



2025:DHC:8801-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 12 March 2025*

*Pronounced on: 6 October 2025*

+ LPA 118/2024 & CM APPL. 8491/2024, CM APPL. 24020/2024, CM APPL. 47596/2024

INDIRA GANDHI NATIONAL OPEN UNIVERSITY AND  
ORS.

.....Appellants

Through: Mr. Sudhir Nandrajog, Sr. Adv.  
with Mr. Aly Mirza and Ms. Ankita Singh,  
Advs. for IGNOU

versus

DR. T.R SRINIVASAN AND ORS

.....Respondents

Through: Mr. Ujjwal Kumar, Ms. Rakhi  
Kaushik, Mr. Dharmendra and Mr. Abhinav  
Kumar Shrivastava, Advs. for R-2.

Dr. S. Gopakumaran Nair, Sr. Adv. with Ms.  
Priya Balakrishnan, Advs for R-1, 3 & 4

Ms. Monika Arora, CGSC with Mr.  
Subrodeep Saha and Mr. Prabhat Kumar,  
Advs. For R-5/UOI

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

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**JUDGMENT**

**06.10.2025**

**C. HARI SHANKAR, J.**

1. The appellants in the present Letters Patent Appeal are the Indira Gandhi National Open University<sup>1</sup>, its Vice Chancellor<sup>2</sup> and its Academic Coordination Division. The appeal is directed against

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<sup>1</sup> "IGNOU" hereinafter

<sup>2</sup> "VC" hereinafter



judgment dated 12 December 2023 passed by a learned Single Judge of this Court in WP (C) 3266/2012. In the writ petition, Respondents 1 to 4<sup>3</sup> in the present appeal were the petitioners.

2. Respondent 5 Union of India, through the Ministry of Education<sup>4</sup> (earlier the Ministry of Human Resource Development<sup>5</sup>) in the present appeal, was impleaded as additional party respondent in the writ petition by order dated 31 May 2012.

### 3. Our view

3.1 The respondents seek a declaration that they were entitled to superannuate at 65, rather than 62, and that they were entitled to the benefit of the Career Advancement Scheme. Both these dispensations are, admittedly, available to “teachers”. The respondents’ case is that they are also “teachers”.

3.2 Without doubt, the learned Single Judge has penned a very well-reasoned, and systematically analyzed, judgment. We are, however, constrained to reverse it primarily because the learned Single Judge has primarily relied on an Ordinance assumed to have been promulgated by the IGNOU in 2007, redesignating the respondents as teachers, whereas, in fact, the Ordinance was never promulgated, and was withdrawn by IGNOU itself. Unfortunately, the reliance on the 2007 Ordinance was first made, by the respondents, in an affidavit filed 11 years after the writ petition was filed, in which several

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<sup>3</sup> “the respondents”, hereinafter, for ease of reference

<sup>4</sup> “MOE” hereinafter

<sup>5</sup> “MHRD” hereinafter



additional grounds were sought to be raised. The affidavit was not filed with the leave of the Court. Nor was it ever taken on record by any order passed by the Court. As a result, no response was sought, either from IGNOU or from the MHRD, to the averments in the affidavit. The averments in the affidavit were, therefore, taken by the learned Single Judge as correct. Before us, however, the MHRD – now the MOE – has placed written correspondence, between the VC of the IGNOU and the MHRD, clearly stating that the 2007 Ordinance was withdrawn by the IGNOU itself. Statute 2(4) of the Statutes governing the IGNOU, to our mind, empower the VC to do so.

**3.3** *De hors* the 2007 Ordinance, the respondents, really speaking, have no case. Statute 17(9) of the Statutes governing the IGNOU, as amended in 2015, enhances the age of superannuation of *teachers* from 62 to 65. The respondents have advanced a residuary plea – which was never raised before the learned Single Judge – that Statute 17(9) was amended by the 65<sup>th</sup> Board of Management<sup>6</sup> Meeting of the IGNOU to replace the word “teachers” with “teachers/academic staff”. However, it is clear from a communication dated 15 December 2017 *infra* from the MHRD to IGNOU, that, even till that date, Statute 17(9) referred to “teachers”, and not “teachers/academic staff”.

**3.4** These, primarily, constitute our reasons for allowing IGNOU’s appeal.

#### A prefatory note

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<sup>6</sup> “BOM” hereinafter



4. The respondents superannuated on 30 June 2012, 30 April 2014, 16 October 2023 and 16 October 2023 respectively, as Joint Director, Deputy Director, Addl. Director and Senior Regional Director in the Regional Services Division of the IGNOU.

5. The entire controversy in the present proceedings is as to whether the respondents can be regarded as “teachers”. Incidentally, however, the respondents have also claimed that, if not teachers, they were entitled to be treated as “other academic staff”, in which capacity, too, they would be entitled to the reliefs they seek.

6. At the outset, it is necessary to note that, based on their contention that they were “teachers” or, in the alternative, “other academic staff”, the respondents sought, in the writ petition, three distinct reliefs, i.e. the right to superannuate at the age of 65, the benefit of the Career Advancement Scheme<sup>7</sup>, which would entitle them to retrospective promotion, and antedated seniority.

7. Of these three prayers, however, the respondents could not legitimately seek antedated seniority, as no person, who would be adversely affected if such antedated seniority were granted, has been impleaded as a party either before the learned Single Judge or before us.

8. The learned Single Judge has also restricted the relief, granted in the impugned judgment, to the right to superannuate at 65 and the benefit of the CAS.

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<sup>7</sup> “the CAS” hereinafter



A further prefatory note

9. We may also note, before proceeding further, that the matter has to be decided on the basis of the applicable statutes and administrative instructions. We say so because submissions were also advanced, before us, regarding the nature of the duties rendered by the respondents. It was sought to be contended that the IGNOU is an organization which imparts distance education and that, therefore, the concept of a “teacher” in the IGNOU would be qualitatively different from that of a teacher in a conventional university. It was pointed out that there is no classical concept of “classroom teaching” in the case of an institution imparting distance education.” The services provided by the respondents, which include preparation of study material, making the material available, to a certain extent evaluation of performance of students and the like, may not involve classical classroom teaching, but would be entitled, in the context of an organization providing distance education, to be regarded as teaching activity. Persons engaged in such activities, such as the respondents would, therefore, be *ipso facto* entitled to be regarded as “teachers”.

10. These arguments may have been substantial, had there not been, in place, a rigid statutory scheme. The IGNOU, however, is governed by the Indira Gandhi National Open University Act, 1985<sup>8</sup>, Ordinances and Statutes issued under the Act and administrative instructions notified from time to time.

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<sup>8</sup> “the Act” hereinafter



11. We find that these are self-contained regarding the controversy in issue, which has, therefore, to be decided on that basis, and not on the basis of any abstract understanding of the concept of a teacher in a distance education setting.

## Relevant Statutes and Administrative Instructions

12. The following statutory provisions, administrative instructions, communications, and other documents, must guide our analysis.

### I. Relevant provisions of the Act

#### Sections 2(f) and (p)

“2. **Definitions.** – In this Act, and the Statutes made hereunder, unless the context otherwise requires,

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

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(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;

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#### Section 5(1)(vi)

5. **Powers of the University.** –



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

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(vi) to institute professorships, readerships, lectureships 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, lectureships and other academic positions;

#### Section 24(d)

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

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

#### Section 25

25. **Statutes how made.** –

(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 the Board of Management is unable to implement such a direction within sixty days of its receipt, the Visitor may, after considering the reasons, any, communicated by the Board of Management for its inability to comply with such direction, make or amend the Statutes suitably.

#### Section 30(1)

### **30. Conditions of service of employees. –**

(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.

#### Section 40

### **40. Statutes, Ordinances and Regulations to be published in the Official Gazette and to be laid before Parliament. –**





(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.”

## II. Statutes of the IGNOU

### 2. **Powers and functions of the Vice-chancellor**

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(4) The Vice-Chancellor shall exercise control over the affairs of the University and shall give effect to the decisions of all the authorities of the University.

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### 7. **Powers and functions of the Board of Management**

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(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;

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## 12. Selection Committees

(1) There shall be Selection Committees for making recommendations to the Board of Management for appointment to the posts of Professors, Readers, Lecturers and other academic staff and heads of institutions maintained by the University.

(2)(i) Each of the Selection Committees for appointment to the post of Professors, Readers, Lecturers and the academic staff shall consist of the following members, namely:

- (a) the Vice-Chancellor;
- (b) a Pro-Vice-Chancellor associated with the School/Division/Centre dominated by the Vice-Chancellor;
- (c) a person nominated by the Visitor;  
and
- (d) three experts not in the service of the University to be nominated by the Vice-Chancellor in such manner as may be specified in the Ordinances.
- (e) Director of the School/Division/Centre concerned/Professor of the Discipline nominated by the Vice-Chancellor.

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(4) The procedure to be followed by a Selection Committee in making recommendations shall be laid down in the Ordinances.



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### 13. **Special mode of appointment**

(1) Notwithstanding anything contained in Statute 12, the Board of Management may invite a person of high academic distinction and professional attainments to accept the post of a Professor or a Reader or equivalent academic post in the University on such terms and conditions as it may deem fit, and appoint the person to such post.

(2) The Board of Management may appoint a teacher or any other academic staff working in any other university or organisation for teaching or for undertaking a project or any work on such terms and conditions as may be determined by the Board in accordance with the manner specified by the Ordinances.

### 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.

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(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;

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**(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.

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**(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.

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**(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



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(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 terms 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.

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(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.

III. Ordinances

(i) **16. ORDINANCE ON DESIGNATING PERSONS HOLDING CERTAIN POSITIONS AS TEACHERS (Under Section 2(p) read with Section**

**5(l)(vi) of the IGNOU Act)<sup>9</sup>**

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(l)(vi) of the IGNOU Act.

S.NO	Division	Name of the Position
1-2.	... ..	... ..
3.	Regional Services Division	Director, Regional Director (in the Professor's Scale), Joint Director, Dy. Director/Regional Director, Assistant Director/Asst. Regional Director
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(l)(vi) of the Act lists the following: 'to institute professorships, readerships, lectureships and other academic positions necessary for imparting instruction or 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

<sup>9</sup> as approved at the 90<sup>th</sup> Meeting of the Board of Management held on 22.05.2007 – but which, as would become apparent from the paragraphs which follow, was subsequently withdrawn and never notified or promulgated



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 and (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 40<sup>th</sup> 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, evolution (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 90<sup>th</sup> 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.*”

(ii) Following the recommendations of the 6<sup>th</sup> and 7<sup>th</sup> Central Pay Commissions and their acceptance, separate Ordinances were issued regarding Career Advancement of Teachers and of Academics, in December 2018 and on 18 September 2020 respectively. The posts covered by “teachers” were the posts of Assistant Professor, Associate Professor, Professor and Senior Professor, whereas the posts covered by “academic staff” were the posts held by the respondents, i.e. Assistant Director, Assistant Regional Director, Deputy Director, Deputy Regional Director, Senior Regional director and Additional Director. The nature of activity to be performed by persons in the said posts were separately defined, and separate and distinct academic qualifications and experience were prescribed for teachers and for academic staff, in each of the Ordinances.





IV. Executive Instructions and other communications etc.

(i) The IGNOU, by circular dated 2 June 1992, conveyed its decision to classify the posts of Director, Joint Director, Deputy Director and Assistant Director at Regional Services (Headquarter) and the posts of Regional Director and Assistant Regional Director at the Regional Centers as other academic staff. The circular also provided as under:

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

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(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 fulfilment of all the conditions prescribed in the existing ordinance 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.”

(ii) The above dispensation was reiterated, verbatim, by a subsequent circular dated 7 June 1994 issued by the IGNOU, of which the relevant clauses may be reproduced as under:

“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 Centers as approved by the Board of Management shall:

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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, a separate ordinance will be framed to make appropriate provisions for this purpose in the context of the nature of their functions.

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d) The age of retirement of teacher and other academic staff shall be the same.”

(iii) On 11 January 2005, the IGNOU wrote to the MHRD, informing it that the BOM had, in its 81<sup>st</sup> meeting held on 16 November 2004, considered a proposal for amendment to the Ordinance on Career Advancement for academic staff and had approved it.



The approval of the Visitor was, therefore, sought to the said proposal.

(iv) On 23 March 2007, the Department of Higher Education, MHRD, wrote to the University Grants Commission<sup>10</sup>, conveying, *inter alia*, the following decision:

“2. ... Accordingly, it has been decided that –

(i) The age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.3.2007 in any of the centrally funded higher and technical educations under this Ministry shall be increased from present 62 years to 65 years,

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3. It is further clarified that the enhancement of retirement age as mentioned above and the provision for re-employment, will apply only to persons in teaching positions against posts sanctioned to Centrally funded higher and technical education institutions coming under the purview of this Ministry, in order to overcome the shortage of teachers.”

(v) The above communication was purported to be clarified by a subsequent letter dated 19 April 2007 from the MHRD to UGC, thus:

“... In this connection, it is clarified that –

(i) The enhancement of the age of superannuation from 62 years to 65 years and the provisions for re-employment as

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<sup>10</sup> “UGC” hereinafter



mentioned in this Ministry's letter dated 23.3.2007 referred to above, have been made in order to overcome the shortage of teachers and is applicable only to the 'Teachers' in centrally funded institutions in higher and technical education under the Ministry of Human Resource Development, who are actually engaged in teaching classes/courses/programmes of study in such institutions.

(ii) The provisions of the Ministry's letter of even number dated 23.3.2007 mentioned above shall not be applicable to any other categories of employees in such institutions; notwithstanding the fact that the posts they hold may be considered as 'equivalent' to teaching positions.

(iii) As provided in this Ministry's letter of even number dated 23.3.2007, those teachers who are occupying teaching positions on regular employment against sanctioned posts in centrally funded higher and technical education institutions as on 15.3.2007, would henceforth retire at the age of 65 years. Therefore, the retirement age of any such regular teacher, who was actually in position as on the crucial date of 15.3.2007, would be 65 years.”

(vi) On 22 May 2007, the BOM of IGNOU approved Ordinance 16<sup>11</sup>, already reproduced earlier in this judgment. This approval along with the draft note justifying the ordinance, also reproduced *supra*, were communicated to the Visitor for consideration in terms of Statute 26(4) of the Act on the same day i.e. 20 June 2007.

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<sup>11</sup> “the 2007 Ordinance” hereinafter, as this Ordinance never came to be approved by the Visitor



(vii) At the next 91<sup>st</sup> meeting of the BOM of the IGNOU, which took place on 2 July 2007, it was decided to re-endorse the ordinance and submit it once again for consideration of the Visitor. In pursuance of the said decision, IGNOU wrote to the MHRD on 20 July 2007, re-submitting the draft of the 2007 Ordinance for consideration of the Visitor.

(viii) As no communication was received from the Visitor regarding the draft of the 2007 Ordinance, despite the expiry of the period of four weeks envisaged in that regard by Statute 26, it was decided, vide File Noting dated 26 July 2007, to notify the Ordinance, and have it published in the Gazette as required by Section 40(1) of the IGNOU Act.

(ix) On 26 November 2008, the IGNOU once again wrote to the MHRD, pointing out that, after the decisions taken in the 90<sup>th</sup> and 91<sup>st</sup> meetings of BOM of the IGNOU, it was decided, in the 92<sup>nd</sup> meeting of the BOM on 29 August 2007, that the financial implications of the proposal to redesignate posts in the Regional Centers as "teachers" be worked out and considered in the Finance Committee of the IGNOU. It was further pointed out that the only financial implication would be a difference of pay-scale between ₹ 12000-₹ 18300/- and ₹ 16400-₹ 22400/-, which was accepted by the Finance Committee and thereafter by the BOM of the IGNOU in its 95<sup>th</sup>



meeting on 4 August 2008. The MHRD was, therefore, requested to look into these proposals and communicate their decisions at the earliest.

(x) After the 2007 Ordinance has thus been notified, the MHRD wrote to the UGC on 31 December 2008, stating, *iter alia*, thus:

“1. General

(i) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels,

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8. Other terms and conditions

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(f) Age of Superannuation

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of



the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

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(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education.

(xi) On 28 January 2009, the IGNOU issued a further notification under the subject “adoption of revised pay-scales in respect of teachers and equivalent positions”. The notification revised the existing pay-scales of teachers, i.e. of Assistant Professors, Associate Professors and Professors and was expressly issued with the



approval of the VC. Para 6 of the notification dealt with the staff in the Regional Service Division<sup>12</sup> and read thus:

“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.”

(xii) On 1-2 April 2009, the MHRD belatedly responded to the communications dated 20 June 2007 *supra* and 26 November 2008 *supra* from IGNOU regarding designation of certain positions in the RSD as teachers and opined thus:

“Sir,

I am directed to refer to IGNOU’s letters No. IG/Admn.(G)/Ord.16/2000/844 dated 20<sup>th</sup> June, 2007 and No. IG/TA/2/516/04/1444 dated 26<sup>th</sup> November, 2008 on the subject mentioned above and to say that the proposal of the University was examined in the Department and it was felt to advise the University not to implement the provisions of this Ordinance as it may have wider financial as well as policy implications.

This issues with the approval of Minister of Human Resource Development.

Yours faithfully,

---

<sup>12</sup> “RSD” hereinafter





(D.K. Paliwal)  
Deputy Educational Adviser  
Telefax: 23385489”

(xiii) This communication was taken up by the IGNOU in the 99<sup>th</sup> meeting of its BOM on 15 April 2009, as item no. 29, and the following decision was taken thereon:

**“ITEM NO.29 TO CONSIDER THE MHRD LETTERS DATED 30<sup>TH</sup> MARCH, 2009 AND 1<sup>ST</sup>/2<sup>ND</sup> APRIL, 2009 ON (I) THE PROPOSED AMENDMENTS TO THE CLAUSES V (6) (a) (b) (c) & V (9) OF ORDINANCE 3 ON CAREER ADVANCEMENT OF TEACHERS IN THE UNIVERSITY AND (II) ORDINANCE ON DESIGNATING CERTAIN POSITIONS IN THE UNIVERSITY AS TEACHERS**

**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.”

(xiv) On 19 May 2009, the MHRD wrote to IGNOU with reference to letter dated 20 June 2007 *supra* from IGNOU, seeking information as to whether the 2007



ordinance was, or was not, in operation. This query was reiterated vide letter dated 10 August 2009.

(xv) The VC responded to the MHRD by the following communication dated 8 February 2010:

“8<sup>th</sup> February, 2010

Dear Mr. Kurian,

The proposal for redesignating teachers and academics of IGNOU as Assistant Professors, Associate Professors and Professors in line with the recommendations of the 6<sup>th</sup> Pay Commission Panel which has been implemented by the Govt of India and adopted by IGNOU in its 98<sup>th</sup> meeting held on 14.01.2009 is with the concerned Bureau in MHRD for the Ministry's, views on the-proposal. The Recruitment Rules, Career Advancement Scheme and service conditions also need to be revised and incorporated in the Statutes in line with the 6<sup>th</sup> Pay Commission Report which is essentially a package.

2. The status of the proposal is that it is in the Ministry for its views and concurrence.

3. Redesignation, recruitment rules and career advancement scheme can be implemented only after the appropriate statutory amendment, which needs the approval/assent of the Visitor. It is the Ministry which forwards the proposal for statute amendment to the Visitor.

4. What the BOM confirmed in its 103<sup>rd</sup> meeting is the Action taken on this item (103.24.1) which is "request to the Ministry for its views and concurrence."

5. IGNOU's further action on this issue will be based on the Ministry's comments /views/concurrence. The University's view (Recommendations of Academic Council, Finance Committee, various expert committees, during the last one year) has been submitted to the Ministry.



6. To sum up, what the University requests is "Views/Concurrence of the "Ministry" for Redesignation as per the 6<sup>th</sup> Pay Commission Recommendations. This needs to be placed before the Statutory authorities of the University including BOM for any further action in this regard. Sending the considered opinion of the bodies to the Visitor for amendment of statutes is the prerogative of the MHRD, as per the existing conventions.

I hope the above points clarify the issues raised. You may please advise the concerned Bureau to give its concrete view on this matter, which will help the University Management to take a final decision in this matter and settle this long-pending issue for ever.

(Prof. V.N. Rajasekharan Pillai)”

(xvi) On 31 March 2010, the MHRD wrote to IGNOU, conveying the decision that “matters regarding re-designation, revised recruitment rules, career advancement scheme and service conditions for teachers etc.”, could only be amended by Statutes, and not by Ordinances in terms of Section 24(d) of the Act, and advising the IGNOU to take up the matter in its next BOM meeting. This was immediately followed by the communication dated 11 June 2010 from the VC to the MHRD:

“Prof. V. N. Rajasekharan Pillai  
Vice-Chancellor

VC/IV-7/10/70

June 11, 2010

Sub: Redesignation of certain categories of academics as Teachers in IGNOU - reg.

Dear & Respected Smt. Vibha Puri Das Ji,



It may be kindly recalled that the Board of Management of the IGNOU had passed a resolution to promulgate an ordinance by which some academic staff of the University could be declared as teachers under the IGNOU Act. But this proposal having very wide repercussions with similar demands coming from all Universities, ITT's etc., was turned down by the Ministry. The proposal of issuing such an ordinance was withdrawn by the IGNOU under these conditions.

There is however merit in the case of those academic staff, who were erstwhile teachers and took up the assignment of these positions in the interest of the University. Because had they continued in the teaching line they would have retired only at the age of 65 years but they are now made to retire at 62 years. It is a fact that the enhancement of retirement age of teachers to 65 years could not have been foreseen at "the time when they were deployed in the other non-classroom teaching academic positions. Effectively therefore, these people have been denied the opportunity of an "informed decision".

They should be, in all fairness, given the option of either continuing in the present position or of reverting back to their teaching line now, albeit belatedly. This however will be subject to the condition that they are still capable of discharging the teacher's responsibilities effectively. In short, the conditions to be satisfied here are:

1. These employees were in the teaching cadre previously;
2. At the time of changing the cadre, the employee could not have been aware of his/her having to retire at 62 years whereas the teaching cadre people could continue upto 65 years; in his discipline/faculty and that on reversion will be able to discharge the duties of a teacher effectively.

Towards this, an Expert Committee is proposed to be constituted to assess each such candidate as regards his/her suitability to revert to the teaching line. Those persons who are



recommended by such Expert Committee can then be considered for being taken back to the teaching line.

If this proposal is accepted in principle by the Ministry, further necessary action will be initiated by the IGNOU.

I look forward to the response from the Ministry in this regard.

With regards,

Yours sincerely,

(V N Rajasekharan Pillai)

Smt. Vibha Puri Das  
Secretary (Higher Education)  
MHRD, Shastri Bhawan  
New Delhi”

(xvii) In its 104<sup>th</sup> meeting, held on 21 April 2010, the BOM of IGNOU approved the amendment to the existing statutes, thus:

**“ITEM NO.29 TO CONSIDER THE PROPOSAL FOR AMENDMENT TO CLAUSES (12) AND (13) OF STATUTE 17 OF IGNOU ACT (This item was discussed on priority basis as Dr. D. K. Paliwal had another meeting to attend)**

**BM 104.29.1** The Board considered the proposal for amendment to clause (12) and (13) of Statute 17 of IGNOU Act. The Registrar (Admn:) informed that the Board at its 98 meeting held on 14.01.2009 adopted the MHRD letter dated 13.12.2008 regarding revised pay scales in respect of Teachers and other equivalent categories of academics and authorized the Vice-Chancellor to constitute a committee to finalize the



recommendations of the revised recruitment rules, career advancement scheme and service conditions for Teachers.

Accordingly, a committee was constituted under the Chairpersonship of Prof. Parvin Sinclair, PVC. The report of the committee was placed before the Board at its 102 meeting held on 14.10.2009. The Board had agreed to the recommendations made by the Committee.

The Registrar (Admn.) informed that the MHRD vide their letter dated 31.03.2010 however, informed that the matter was considered in the Ministry and the Ministry decided that the matters regarding re-designation, revised recruitment rules, career advancement scheme and service conditions for Teachers are required to be provided under Statutes and not under the Ordinances as per the provisions under Section 24 (d) of IGNOU Act. The MHRD has advised that the University may bring an agenda item in its next meeting on the subject.

Dr. D.K. Paliwal, Dy. Educational Advisor clarified that as far as the teaching posts, namely, Lectures, Readers and Professors are concerned the necessary notification may be issued by the University in accordance with the UGC notifications in this regard. However, with regard to the equivalent academic positions in the University the MHRD has been reiterating its position for appropriate amendments in the Statutes of the IGNOU Act and not under the Ordinances which may be considered by the University.

**BM 104.29.2** The Board decided that notification re-designating the Lecturers, Readers, Professors in the University may be issued. As regards the other academic equivalent positions, the Board approved the amendments to the existing Statutes, as desired by the Ministry for consideration of the BOM. A copy of the MHRD letter No. F.5-67/2009-DL dated 31.03.2010 is placed as Appendix-12.”



(xviii) On 10 June 2010, the following note was issued by the VC to the MHRD:

“Note to Secretary (HE), MHRD

Sub: 6<sup>th</sup> Pay Commission Benefits to Academic Staff other than those who are designated as Professors, Associate Professors and Assistant Professors in IGNOU.

1. The proposal in this regard, duly approved by all the statutory bodies of the University, had been forwarded to the MHRD for making the ordinances. This is strictly in compliance with the IGNOU Act, Paragraph 2, Clause (p)
2. The eligibility, the Recruitment and Career Advancement procedures for Professors, Associate Professors and Assistant Professors and these other academic staff are exactly the same.
3. So far they have been enjoying the same benefits including the superannuation age on par with the Professors.
4. All the clarifications sought by the Ministry have been sent.
5. The draft ordinance had also been approved by the BoM and sent to MHRD.
6. *However, for reasons of wider negative implications of the above proposal, as advised the MHRD, IGNOU withdrew this proposal.*
7. The way out is now to give these benefits to the existing staff, with a due diligence process, and create a separate cadre of supporting staff other than teachers in future for such activities.”

(xix) Following this on 29 June 2010, the VC of the IGNOU appointed a committee to suggest the action to be taken with reference to the MHRD letter dated 31



March 2010. The Committee made the following recommendations:

### **“Recommendations**

The following recommendations are made to sort out the issue:

1. The Academic Cadres in the University be re-designated as per the approval of the BOM accorded at its 104<sup>th</sup> Meeting held on 21.04.2010 while considering amendments to Statute 17, as per the direction of the MHRD vide their letter dated 31.03.2010. A copy of the relevant decision of the Board of Management is enclosed (Annexure-1). This action does not involve any additional financial commitments and also it will not have any implication on any of the Conventional Universities in the Country as these Cadres are specific to IGNOU. A statement showing the Approved re-designation for academic Cadres on par with Teaching Cadres as per Resolution No. 104.29 of the BOM at its meeting held on 21.04.2010 is enclosed (Annexure-II). As seen from the list the re-designations of the incumbents of the Academic Cadres shall be in the Academic Functional Areas.

2. The future appointments against the sanctioned positions in these academic functional areas shall be made in teaching Cadres of Assistant Professor, Associate Professor and Professor.

3. The committee recommends that, a notification to re-designate Academics may be issued by the University with immediate effect, as per the provision of the University, holding analogous positions in various Divisions/Centres/Units/ Institutes to their equivalent counterpart Teacher designation.”





(xx) The decisions taken by the BOM in its 104<sup>th</sup> meeting held on 21 April 2010 *supra* were forwarded by IGNOU to the MHRD, under cover of letter dated 31 December 2010.

(xxi) On 11 May 2012, the following circular was issued by the Academic Coordination Division of the IGNOU:

“IGNOU  
ACADEMIC COORDINATION DIVISION  
L.No.IG/IA//2/319/1553  
Date 11<sup>th</sup> May, 2012

#### CIRCULAR

As on date, the agreed appointment of teachers of the University is 65 years and that of academics is 62 years. It has been observed that in the reason passed one or two teachers/ academic have continued to attend to their duties beyond their respective age of superannuation on the plea that no order was issued regarding their superannuation.

In this connection attention is drawn to the provisions of Min. of Home Affairs OM No.33/6/56 Ests(A) dated 10.12.1965 which states "....a government servant cannot take advantage of the non-receipt of formal orders regarding his relief, etc. to say that he has been granted an extension of service. If the government servant desires to take any leave preparatory to retirement he will naturally apply for it in good time. If not he should bring the fact he is attaining the age of superannuation of completing the period of service after which he has to retire, to the notice of the head of the office in which he is serving or if he is himself the head of the office to that of his immediate superior. Unless you receives specific order that he should continue in service he should make over charge on the due date to the head of the office (or such officer as may be nominated by the later), or if he is himself the head of the office to the next senior most officer in



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the office who normally be placed incharge of the office in his absence"

Therefore, under no circumstances should the teacher / academic continue to attend their duties beyond their respective age of superannuation unless he / she receives specific orders regarding his /her continuation of service.

Sd/-  
(M.S.SENAM RAJU)  
Director (ACD)"

(xxii) The proposal forwarded by IGNOU to amend Statutes 17(12) for re-designating certain academic positions in the IGNOU as teacher was, ultimately, not approved by the President, as Visitor of the IGNOU. The non-approval was communicated by the MHRD to IGNOU *vide* letter dated 23 July 2013.

(xxiii) This decision was reiterated by the MHRD in its letter dated 25 April 2014 addressed to IGNOU, apparently in response to further representations from IGNOU to the MHRD on 3 April 2014. It was clearly stated, in the said communication, the issues raised by IGNOU in its representation had been already examined by the MHRD and, with the approval of the Visitor, the decision thereon communicated to the IGNOU *vide* letter dated 23 July 2013 *supra*. As such, it was clarified that there was "no scope and merit to reconsider the proposal of redesignation of certain academic positions in IGNOU as Teachers".



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(xxiv) On 15 December 2017, the MHRD wrote to the IGNOU, approving the amendments in Statutes 17(9) to the extent of enhancing the retirement age of teachers in the IGNOU from 62 to 65 years. The relevant portion of the said communication reads, thus:

New Delhi, dated: 15.12.2017

To,

Ms. Manjulika Srivastava,  
Director, Academic Coordination Division,  
Indira Gandhi National Open University,  
Maidan Garhi, New Delhi-110068

Subject: Amendment in the Statute 17(9) on the age of retirement of teachers under IGNOU Act, 1985-reg.

Madam,

I am directed to refer IGNOU's letter No. AD/2/A/107089/1944 dated 26.09.2016 on the subject mentioned above and to state that the proposal of IGNOU for amendment in the Statute 17(9) on the age of retirement of teachers under IGNOU Act, 1985 was examined in the ministry and further taken up with the Visitor of the University for his approval. The President of India, in his capacity as the Visitor of IGNOU, has accordingly approved the amendment in the Statute 17(9) on the age of retirement of teachers under IGNOU Act, 1985 as under:

<b>Existing provision under Statute 17(9) on the age of retirement of teachers under IGNOU Act (1)</b>	<b>Approved Statute 17(9) [after amendment]</b>
(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	(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



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date of the month in which he/she attains the age of 62 years. (b) *****	date of the month in which he/she attains the age of 65 years. (b) *****
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2. In view of above, you are accordingly requested to take further necessary action as per the provisions of the IGNOU Act, 1985 in the matter.

Yours faithfully,

(B.K. Bhadri)  
Assistant Educational Adviser (DL)”

## Proceedings before the learned Single Judge

### 13. Relevant proceedings prior to passing of the impugned judgment

**13.1** Before we advert to the impugned judgment of the learned Single Judge, it is necessary to refer to the prior trajectory of proceedings.

**13.2** The writ petition, as originally filed by the respondents, was predicated solely on Sections 2(p) and 5(1)(v) of the Act, the letter dated 23 March 2007 from the MHRD to the UGC and 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 2010<sup>13</sup>, dated 28 June 2010. Further, the prayer clause in the writ petition read thus:

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

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<sup>13</sup> "the 2010 UGC Regulations" hereinafter



- (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.
- (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. 3<sup>rd</sup> 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 regulations-2010 (sic).
- (e) 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."

**13.3** On 28 October 2022, Respondents 3 and 4, as Petitioners 3 and 4 in the writ petition, filed CM 46632/2022, to demonstrate that the said Respondents been carrying out duties which were classically carried out by teachers.

**13.4** Thereafter, on 31 October 2022, 11 years after the writ petition had been instituted, the respondents moved CM 46825/2022, seeking to amend the writ petition by adding prayers (f) to (j). The prayer clause, as proposed to be amended, read thus:

"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.
- (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. 3<sup>rd</sup> 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 regulations-2010 (sic).
- (e) 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 entitled 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.”

**13.5** Along with the aforesaid application seeking amendment of the prayer clause in the writ petition, the respondents also filed, under cover of index dated 31 October 2022, an additional affidavit, in which it sought to advance the following further submissions:

(i) The respondents sought to place reliance on the amendment of Statute 17(9) as well as the approval to the said



amendment, granted by the Visitor, on 15 December 2017<sup>14</sup>. The respondents asserted, in their additional affidavit, that, in view of the amendment of Statute 17(9), whereby the age of superannuation of teachers in the IGNOU was enhanced to 65 years, they were entitled to continue in service till the age of 65.

(ii) Additionally, reliance was placed on information stated to have been received under the Right to Information Act, 2005, to contend that, in 1999 itself, Statute 17(9) had been amended, in the 65<sup>th</sup> Meeting of the BOM, to include, within its purview, “academic staff” assessed the respondents. It was contended that Statute 17(9), as thus amended, read as under:

“9) Age of retirement

(a) Save as otherwise provided in the Act, Statutes and Ordinances all teachers/ academic staff 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.”

(iii) Reliance was also placed, for the first time, on Circulars dated 2 June 1992 *supra* and 7 June 1994 *supra*, issued by the IGNOU, to contend that the said Circulars equated the age of retirement of other academic staff with that of teachers and extended, to other academic staff, the benefit of the CAS.

**13.6** The orders that came to be passed by the learned Single Judge, apropos CM 46632/2022, CM 46825/2022 and the additional affidavit

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<sup>14</sup> Refer para 12(IV)(xxiv) *supra*





filed along with CM 46825/2022, are significant, and maybe thus noted:

- (i) On 3 November 2022, the following order came to be passed, apropos CM 46632/2022:

**“CM Appl 46632/2022**

By way of this application under Section 151 of the Code of Civil Procedure, 1908, the petitioners no. 3 and 4 seek permission to place additional documents on record.

There is no appearance on behalf of Respondents no. 1 to 3.

On taking steps within a week, issue notice to Respondents no. 1 to 3 through all permissible modes, returnable on 25<sup>th</sup> January, 2023, i.e. date already fixed.”

- (ii) This order was, however, “corrected” by the following order passed on the very next date of hearing, i.e., 14 November 2022:

**“CM Appl. 48576/2022**

1. By way of this application, the petitioners pray for correction of the order dated 3<sup>rd</sup> November, 2022.

2. Heard.

3. For the reason stated in the application, the application is allowed.

4. The order dated 3<sup>rd</sup> November, 2022 stands corrected and shall henceforth be read as under:

**“CM. Appl. 46825/2022**

By way of this application under Section 151 of the Code of Civil Procedure, 1908, the Petitioners seek amendment of the writ petition.



There is no appearance on behalf of Respondents no. 1 to 3. On taking steps within a week, issue notice to Respondents no. 1 to 3 through all permissible modes, returnable on 25<sup>th</sup> January, 2023 i.e., the date already fixed.”

5. In view of the above, the instant application stands disposed of.”

Thus, the earlier order dated 3 November 2022, issuing notice in CM 46632/2022 was effectively cancelled by the order dated 14 November 2022. No formal notice, therefore, could be said to have been issued in CM 46632/2022, whereby additional documents were sought to be placed on record.

(iii) Insofar as the additional affidavit which was filed by the respondents along with CM 46825/2022 is concerned, no order was ever passed, taking it on record. As a result, no occasion ever arose or the present petitioner, or for the Union of India, to traverse the assertions contained therein.

#### **14. The impugned judgment**

**14.1** The impugned judgment adjudicates both CM 46825/2022 as well as the writ petition itself. The request for amendment of the prayer clause in the writ petition has been allowed, and the writ petition itself has also been allowed.



**14.2** The learned Single Juge has, after a detailed and elaborately analyzed judgment, enumerated the reasons for his decision to allow the writ petition, thus, in para 58:

“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 Statutes<sup>8</sup>. Addition, alteration, amendment or repeal of a Statute is not valid unless it receives the assent of the Visitor<sup>15</sup>.

58.3. Furthermore, the Board of Management is also empowered to make Ordinances or to amend or repeal them<sup>16</sup>. Every Ordinance made by the Board of Management comes into effect immediately<sup>17</sup>. 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 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<sup>18</sup>.

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,

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<sup>15</sup> Section 25(4)

<sup>16</sup> Section 26(1) and 26(2)

<sup>17</sup> Section 26(3)

<sup>18</sup> Section 26(4)



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 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."



15. Aggrieved thereby, the IGNOU has preferred the present appeal.

16. We have heard Mr. Sudhir Nandrajog, learned Senior Counsel for the petitioners and Dr. S. Gopakumaran Nair, learned Senior Counsel for Respondents 1, 3 and 4, instructed by Ms. Priya Balakrishnan.

### **Rival submissions**

#### Submissions of Mr. Nandrajog for IGNOU

17. Opposing the impugned judgment, Mr. Nandrajog advances the following submissions:

- (i) The offer of appointment, dated 20 January 1997, pursuant to which Respondent 1 was appointed as Regional Director, stated that his major functions would be “academic, administrative and promotional including admission of students, promotion of the University’s programs and activities, establishment, maintenance and coordination of study centres, delivery of various student services, liaison with various authorities in the Region such as State Government, Educational Institutions and other organisations, monitoring of services at study centres and sending regular feedback to the headquarters and such other functions as assigned by the University from time to time”. Similar duties were required to



be performed by the other Respondents. They were not, therefore, appointed for performing teaching duties.

(ii) The MHRD letter dated 23 March 2007 *supra* increased the age of superannuation from 62 to 65 years for persons “who were holding teaching positions on regular employment against sanctioned posts”, specifically “in order to overcome the shortage of teachers”. To avoid confusion, this aspect was clarified by the MHRD in its subsequent communication dated 19 April 2007 *supra*, which made it clear, beyond doubt, that the enhancement of age of superannuation would not be applicable to employees in Centrally Funded Institutions, even if the posts that they held were considered as equivalent to teaching positions. It was further clarified that the increased age of superannuation was applicable only to persons “actually engaged in teaching classes/courses/programmes of study in such institutions”.

(iii) The Ordinance which was proposed, in the BOM Meeting dated 22 May 2007, re-designating Directors, Regional Directors, Joint Directors, Deputy Directors, Assistant Directors and Asst Regional Directors in the RSD as “teachers” was never notified. The last Noting in that regard, on the file, dated 26 July 2007, by the VC, proposed that the IGNOU would wait for the comments of the MHRD till 20 August 2007 and that the proposal be resubmitted thereafter. Ultimately, the proposal was never notified. This fact was acknowledged by the respondents,



in their rejoinder before the learned Single Judge, in which it was averred thus:

“Even though the Administration Division put up notings several times in the year 2007 to adopt and notify the Ordinance 16 in accordance with the provision of Statute 26(3) and 26(4) but then the Vice-Chancellor, without any reason, disapproved the noting, draft Covering letter to Controller of Publications and Draft Notification put up by the Administration Division in complete violation of the statutory provisions and disregard to the decisions of Board of Management.”

The decision of the VC has never been challenged by the respondents. It is also pointed out that, by virtue of Statute 2(4), the VC exercised control over the affairs of the IGNOU and gave effect to the decisions of all authorities of the IGNOU.

(iv) Section 40(1) of the Act made it clear that the mere passing of a resolution to incorporate or add an Ordinance was not enough and that it had to be published in the Official Gazette and laid before each House of Parliament. This never happened in the case of the purported Ordinance 16. Reliance is placed, in this context, on paras 3 and 9 of *Harla v State of Rajasthan*<sup>19</sup> and para 16 of *Collector v Raja Ram Jaiswal*<sup>20</sup>.

(v) *Vide* communication dated 31 March 2010, the MHRD pointed out that re-designation of other academic posts as “teachers” could only be by amendment of the Statutes, and not by an Ordinance. The proposed re-designation included the

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<sup>19</sup> AIR 1951 SC 467

<sup>20</sup> (1985) 3 SCC 1





posts of Director and Librarian, in respect of whom Statutes 4 and 6.1 clearly fixed the age of retirement as 62 years. Moreover, Statute 17(12) only referred to teachers. If, therefore, other posts, which included the posts of Director and Librarian were to be redesignated as teachers and allowed to superannuate at 65, the Statutes would have to be amended. Consequent on this communication, IGNOU, vide letter dated 31 December 2010 addressed to the MHRD, forwarded a proposal to amend Statute 17. This proposal was, however, rejected by the Visitor, as intimated to IGNOU vide letter dated 25 April 2014 and 23 July 2014 *supra*.

(vi) As a result, there has never, at any point of time, been any redesignation of the posts held by the respondents as teachers. The proposal to introduce an Ordinance that effect was never finalised, and was kept awaiting the approval of the MHRD. On the MHRD informing IGNOU that the amendment would have to be in the Statutes, and not by way of an Ordinance, a proposal to amend Statute 17 according the was forwarded to the MHRD, but was not approved by the Visitor.

(vii) Section 2(p) of the Act defines “teachers” as “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”. This clause, seen in conjunction with Section 2(f), which defined “employee” as including “teachers and other academic



staff of the University”, made it clear that “teachers” and “other academic staff” were distinct categories of employees of the IGNOU. The respondents, being “other academic staff” could not, therefore, be regarded as “teachers”, though both were “employees”. There was no Ordinance or Statute redesignating the respondents as “teachers”. In this context, it was relevant to note that, while Statutes 17(1) to 17(3) referred to “teachers and other academic staff”, the various clauses of Statute 17, starting Clause (4), referred only to “teachers”. Statute 17(5) referred to the fundamental duties of a “teacher”, Statute 17 (9) referred to the superannuation age of a teacher is being 65 years and Statutes 17 (12) and (13) without the designations of teaching staff and their pay scales.

(viii) Besides, the essential qualifications for recruitment as teachers, and as “other academic staff”, were different, and Statute 12 also envisaged separate processes of selection.

**18.** Mr. Nandrajog submits, therefore, that the impugned judgment of the learned Single Judge cannot sustain, and is liable to be set-aside.

#### Submissions of the MOE (earlier MHRD)

**19.** In addition to reiterating the submissions advanced by Mr. Nandrajog, Ms. Arora has also submits that the decision of the MHRD was to extend the benefit of enhanced age of superannuation at 65 only to persons holding teaching posts and actually engaged in



teaching classes, courses or programmes of study and not to persons holding posts which were equivalent to teaching posts. She has relied on letter dated 31 December 2008 *supra* from the MHRD to the UGC, specifically stating that, in universities and colleges, there would be only three categories of teachers, namely, Assistant Professors, Associate Professors and Professors. It is submitted that this is also in tune with the 2010 UGC Regulations. According to the said Regulations, “teachers” and “other academic staff” are employees who fall into distinct categories, with distinct and different conditions of service. They are governed by different ordinances insofar as their career advancement is concerned. They cannot, therefore, be equated for the purposes of age of superannuation. Ms. Arora also adopts Mr. Nandrajog’s submission that the decision as communicated by letters dated 23 March 2007, 19 April 2007 and 31 December 2008 of the MHRD has never been challenged by the respondents.

**20.** Ms. Arora also reiterates Mr. Nandrajog’s submission that the 2007 Ordinance, proposing re-designation of certain academic posts as teachers, is not valid or enforceable in law. She submits that the Ordinance was never approved by the visitor and stands withdrawn by IGNOU *vide* its decision in 2010, as is manifest from the Note dated 10 June 2010<sup>21</sup> addressed by the VC to the MHRD.

**21.** The fact that the proposal to issue the 2007 Ordinance was withdrawn by IGNOU, submits Ms. Arora, is also manifest from the subsequent decision to amend Statute 17(12) and the communications between IGNOU and the MHRD, seeking approval of the Visitor in

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<sup>21</sup> Refer para 12(IV)(xviii) *supra*



that regard. That approval, however, was never granted and ultimately, the Visitor communicated his rejection to the proposal.

### Submissions of Dr. S. Gopakumaran Nair for the respondents

22. Appearing for the respondents, Dr. Nair submits as under:

(i) The respondents were “teachers” within the meaning of Section 2(p) of the Act. Reliance is also placed, in this context, on Section 2(f), 5(1)(vi) and 24(d) of the Act, Statutes 17 and 18 and Ordinances 4 and 16. These provisions made it clear that, in the organizational structure of the IGNOU, teachers and other academics formed a single class, whereas other employees formed a separate class. There could, therefore, be no justification for denying, to the respondents, the benefits available to teachers, by classifying them as “other academic staff”.

(ii) Statute 17 in fact stood amended by the decision of the BOM in its 65<sup>th</sup> meeting held on 31 December 1999. In the said BOM meeting, it was decided to amend Statute 17 to replace Statute 17(9)(a) to read thus:

“9) Age of retirement

(a) Save as otherwise provided in the Act, Statutes and Ordinances all teachers/academic staff 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.”



(iii) Statute 17(9) was further amended by the IGNOU by enhancing the age of superannuation stipulated therein from 62 to 65. This proposal was approved by the Visitor vide communication dated 15 December 2017 *supra*.

(iv) Statutes 12 and 13 envisaged the same Selection Committee, with the same composition and Constitution, making selections to the posts of teachers and of other academic staff and the same “Special Mode of Appointment” in respect thereof. Thus, even in these aspects, there was no distinction, in the Statutes, between teachers and academics.

(v) Statute 18 further clarified that teachers and other academic staff constituted one cadre, whereas other employees constituted a separate cadre.

(vi) Statute 17(9), in fact, stood modified as far back as on 31 December 1999 in the 65<sup>th</sup> BOM Meeting of the IGNOU, by replacing the word “teachers”, therein, by “teachers/academic staff”. From then onwards, therefore, there could be no distinction between teachers and other academic staff.

(vii) As a result, the further amendment of Statute 17(9), enhancing the age of superannuation from 60 to 65, as approved by the Visitor on 15 December 2017, would also apply to teachers as well as other academic staff such as the respondents.



(viii) By operation of Statute 26(3), Ordinances came into effect immediately, and did not have to await the approval of the Visitor. As was correctly held by the learned Single Judge, the draft of the 2007 Ordinance was forwarded by IGNOU to the MHRD twice, firstly on 20 June 2007 and, later, on 20 July 2007. No response, modifying, annulling or invalidating the draft Ordinance was received by the Visitor or by the Legislature. In the circumstances, the 2007 Ordinance *ipso facto* became part of the Ordinances of the IGNOU, as Ordinance 16.

(ix) The Final Report submitted by the Chairman, Task Force of the Distance Education Council<sup>22</sup>, which was the apex body for Open and Distance Learning in the country also opined, in para 7.1, that, in Open Universities, all persons engaged in academic activities would come within the purview of the expression “features” and that the academic activities included audio communication technologies, research, online education, coordination, promotion and maintenance of standards in the distance education system etc.

(x) Statute 17 was enacted in exercise of the powers conferred by Section 24(d) of the Act, which did not use the expression “other academic staff”, and merely referred to “teachers and other employees of the University”. Statute 17 could not, therefore, be so interpreted as discriminating between teachers and other academic staff.

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<sup>22</sup> "DEC" hereinafter



23. The respondents have also submitted detailed written submissions, in which they have specifically stated that they are not seeking re-designation or parity, but are basing their claim on the premise that they are “teachers” and are, therefore, covered by Statute 17(12).

### **Analysis**

#### **24. Confusion owing to pleadings before the learned Single Judge**

24.1 As we have already noted, the writ petition, as originally filed by the respondents, was predicated solely on Sections 2(p) and 5(1)(v) of the Act, the letter dated 23 March 2007 from the MHRD to the UGC and the 2010 UGC Regulations. The pleadings in the writ petition were never amended. CM 46825/2022 merely sought to add certain prayers in the writ petition, without adding any pleadings.

24.2 Without any direction from the Court, and without seeking leave of the Court or moving any application to take it on record, the respondents sought to urge certain additional grounds<sup>23</sup> by way of an additional affidavit filed under cover of an index dated 31 October 2022. There is no order, taking the said additional affidavit on record. No notice was ever issued, during the proceedings in the writ petition, calling on the appellant or the UOI to respond to the said additional grounds. As such, the learned Single Judge had no occasion to ascertain to the grounds urged in the additional affidavit. Strictly

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<sup>23</sup> Refer para 13.5 *supra*



speaking, it was not open, therefore, to the petitioner to urge the said additional grounds.

**24.3** Even otherwise, the practice of filing additional grounds, in support of a writ petition, over and above the grounds urged in the writ petition, is unknown to the law, especially where the additional grounds are based on facts and on documents which were never part of the writ petition, as in the present case. If the respondents desired to urge such as additional grounds, based on documents which were not on record, they were required to amend the writ petition accordingly. They did not choose to do so, for reasons best known to them. They chose to restrict the amendment sought in the writ petition, to addition of certain prayers.

**24.4** The respondents also chose to introduce certain new documents, by way of CM 46632/2022. The order dated 3 November 2022, issuing notice on CM 46632/2022, was effectively cancelled by order dated 14 November 2022. As such, no formal notice was ever issued in CM 46632/2022. The documents which were sought to be introduced under cover of the said CM 46632/2022 were, therefore, never taken on record.

**24.5** No opportunity was ever given to the respondents in the writ petition, i.e. the present appellant and the UOI, to be heard in respect of the additional prayers introduced by way of CM 48576/2022, as the said CM 48576/2022, which sought to amend the writ petition by adding additional prayers, was allowed by the learned Single Judge by the impugned judgment, and not at any point of time prior thereto.





This, in fact, has been urged as a specific ground of challenge to the impugned judgment by Mr. Nandrajog, both orally as well as in his written submissions.

**24.6** A serious consequence that has resulted, as an outcome of the above confusion, is reflected in paras 55 to 57 of the impugned judgment, in which the learned Single Judge has proceeded on the presumption that the 2007 Ordinance was finally approved by the BOM and that the MHRD must have taken requisite steps for placing the Ordinance before the Visitor and the legislature. As reliance was placed on the 2007 Ordinance, by the respondents, in the grounds urged in the additional affidavit filed by them under cover of the index dated 31 October 2022, and the said additional affidavit was never taken on record, nor were the respondents in the writ petition, including the MHRD, ever called upon to respond thereto, the learned Single Judge did not have, before him, the actual sequence of communications which transpired after 20 July 2007, when the draft of the 2007 Ordinance was forwarded for the second time by the IGNOU to the MHRD for the approval of the Visitor. The learned Single Judge has presumed that communications, with respect to the said 2007 Ordinance ceased with the said communication dated 20 July 2007 and has assumed, therefore, that, for want of any material to the contrary, the 2007 Ordinance must have received the approval of the Visitor and been placed before the Legislature.

**24.7** As the recital hereinafter would disclose, however, this is not the position. In fact, the 2007 Ordinance was withdrawn by the IGNOU itself, and communications in that regard were issued by the



VC of the IGNOU to the MHRD. This withdrawal is not under challenge in the present proceedings. This has resulted in mistaken reliance being placed, by the learned Single Judge, on the 2007 Ordinance, which actually perished before it was promulgated.

**24.8** That said, we are not inclined to remand the matter for a fresh adjudication. The rival material, and documents, are now on record, and learned Counsel have advanced detailed arguments thereon, both orally as well as in writing. We, therefore, proceed to decide the appeal keeping in mind the material on record and rival submissions of learned Counsel.

**25.** Have holistically perused the material on record and addressed ourselves to the rival submissions, we are of the opinion that the impugned judgment of the learned Single Judge cannot be sustained, and the appellant-IGNOU is entitled to succeed in the appeal. We say so for three reasons.

**26.** Re. respondents' contention that Statute 17(9) stood amended in 1999 by replacing the word "teachers" with "teachers/academic staff"

**26.1** The respondents seek to contend that Statute 17(9) stood amended by the decision taken in the 65<sup>th</sup> meeting of the BOM held on 31 December 1999<sup>24</sup>. Decision No. BM 65.16.4, as taken by the BOM in the said meeting, purports to approve the proposed amendment in Statute 17, as per Appendix IX to the minutes. Appendix IX to the Minutes of the BOM substitutes, in Statute 17(9),

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<sup>24</sup> Refer para 13.5(ii) *supra*



the words “teachers/academic staff” for the word “teachers” and the words “62 years” for the words “60 years”, to read thus:

“9) Age of retirement

- (a) Save as otherwise provided in the Act, Statutes and Ordinances all teachers/ academic staff 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.”

**26.2** IGNOU has denied that this amendment ever took place. There is nothing to indicate that Statute 17(9) in fact amended as proposed in the 65<sup>th</sup> meeting of the BOM held on 31 December 1999. There is also nothing to indicate that the aforementioned proposed amendment was ever approved by the Visitor, resulting in formal amendment of the Statute, as required by Section 25(3)<sup>25</sup> of the Act.

**26.3** The record, in fact, indicates that no such amendment actually took place. This is clear from the communication dated 15 December 2017<sup>26</sup> *supra* from the MHRD to IGNOU, by which the decision of the Visitor to approve Statute 17(9), further enhancing the age of superannuation from 62 to 65, was communicated. A glance at the said letter reveals that the Statute 17(9)(a), in its pre-amended form as it stood on 15 December 2017, read thus:

“(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 62 years.”

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<sup>25</sup> Refer para 12 *supra*

<sup>26</sup> Refer para 12(IV)(xxiv) *supra*



Thus, even as on 15 December 2017, Statute 17(9)(a) referred only to “teachers” not to “teachers/academic staff”. This clearly indicates that Statute 17(9) was never amended as proposed in the 65<sup>th</sup> BOM meeting dated 31 December 1999.

**26.4** The assertion of the respondents that Statute 17(9) already stood amended in 1999, to extend its applicability to teachers and academic staff is, therefore, apparently incorrect. Resultantly, the reliance, by Dr. Nair, on the 65<sup>th</sup> BOM Meeting which took place on 31 December 1999, and the decision taken thereon, is misguided.

## **27. Re. 2007 Ordinance**

**27.1** Insofar as the 2007 Ordinance is concerned, the documents placed on record by the MHRD clearly indicates that the IGNOU itself withdrew the proposal to promulgate the said Ordinance. With respect to this Ordinance, the learned Single Judge has observed thus, in paras 55 to 57 of the impugned judgment:

“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.”

(Emphasis supplied)

**27.2** The record, however, reveals that the factual position is at variance with what the learned Single Judge has presumed in the afore-extracted paragraphs from the impugned judgment. The learned Single Judge has proceeded on the presumption that, as no response was received from the Visitor despite the 2007 Ordinance having been forwarded to the MHRD twice, for the approval of the Visitor, on 20 June 2007 and 20 July 2007, *the matter must have been placed before the Legislature which must have approved the Ordinance.* Neither the IGNOU nor the MHRD had any occasion to place the correct position before the learned Single Judge, as the additional affidavit filed by the respondents under cover of index dated 30 October 2022, in which this plea was taken by the respondents, was not filed with the leave of the Court, nor was it ever formally taken on record, much less requiring the IGNOU or the MHRD to respond thereto.

**27.3** Before us, however, the MHRD has placed on record the detailed communications between the VC and the MHRD in this regard. The MHRD had, on 1-2 April 2009, advised the IGNOU not to implement the proposed Ordinance. Thereafter, by letters dated 19 May 2009 *supra* and 10 August 2009 *supra*, the MHRD sought to know the status of the proposed amendment and as to whether it had been implemented. *The VC, in his communications dated 8 February 2010, 10 June 2010 and 11 June 2010 supra, clarified that the proposal to issue the 2007 Ordinance had been withdrawn.*



**27.4** Thus, the most important basis on which the learned Single Judge has proceeded to allow the writ petition, i.e., the 2007 Ordinance, falls. The 2007 Ordinance was never, in fact, implemented. Rather, it was withdrawn by the IGNOU itself. The communications from the VC in this regard cannot be disregarded in view of Statute 2(4) of the Statutes, which postulates that implementation of all decisions on behalf of the IGNOU was to be by the VC.

**27.5** As the proposal for the 2007 Ordinance was withdrawn by the IGNOU itself, there can be no question of presuming any consent, thereto, by the Visitor or by the Legislature. In fact, the communications dated 1-2 April 2009, 19 May 2009 and 10 August 2009 from the MHRD to IGNOU itself indicate that no such approval had been granted by the Visitor.

**27.6** Besides, section 40 of the Act requires every Statute to be laid before each House of the Parliament for a total period of 30 days. There is nothing to indicate that this was done. The learned Single Judge has, in para 57 of the impugned judgment, presumed that the proposed 2007 Ordinance must have been placed before the Parliament, in the absence of anything to indicate to the contrary. This presumption, as we have already noticed, is belied by the communications dated 1-2 April 2009, 19 May 2009 and 10 August 2009 from the MHRD to IGNOU and the acknowledgement, by the VC, that IGNOU had itself withdrawn the proposed Ordinance.



**27.7** The proposed 2007 Ordinance, which perished before promulgation cannot, therefore, come to the aid of the respondents.

**28.** Re. Statute 17(9)

**28.1** The record does not indicate that there is any approval by the Visitor to amending Statute 17(9) to extend its reach to persons such as the respondents or any “other academic staff”, apart from teachers. Statute 17(9), in its pre-amended and post-amended avatars, continues to refer only to “teachers”. It does not, therefore, extend to “other academic staff”.

**28.2** Unless the respondents can be regarded as “teachers”, therefore, Statute 17(9), which applies only to “teachers”, cannot apply to them.

**29.** The position as it flows from the Act and Ordinances – Letters dated 23 March 2007 and 19 April 2007 of the MHRD to the UGC

**29.1** Sections 2(p) and 2(f) of the Act are also significant in this regard. Section 2(p) clearly indicates that “teachers” and “other academic staff” are distinct categories of employees. While it is permissible to extend, to any other employee of IGNOU, the benefit of enhanced age of superannuation as has been made available to teachers, that has either to be by way of an Ordinance or by way of a statute. There is, as we have noticed, neither any Ordinance nor any statute which extends, to any other academic staff such as the respondents, the enhanced age of superannuation as is available to “teachers”.



**29.2** In fact, it is apparent that, from 2007 itself, the proposal to enhance age of superannuation from 62 to 65 was only for persons who were engaged in teaching classes/courses/programs of study. In the letter dated 23 March 2007 addressed by the MHRD to the UGC, it was clearly stated that the age of superannuation of persons “holding teaching positions on regular employment against sanctioned posts” would stand enhanced from 62 to 65.

**29.3** It is nobody’s case that the respondents were holding teaching position on regular employment against sanctioned posts of teachers. In fact, the letters of appointment of the respondents itself indicate that they were appointed as other academic staff and not teachers.

**29.4** “Teachers” and “other academic staff” are separate categories of employees under the Act and under the Statutes. They are governed by separate qualifications, and their selection process is also different. Dr. Nair has attempted to argue to the contrary, based on Statutes 12 and 13. The attempt, we feel, must fail. Statute 12 merely sets out the composition of the selection committee, and stipulates that the same Selection Committee would select teachers and other academic staff. The submission overlooks Statute 12(4), which stipulates, in addition, that the procedure to be followed by the Selection Committee in making recommendations would be laid down in the Ordinances. As has been pointed out by Mr. Nandrajog, separate Ordinances were issued consequent to the 6<sup>th</sup> and the 7<sup>th</sup> Central Pay Commission, stipulating the prescribed qualifications and experience for appointment to the posts of teachers, i.e. Assistant Professors, Associate Professors, Professors and Senior Professors, and for





appointment of other academic staff such as the respondents, i.e. Assistant Directors, Assistant Regional Directors, Deputy Directors, Deputy Regional Directors, Senior Regional Directors and Additional Directors. The appointment letters of the respondents also indicate that they were appointed as “other academic staff”, and not as teachers. The Ordinances issued consequent to the 6<sup>th</sup> and 7<sup>th</sup> Central Pay Commissions also stipulate separate Career Advancement Schemes for teachers and other academic staff, and also prescribe different duties and responsibilities to be undertaken by them.

**29.5** The somewhat ambitious averment, in the written submissions tendered by the respondents that “the selection procedure, selection committee, educational qualification, manner of appointment, nature of duties, probation, confirmation, increments, terms and conditions of services including the age of retirement, the scale of pay, and the mobility are same for all the persons were appointed as teachers and other academic staff” is, therefore, far removed from reality.

**29.6** In the absence, therefore, of any re-designation or declaration that the posts held by the respondents would also be deemed to be posts of teachers, the respondents cannot claim to be teachers.

**29.7** The MHRD further clarified the position in its subsequent communication dated 19 April 2007, stating that the enhanced age of superannuation was intended to apply only to persons who were “actually engaged in teaching” and was intended to overcome the shortage of teachers. Only persons “actually engaged in teaching classes/courses/programs of study” in centrally funded institutions



were entitled to the beneficial dispensation of extended age of superannuation. Employees holding positions which were equivalent to teaching positions were specifically excepted from the said benefit.

**29.8** Valiant efforts were made by learned Counsel for the respondent, particularly, by Ms. Priya Balakrishnan, to underscore the nature of the duties performed by the respondents, and to make out a case that they were performing duties which were similar to those performed by teachers. For this purpose, certain additional documents were sought to be placed on record, which were never placed before the learned Single Judge. Nonetheless, in order to do substantial justice, we have considered the said plea.

**29.9** We find ourselves unable, in the backdrop of the fact that there is a strict and rigid statutory framework within which the IGNOU operates, to accept Ms. Balakrishnan's submission that the respondents should be regarded as "teachers".

**29.10** Though it was sought to be emphasized that the concept of a "teacher" in the IGNOU could not be equated with the concept of a teacher in a brick-mortar institution, we cannot travel down that path, for the simple reason that the Act, by which the IGNOU is covered, itself distinguishes between "teachers" and "other academic staff". Not only this, separate educational qualifications are prescribed for both categories of staff, with separate selection process.

**29.11** While it may be conceivably possible for the respondents to contend that they are "other academic staff" within the meaning of



Section 2(p) of the Act, we are of the opinion that they cannot be treated as “teachers”, especially as Section 2(p) itself refers to “teachers” and “other academic staff”. “Teachers” and “other academic staff” are, therefore, distinct categories of employees within the IGNOU organisational structure.

**29.12** In any case, without any inclusion of other academic staff in Statute 17(9), the benefit of extended age of superannuation of 65 years cannot be made available to the respondents.

**30. Errors in the findings of the learned Single Judge**

**30.1** The impugned judgment of the learned Single Judge, on a plain reading, largely revolves around the 2007 Ordinance. The learned Single Judge has proceeded on the premise that the 2007 Ordinance was valid and came into effect immediately, and did not have to await approval by the Visitor. As we have noticed, the 2007 Ordinance was withdrawn by IGNOU itself. The subsequent proposed amendment of Statutes 17(12), to redesignate the posts held by the respondents as teachers, was rejected by the Visitor, and the rejection communicated twice to IGNOU, firstly by letter dated 23 July 2013, and later by letter dated 25 April 2014.

**30.2** The learned Single Judge has, however, proceeded on the reasoning that, as the 2007 Ordinance had redesignated the posts held by the respondents as “teachers”, the respondents would be entitled to the subsequent amendment of Statute 17(9), whereby the age of superannuation of teachers was enhanced from 62 to 65, and which



was approved by the Visitor. Once, however, it is seen that the 2007 Ordinance never came into effect, and there is in fact no approval by the Visitor to redesignation of the posts held by other academic staff as “teachers”, the respondents can no longer claim the benefit of the amendment of Statutes 17(9). That benefit was available only to teachers, and not to other academic staff such as the respondents.

**30.3** The learned Single Judge has further held that the rejection, by the Visitor, to the proposed amendment of Statute 17(12) was of no consequence, as the posts held by the respondents had, by the 2007 Ordinance, already been redesignated as posts of teachers. This reasoning must also, therefore, be rejected, once it is seen that the 2007 Ordinance never fructified or crystallised into formal shape. Had Statute 17(12) applied to teachers and other academic staff, the respondents would undoubtedly have had a case. Unfortunately for them, however, it applied only to “teachers”, and no one else.

**30.4** Statute 7(2)(a), no doubt, empowered the BOM to create teaching and other academic posts. That, however, was specifically statutorily subject to the provisions of the Act, the Statutes and the Ordinances. Section 40(2) of the Act requires every change in Statute to be approved by the Visitor. Similarly, Statute 26(4) requires every Ordinance made by the BOM to be submitted to the Visitor for approval. Though the provision does not specify the consequence of the Visitor failing to respond, either positively or negatively, to the proposed Ordinance, within the time envisaged by Statute 26(4), we need not examine this position, as the 2007 Ordinance was withdrawn



by IGNOU itself. There is no other Ordinance of significance in the present case, which would help the respondents.

**31. Re. other submissions of the respondents**

**31.1** The reliance, by Dr. Nair, on Statute 18 is also of no serious consequence. It is sought to be contended that the said Statute indicates that teachers and other academic staff constitute a single cadre. Having read the Statute, we do not find any such indication therein. A cardinal is a unit of a service, the members of which constitute a homogeneous whole, and which share a common seniority. All that Statute 18 states is that all employees of the IGNOU, other than teachers and other academic staff would be governed by the terms and conditions of service and code of conduct as specified in the Statutes and Ordinances. This cannot, in any way, indicate that teachers and other academic staff constitute a common cadre. In any event, the issue before the Court is whether the respondents are teachers. For the reasons stated herein before, we are of the opinion that the query is required to be answered in the negative.

**31.2** Nor, in our considered opinion, can the outcome of this case be determined by the Chairman of the Task Force of the DEC. The statement made by the Chairman of the Task Force cannot prevail over the position which emerges from a conjoined reading of the Act, Statutes and Ordinances by which the IGNOU is governed.



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## **Conclusion**

**32.** For all the aforesaid reasons, we are unable to sustain the impugned judgment of the learned Single Judge, which is accordingly quashed and set aside.

**33.** The writ petition filed by the respondents before the learned Single Judge shall accordingly stand dismissed.

**34.** If, however, any financial benefits have been earned by any of the respondents as a consequence of the impugned judgment passed by the learned Single Judge, there shall be no recovery from them of the amounts so earned.

**35.** The appeal is accordingly allowed.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**OCTOEBR 06, 2025**

*dsn/AR*