

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Case No: RFA No. 18/2025

Reserved on : 21.05.2026

Pronounced on : 05.06.2026

Uploaded on: 05.06.2026

Vishwa Bharati Women's Welfare
Institution through its
Chairman S.K.Koul

...Petitioner(s)/Appellant(s)

Through: Mr. Prakash Priyadarshani, Advocate, with Ms.
Rehana Fayaz and Hakim Aman Ali, Advocates

Vs.

Amina Naseem and others

.... Respondent(s)

Through: Mr. R. A. Jan, Sr. Advocate with Mr. Syed
Yahaya, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of the present appeal, the appellant-defendant has challenged the judgment and decree dated 29.01.2025 passed by the learned 1st Additional District Judge, Srinagar (hereinafter "the trial court"), whereby the suit filed by the contesting respondents-plaintiffs has been decreed by the trial court in their favour and against the appellant-defendant while exercising its jurisdiction under Order XII Rule 6 read with Order VIII Rules 3, 4 and 5 of the Code of Civil Procedure.
2. It appears that the contesting respondents-plaintiffs filed a suit against the appellant-defendant before the trial court seeking a declaration

that Communication Nos. VB/CJ/AC/327-31/MC dated 06.07.2021 and VB/CJ/AC/333-35/MC dated 14.07.2021, whereby the services of the contesting respondents-plaintiffs were terminated upon their attaining the age of 60 years and their salaries were withheld with effect from June, 2021, are illegal and unsustainable in law.

3. As per the case of the contesting respondents-plaintiffs, they were engaged as Lecturers on contractual basis by the defendant-college in the year 1993 and their services were subsequently regularized in the year 2001. According to the contesting respondents-plaintiffs, in terms of the Bye-laws of the defendant-college, the J&K Private Colleges (Regulation and Control) Act, 2002, and the Rules framed thereunder, the age of superannuation of the faculty members of the defendant-college is prescribed as 65 years. It has been further pleaded by the contesting respondents-plaintiffs that the relevant official record of the defendant-college substantiates the fact that, as a matter of policy followed by its management, the employees, including faculty members, retire from service only upon attaining age of 65 years. In this regard, the contesting respondents-plaintiffs have placed on record information obtained from the defendant-college under the Right to Information Act. According to the said information, the management of the defendant-college has admitted that faculty members have consistently been retired upon attaining the age of 65 years.
4. On the basis of the aforesaid averments made in the plaint, it was contended by the plaintiffs that the impugned action of the defendant-institute in issuing the aforesaid communications, whereby the

contesting respondents-plaintiffs were retired from service on attaining the age of 60 years and their salaries beyond June, 2021 were directed to be withheld, is illegal, arbitrary and non est in the eyes of law. It was further contended that the said action has caused irreparable injury and prejudice to the contesting respondents-plaintiffs.

5. The appellant-defendant contested the suit by filing a written statement before the trial Court. In the written statement, it was pleaded that the defendant-college is a fully aided institution receiving financial assistance from the Government and, therefore, the Union Territory of Jammu & Kashmir is a necessary party to the suit. It was further pleaded that age of retirement of faculty members is 60 years in terms of the Bye-laws of the Society as well as in terms of the relevant Government SROs. According to the appellant-defendant, the contesting respondents-plaintiffs had attained the age of superannuation in accordance with the Bye-laws of the Society and the J&K Private Colleges (Regulation and Control) Rules, 2005. The appellant-defendant also contended that the Bye-laws relied upon and reproduced by the contesting respondents-plaintiffs in the plaint have subsequently been amended. The amended Bye-laws stand reproduced in the written statement, according to which age of superannuation of the teaching staff is 60 years, whereas that of the non-teaching staff is 58 years. It was further pleaded that SRO 339 dated 20.12.2005 also provides that age of superannuation/retirement shall be 60 years, as fixed by the Government. Since age of retirement of college teachers

in the Union Territory of Jammu & Kashmir is 60 years, the age of retirement of faculty members of fully aided colleges is also the same.

6. According to the appellant-defendant, continuation in service beyond the age of retirement up to 65 years is not a matter of right. It was pleaded that, in order to address the controversy allegedly created by the contesting respondents-plaintiffs, the management of the defendant-college had addressed various communications to the Higher Education Department of the Union Territory of Jammu & Kashmir seeking clarification on the issue. The appellant-defendant further submitted that the day-to-day affairs of the defendant-college were being managed by Ms. Feroza Fazal, who had allowed certain employees to continue in service without informing the management, in violation of the Bye-laws of the Society and SRO 339 dated 20.12.2005. It was contended that, upon learning of such unauthorized continuation in service, the management initiated appropriate action and referred the matter to the Government for clarification. It was specifically pleaded that the contesting respondents-plaintiffs had attained age of superannuation of 60 years in terms of the Bye-laws of the Society and SRO 339 dated 20.12.2005. According to the appellant-defendant, the contesting respondents-plaintiffs had concealed the relevant Rules and other material facts, thereby creating an unnecessary controversy.

7. It appears that, after the filing of the written statement by the appellant-defendant, the contesting respondents-plaintiffs moved an application under Order XII Rule 6 CPC read with Order VIII Rules 3, 4 and 5 CPC, seeking a decree against the appellant-defendant on

the basis of alleged admissions contained in the written statement. The learned trial Court, after inviting objections to the said application and after considering the response of the defendants, came to the conclusion that the reply furnished by the appellant-defendant to paragraphs 23 and 24 of the plaint was evasive in nature and, therefore, amounted to admission on the part of the appellant-defendant. On the basis of the aforesaid deemed admission, the learned trial Court proceeded to pass the impugned judgment and decree in favour of the contesting respondents-plaintiffs by invoking the provisions of Order XII Rule 6 of the Code of Civil Procedure.

8. The appellant-defendant has challenged the impugned judgment and decree passed by the learned trial Court on the ground that there was a clear and specific denial of the averments contained in paragraphs 23 and 24 of the plaint and, therefore, it was not open to the learned trial Court to pass a decree in exercise of powers under Order XII Rule 6 CPC. It has been contended that, apart from the reply furnished to paragraphs 23 and 24 of the plaint, the appellant-defendant had categorically pleaded in its written statement that the management of the defendant-college was compelled to leave the Kashmir Valley in the year 1990 owing to militancy and that, upon coming to know that certain employees had been allowed to continue in service beyond the age of 60 years, it proceeded to take corrective measures by issuing the impugned communications. According to the appellant-defendant, this aspect of the matter has not been duly considered by the learned trial Court. It has further been submitted that the appellant-defendant had unequivocally taken the stand in its written statement that the age

of superannuation of the teaching staff of the defendant-college was 60 years and not 65 years. It has also been argued that any information furnished by the defendant-college under the Right to Information Act would not bind the management and that no decree could have been passed against the appellant-defendant solely on the basis of such information.

9. I have heard learned counsel for the parties and carefully perused the record of the case, including the record of the learned trial Court.

10. Before proceeding to examine the rival contentions advanced by the parties, it would be appropriate to notice the provisions of Order XII Rule 6 of the Code of Civil Procedure, which read as under:-

6. Judgment on admissions.

- (1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
- (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

11. From a perusal of the aforesaid provisions, it is clear that where admissions of fact have been made, either in the pleadings or otherwise, the Court has the discretion, either suo motu or on an application made by any party, to pass such judgment as it may deem fit having regard to such admissions, whereafter a decree has to be drawn in accordance with the judgment so pronounced. Thus, Rule 6(1) of Order XII CPC empowers the Court to pronounce judgment on the basis of admissions made by the parties without requiring determination of the other questions involved in the case. The primary object of Rule 6 is to enable a party to obtain an expeditious judgment

to the extent of the admissions made by the opposite party. However, the provisions contained in Rule 6 are discretionary in nature and not obligatory or mandatory, as is evident from the use of the word “may” in the provision. Consequently, the power under Order XII Rule 6 CPC is to be exercised having regard to the facts and circumstances of each case. Therefore, where questions requiring determination cannot be appropriately dealt with or decided solely on the basis of the admissions made by the parties, the Court may decline to exercise its discretion to pronounce judgment on such admissions and may insist upon further proof even in respect of the admitted facts.

12. Another provision that requires consideration in the context of the present case is Order VIII Rule 5 of the Code of Civil Procedure, which reads as under:-

5. Specific denial.-

“(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

2 [(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced].”

13. As per sub-rule (1) quoted above, if an allegation of fact made in the plaint is not denied specifically or by necessary implication, it shall be

taken to be admitted. The provision further provides that, notwithstanding such deemed admission in terms of sub-rule (1), the Court may, in its discretion, require such facts to be proved otherwise than by such admission. Therefore, discretion is vested in the Court either to rely upon the deemed admission and pass a decree against the defendant on the basis of such admission or to require the plaintiff to prove the admitted facts by leading evidence. Thus, the provision is not obligatory or mandatory in nature.

14. The Supreme Court has, in the case of *Balraj Taneja and another v. Sunil Madan and another*, (1999) 8 SCC 396, while interpreting the provisions contained in Order XII Rule 6 and Order VIII Rule 5 of the Code of Civil Procedure, made certain observations which are relevant for the determination of the issues involved in the present case. The relevant extracts are reproduced hereunder:-

24. In *Razia Begum v. Sahebzadi Anwar*, it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.

25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

“58. *Facts admitted need not be proved.*—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass

such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

28. Having regard to the provisions of Order 12 Rule 6, Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum case observed as under:

“In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms:

‘Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.’

The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted.”

The Court further observed:

“Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers.”

29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression “the court may, in its discretion, require any such fact to be proved” used in sub-rule (2) of Rule 5 of Order 8, or the expression “may make such order in relation to the suit as it thinks fit” used in Rule 10 of Order 8.”

15. The Supreme Court has in the case of *S. M. Asif v. Virender Kumar*

Bajaj, (2015) 9 SCC 287, interpreted the scope and ambit of Order

XII Rule 6 of the Code of Civil Procedure. The relevant observations of the Court are reproduced hereunder.

“8. The words in Order 12 Rule 6 CPC “may” and “make such order...” show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent’s claim.”

16. From the foregoing analysis of the legal position, it is manifestly clear that unless the admissions made by the defendant in its pleadings or otherwise are clear and unequivocal, the Court would not proceed to pass a decree in favour of the plaintiff on the basis of such admissions. Even where admissions have been made by the defendant in its pleadings with regard to certain facts, the Court may, in an appropriate case, refuse to pass a decree on the basis of such admissions and may call upon the plaintiff to prove those facts by leading other evidence.

17. With the aforesaid legal position in mind, let us analyse the facts of the present case. The contesting respondents-plaintiffs claim that the age of superannuation of the faculty members of the defendant-college is 65 years. In support of this claim, they have placed reliance upon the information furnished by the defendant-college under the Right to Information Act vide communication dated 02.08.2021, wherein it has been stated that the employees who had retired from service since 1990 had superannuated upon attaining the age of 65 years. The contesting respondents-plaintiffs have also placed reliance

upon Clause 8 of the Bye-laws of the defendant-college, which reads as under:-

“8. Every employee appointed will be on probation for two years unless orders to the contrary, except in case of appointment on contract basis. The age of superannuation shall not be less than 60 years and not more than 65 years, except in such cases, where it is deemed necessary to waive this restriction by a special order of the Management.”

18. The contesting respondents-plaintiffs have further placed reliance upon Rule 11 of the J&K Private Colleges (Regulation and Control) Rules, 2005, which reads as under:-

11. Appointment of Staff:

.....
(4) No Teachers or a member of non-teaching staff (shall continue to hold an appointment in an affiliated institute beyond the age of 65 years.
.....”

19. If we have a look at Clause 8 of the Bye-laws quoted above, it simply provides that the age of superannuation shall not be less than 60 years and not more than 65 years, except in such cases where it is deemed necessary to waive this restriction. The said clause nowhere provides that in every case the age of superannuation would be 65 years. It only provides that the age of superannuation of the employees of the defendant-college would be between 60 and 65 years. So far as Rule 11 of the Rules of 2005 is concerned, it provides that no teacher or member of the non-teaching staff shall continue to hold an appointment in an affiliated institution beyond the age of 65 years. This means that no employee of an affiliated institution can continue in service beyond the age of 65 years. Thus, both these provisions, viz. Clause 8 of the Bye-laws and Rule 11 of the Rules of 2005, go on to show that an employee of the defendant-college may be continued in service up to a maximum age of 65 years. However, this does not

mean that in every case an employee would be entitled to claim that the age of superannuation is 65 years. As per the aforesaid provision, age of superannuation of an employee of the defendant-institute could be anything between 60 to 65 years.

20. Regarding the employees whose names are mentioned in answer to the Right to Information Act query dated 02.08.2021 and who have retired after attaining the age of 65 years, the appellant-defendant in the written statement has categorically stated that because the management of the defendant-college had migrated in the year 1990 on account of militancy, as such, they could not gather the knowledge about the facts that the employees had continued beyond the age of 60 years and once they came to know about it they immediately issued the impugned communications. Whether or not the said stand of the defendant-college can be accepted and whether or not they would be able to prove this fact is a matter of trial. The same cannot be determined at the stage of considering an application under Order 12 Rule 6 CPC.

21. Apart from the above, the defendant-college, in its written statement, has categorically pleaded that the Bye-laws relied upon by the plaintiffs had subsequently undergone amendment and that, under the amended Bye-laws, the age of superannuation of the teaching staff has been fixed at 60 years. The defendant-college has also reproduced the relevant Bye-laws in its written statement. The appellant-defendant has further referred to SRO 339 dated 20.12.2005 issued by the Government, whereby the age of superannuation in respect of the teaching staff of affiliated colleges has been fixed at 60 years.

Whether these Bye-laws or SRO 339 would be applicable to the case of the contesting respondents-plaintiffs, who were employed prior to the coming into force of the amended Bye-laws/Rules, is a matter that has to be determined by the trial Court at the appropriate stage. Once the appellant-defendant has taken a categorical stand regarding the age of superannuation of its teaching and non-teaching staff, it was not open to the learned trial Court to seize upon an alleged instance of evasive denial on the part of the appellant-defendant and pass a decree against the defendant-college on the basis of a so-called admission.

22.In fact, while replying to paragraphs 23 and 24 of the plaint, which relate to the alleged policy of the defendant-college of retiring its employees at the age of 65 years, the appellant-defendant has specifically denied the existence of any such policy and has contended that the contesting respondents-plaintiffs have concealed the applicable Rules. It has also been pleaded by the appellant-defendant that the contesting respondents-plaintiffs have been retired in accordance with the Bye-laws and that no salary beyond the date of their retirement is payable to them. Thus, even otherwise, there was no categorical admission on the part of the appellant-defendant to the assertion of the contesting respondents-plaintiffs that the defendant-college had been consistently following a policy of retiring its employees upon attaining the age of 65 years.

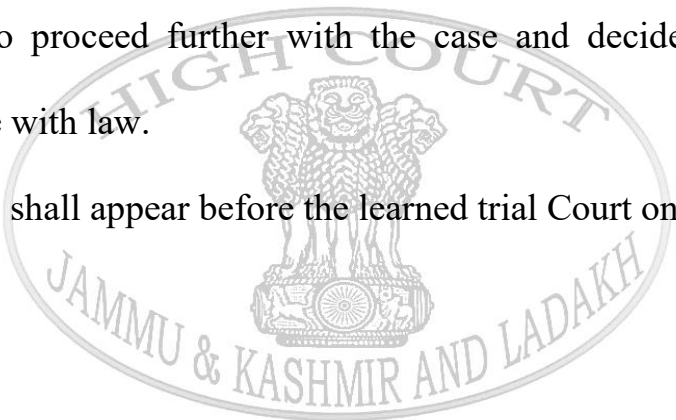
23.The learned trial Court, while passing the impugned judgment and decree, has ignored the basic stand taken by the defendant-college in its written statement with regard to the applicability of the Bye-laws/Rules concerning the age of superannuation of its employees and

has clinched the issue on the basis of the reply given by the defendant-college to paragraphs 23 and 24 of the plaint, which, as already stated, by no stretch of imagination amounts to evasive denial on the part of the defendant-college.

24. For the reasons discussed hereinabove, it is clear that the learned trial Court, while passing the impugned judgment and decree, has fallen into a grave error. Consequently, the impugned judgment and decree cannot be sustained in the eyes of law.

25. Accordingly, the appeal is allowed and the judgment and decree dated 29.01.2025 passed by the learned trial Court in the case titled *Amina Naseem and Others vs. Vishwa Bharati Women’s Welfare Institution through its Managing Committee, Rainawari, Srinagar and Others* is set aside. The matter is remanded to the learned trial Court with a direction to proceed further with the case and decide the same in accordance with law.

26. The parties shall appear before the learned trial Court on **13.07.2026**.



(Sanjay Dhar)
Judge

Srinagar
05.06.2026
Madan Verma-Secy

Whether order is speaking?	Yes/No
Whether order is reportable?	Yes/No.