/default/files/inline-files/n-general-conditions)
- ANNEXURE-A8 TRUE COPY OF THE REPRESENTATION DATED 13.12.2021 SUBMITTED BY THE APPLICANT BEFORE THE CHAIRMAN, PUBLIC SERVICE COMMISSION
- EXHIBIT-P1 TRUE COPY OF GOVERNMENT ORDER BEARING G.O. (P)NO. 18/2019/HEDN DATED 29.06.2019.
- EXHIBIT-P2 TRUE COPY OF O.A.(EKM)NO. 151/2023 FILED BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM ON 19.01.2023.
- EXHIBIT-P3 TRUE COPY OF THE ORDER DATED 23.01.2023 IN O.A.(EKM) NO. 151/2023 PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH AT ERNAKULAM.