
(2021) 10 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2250, 7701, 14428, 14478, 14493, 14508, 14539, 14562, 14688, 14743, 14744, 14748, 14917, 15644, 15800 Of 2017

Dr. Raj Kumar Mazumdar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Constitution of India, 1950 — Article 16(4A), 16(4B), 226
Bihar State Universities Act, 1976 — Section 2(m), 2(am), 2(o), 2(r), 2(s), 2(v), 7, 9(7)(i), 10(14), 14, 14(1), 14(3), 26, 26(5)(i)(a), 26(5)(i)(b), 57, 57A, 57B, 62, 64(a), 67, 67(a)
Bihar State Universities (Amendment and Validation) Act, 2012 — Section 2
Bihar State University (Amendment) Act, 2017 — Section 2
University Grants Commission Act, 1956 — Section 26, 26(1)(e), 26(1)(g)

Citation : (2021) 10 PAT CK 0006

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Manoj Kumar Singh, Brajesh Kumar Pandey, Santosh Kumar, Rajendra Kumar Giri, Shilpa Singh, Abhanjali, Ritesh Kumar, Amarendra Nath Verma, Navin Prasad Singh, Narayan Singh, Ajit Kumar, Avinash Kumar, Krishna Chandra

Judgement

1. The petitioners have moved the Court under Article 226 of the Constitution of India for the following reliefs:

CWJC No. 7701 of 2017: "That by this writ petition the petitioner carves indulgence of this Hon'ble Court for issuance of an appropriate writ, direction or order restraining the Respondents to superannuate the petitioner at the age of 62 years and pass an order that he is entitled to continue on the post of principal or other teaching post or posts up to the age of 65 years."

Further, the petitioner has prayed for the following reliefs:

"I. After adjudication your lordships may be pleased to pass an order that the

Bihar State Universities (Amendment and Validation) Act, 2012 (Bihar Act 22, 2012) cannot be applied retrospectively.

II. That the Principal of the college or University is also entitled for increased period of age of retirement i.e. upto 65 years.

III. An appropriate writ or order or direction be passed restraining the respondents to superannuate the petitioner/ Principal in the age of 62 years and he be allowed to continue on his post upto 65 years of age.

IV. Any other order or orders which your lordships deem fit and proper under the circumstances of the case may be passed."

CWJC No. 2250 of 2017:

"(i) For issuance of writ of quo-warranto for removal of Dr. Baban Singh, respondent no. 10 from the post of Principal, College of Commerce, Arts and Science, Patna who is holding a post in public office now as an usurp and without any legal authority after attaining the age of 62 years on 06.11.2016 and retirement on 30.11.2016 in view of the fact that the Principal is no more a teacher/teaching staff of the University after amendment in definition of Teacher in section 2(v) of the Bihar State Universities Act, 1976 through Bihar State Universities (Amendment and Validation) Act 2012, published in Bihar Extraordinary Gazette dated 27.12.2012 and the said amendment has been made effective retrospectively with effect from the date the UGC Regulation, 1991 came into operation on 5th October, 1991.

(ii) For issuance of writ in the nature of mandamus commanding the respondent Magadh University to immediately notify the retirement of Dr. Baban Singh from the post of Principal with effect from 30.11.2016.

(iii) For issuance of direction to the respondent Magadh University for not allowing Dr. Baban Singh to continue as Principal since he has superannuated on 30.11.2016 in view of section 67 of the Bihar State Universities Act, 1976 and clause 8(f) of APPENDIX-I of UGC Regulations, 2010 and the post of Principal in the said college may be held by other appropriate and competent person as per law.

(iv) Any other relief or reliefs the petitioners are entitled for in the facts and circumstances of the present case."

CWJC No. 14428 of 2017:

"i. For an appropriate writ, order of direction for quashing the communication dated 20.09.2017 contained in Memo No. 1703 (Annexure-6) whereby and whereunder the Additional Secretary, Education Department, Govt. of Bihar (Respondent No.

4) has informed the Vice Chancellor, Magadh University (Respondent No. 6) that since the Bihar State University (Amendment) Act, 2017 (hereinafter referred to

as the 2017 Amendment Act) by which "Principals" have been included in the definition of "Teachers", is prospective in its operation, such Principals who have attained or exceeded 62 years of age on 18.05.2017 (being the date on which the 2017 Amendment Act came into force), would stand relieved from their service with effect from their originally prescribed date for their superannuation (i.e. when they attained 62 years of age).

ii. For an appropriate writ, order or direction for quashing the order dated 23.09.2017 contained in Letter No. 394/GIA/17 (Annexure-7) passed by the Vice Chancellor, Magadh Universities (Respondent No. 6) whereby and whereunder in terms of the aforesaid communication dated 20.09.2017 contained in Memo No. 1703 (Annexure 6), the petitioners have been held to have retired from service on their respective dates of attaining the age of 62 years.

iii. For a declaration that the post of "Teacher" as defined in Section 2(v) of the Bihar State Universities Act, 1976 (hereinafter referred to as the Act) pursuant to its amendment vide Bihar State Universities (Amendment & Validation) Act, 2012 (hereinafter referred to as the 2012 Amendment Act) included the post of Principal and that the 2017 Amendment Act whereby the post of "Principal" has explicitly been included in the definition of teacher under Section 2(v) is only clarificatory in nature.

iv. For a further declaration that "Principal" being included in the definition of "Teacher" under Section 2(v) of the Act as it stood amended vide the 2012 Amendment Act, the petitioners would superannuate only on attaining the age of 65 years i.e. the same age of superannuation as that of university teachers in terms of the decision of the State Govt. contained in Memo No. 489/10/49/GIA dated 08.02.2012 (Annexure 3) whereby the age of superannuation of university teachers had been enhanced from 62 years to 65 years with effect from 30.06.2010.

v. For a consequential appropriate writ, order or direction commanding the Respondents to re-instate the service of the petitioners on their respective posts of principals with all consequential benefits and entitlements including wages, perks etc. for the period the petitioners stood ousted from service on account of the impugned orders.

vi. For an ad interim writ, order or direction staying the operation of the impugned orders (Annexure 6 & 7), restoring status quo ante as it existed prior to 20.09.2017 and commanding the Respondents to re-instate the petitioners on their respective posts of Principals and allow the petitioners to discharge their duties during the pendency of the present writ application.

vii. For any other appropriate writ, order or direction which this Hon'ble Court may deem the petitioners to be entitled or deem fit and proper in the facts and circumstances of the present case."

CWJC No. 14478 of 2017:

"i. For issuance of an appropriate Writ/Writs, direction/directions in the Nature of Certiorari or Writs, order of orders for Quashing the Order as contained in Letter No.-2711 dated 26.09.2017 issued by the Governor's Secretariat, Bihar whereby and where under the Petitioners who are discharging the duties on the Post of Principal in different Colleges under the Lalit Narayan Mithila University, have been directed to retire from the date of completion of 62 years of age on the ground that Bihar State Universities (Amendment and Validation) Act, 2012 (Bihar Act, 21 of 2012) excluded Principals from the definition of Teachers and its re-inclusion by way of Bihar State Universities (Amendment and Validation) Act, 2017 (Bihar Act, 24 of 2017) having come into being only on 15.05.2017 with Prospective effect as such, the Principals having automatically become a member of Non-teaching Cadre would not get the benefit of enhancement of retirement age from 62 to 65 granted to "Teachers" with effect from 30.06.2010 vide Education Department letter no.-2925 dated 07.12.2011, who have already completed the age of 62 years during the intervening period i.e. between the date when the post of a Principal was excluded from the definition of Teacher (27.12.2012) and re-included in the definition of the "Teacher" through Bihar State Universities (Amendment and Validation) Act, 2017 (Bihar Act, 24 of 2017) and the effect of re-inclusion in the definition cannot be given its retrospective effect.

ii. For issuance of an appropriate Writ/Writs, direction/directions in the Nature of Certiorari or Writs, order or orders for Quashing the Order as contained in Letter No.-SC/3498-3536 dated 23.09.2017 issued by the University, in compliance of the direction of the State Government as contained in Memo No.- 1703 dated 20.09.2017, by which the Petitioners who have been discharging the duties on the Post of Principal, have been declared to have superannuated from the date of attaining the age of 62 years, by treating these Petitioners/Principals to be a member of Non-teaching Cadre contrary to the Constitutional Mandate and guidelines issued by the UGC and as also by misinterpreting the legislative provision amended up-to-date.

iii. For issuance of appropriate Writ/Writs, direction/directions in the nature of Mandamus or Writs, Order or Orders for staying the Operation of Impugned letters by which the Petitioners have been directed to retire from the Post of Principal by treating them to be a member of Non-teaching Cadre contrary to the scheme of legislation and Constitutional Provisions, during the pendency of the instant proceeding before this Hon'ble Court.

iv. For further kind indulgence of this Hon'ble court to look into the matter and the concerned respondents may be directed to produce all connected records for perusal of the same for passing an appropriate order in order to demonstrate that the decision was taken in a fair and just manner after observing due process of law.

v. For any other relief/reliefs which the Hon'ble court may grant in the interest of the petitioners by directing them to continue on their substantive place of

posting till the age of 65 years with all such benefits as would be applicable to similarly situated Teachers/Persons who have allowed to continue merely because they fall within the cutoff date and further to pass any such Order/Orders, which may be deemed appropriate and necessary in the interest of justice."

CWJC No. 14493 of 2017:

"(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 20/09/2017 being memo no. 1703 issued by the concerned authorities under the Education Department of the State Government, by which it has been communicated that the principals posted and working in colleges under different universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from the services of different universities within the State of Bihar while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the notification dated 23/09/2017 issued by the L.N. Mithila University, Darbhanga (hereinafter referred to as "the University"), by which, amongst other persons, the petitioner was retired from the post of principal working in the services of the University with effect from 31/12/2016, upon attaining the age of 62 years in furtherance of the directions contained under the aforesaid letter dated 20/09/2017 being memo no. 1703 issued by the concerned authorities under the Education Department of the State Government;

(iii) Issuance of direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to allow the petitioner to continue in the capacity of Principal in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under section 67(a) of the Bihar State Universities Act, 1976;

(iv) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 26/09/2017 by the Principal Secretary to the Governor, Raj Bhawan, Patna, by which the vice chancellors of different universities within the State of Bihar had been directed, inter alia, to compulsorily superannuate all the principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 and further, that clarifications be sought from principals as to why they did not inform their respective universities regarding the date of their retirement, that is the date of which they attained 62 years of age notified for retirement of principals and other non-teaching employees;

(v) Issuance of declaration holding that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the

Bihar State University (Amendment), Act, 2017, "Principal" is included in the definition of teacher and as such, is entitled for being extended the benefit of age of superannuation as 65 years as is applicable in the cases of teachers working in the services of the University.

(vi) Issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 23/09/2017 by the University in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government;

(vii) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No. 14508 of 2017:

"(i) For quashing of the office order contained in Memo No. Gen/100/Muz dt. 22.09.2017 issued under the signature of Registrar of Babasahab Bhimrao Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as the " Bihar University") whereby and whereunder petitioners who were posted as principals in different constituent colleges under the same university were treated to be retired with immediate effect on completion of 62 years of age on or before 18.05.2017 pursuant to a letter issued by the Additional Secretary, Education Dept. Govt., of Bihar, Patna contained in memo no. 15/M1- 20/2017-1703 dt. 20.09.2017 pertaining to retirement of Principals of the constituent colleges on completion of 62 years of age on before 18.05.2017.

(ii) For quashing of letter no. 15/M1-20/2017-1703 dt. 20.09.2017, issued under the signature of the Additional Secretary, Education Dept., govt. of Bihar, Patna whereby and where under all universities of this State have been intimated that all such principles of constituent colleges who have, completed 62 years of age on or before 18.05.2017 shall be treated to be retired with immediate effect.

(iii) For an appropriate direction to allow the petitioners to continue in their service and to discharge their duties as principal in their respective colleges up-to the age of superannuation i.e. 65 years.

(iv) For granting any other relief/reliefs to which the petitioners are found entitled too."

CWJC No.14539 of 2017:

"(a) To issue a writ of Certiorari for quashing the office order as contained in memo no. 15/M1-20/2017 (part 1)- 1703 dated 20.09.2017 (Annexure-12) issued by Additional Secretary, Government of Bihar, Patna through which direction has been issued to the authorities of Universities of State of Bihar to get retired all those Principals who have completed 62 years of their age or more, after 27.12.2012 and before 15.5.2017, on the ground that as per advise

of Law Department of State of Bihar, Bihar State Universities (Amendment) Act 2017 (Bihar Act 14 of 2017) has been implemented from prospective effect.

(b) To issue further writ of Certiorari for quashing the office order as contained in letter no. 1230-Est-I dated 22.09.2017 (Annexure-11) issued by Registrar, Jai Prakash University, Chapra, through which on the basis of aforesaid memo dated 20.09.2017, the petitioner has been intimated that due to completion of his age as 62 years on 31.01.2016, he would be treated retired w.e.f. 31.1.2016 and he has been asked to hand over charge of his post to next senior teacher namely, Professor (Dr.) Saroj Kumar Verma of the said college.

(c) To issue further writ of Certiorari for quashing the letter no.- PU-6/2017-9711 dated 26.9.2017 (Annexure-16), issued by Principal Secretary of the Hon'ble Chancellor, to the extent through which directions of Hon'ble Chancellor has been communicated to the Vice-chancellors of all

the Universities to compulsorily superannuate all those Principals who have completed 62 years of their age in between 27.12.2012 to 15.5.2017 on the ground that Bihar State Universities (Amendment and Validation) Act, 2012 (Bihar Act 22 of 2012) had excluded the Principals from the definitions of "Teacher" and Bihar State Universities (Amendment) Act 2017 (Bihar Act 14 of 2017), which included the principals within the definition of "Teacher" again, has been implemented from prospective effect.

(d) To issue a writ of mandamus, commanding the respondents to discharge their legal obligation to extend benefit of enhancement of age of teachers from 62 years to 65 years as notified and not to interfere in any way, in peaceful working of petitioner as Principle of Rajendra College, Chapra and to allow the petitioner to work on his said post till his attaining age of 65 years and to pay his salary and other allowances till then as usual.

(e) To any other relief or relief's for which the petitioner may be found entitled to."

CWJC No.14562 of 2017

"(i) To quash memo no. 1703 dated 20.09.2017 issued by the Additional Secretary Education Department Government of Bihar (Respondent no. 4) whereby and whereunder a decision has been communicated to all the Registrar of the Universities of Bihar including the Veer Kunwar Singh University Ara that those Principal who have attained the age of 62 before 18.05.2017 will be deemed to have been retired retrospectively on the day they have completed 62 years of the age. A copy of memo no. 1703 dated 20.09.2017 is annexed as Annexure 1 to this application.

(ii) Further to quash notification contained in memo no. 2084/Estab/17 dated 23.09.2017 issued by the Registrar, Veer Kuwar Singh University, Ara (Respondent no. 7) whereby and whereunder, relying upon memo dated 20.09.2017 (Annexure 1) a direction has been issued to all the Principals of the

constituent/Affiliated colleges of this University that those Principals who have attained the age of 62 before 18.05.2017 will be deemed to have been retired retrospectively on the day they have completed 62 years of the age. A copy of memo no. 2084/Estab/17 dated 23.09.2017 is annexed as Annexure-2 to this application.

(iii) Further to quash the notification contained in memo no. 2085/Estab/17 dated 23.09.2017 issued by the Registrar, Veer Kuwar Singh University Ara (Respondent no. 7) whereby and where under, relying upon memo dated 20.9.2017 (Annexure 1) and memo dated 23.09.2017 (Annexure-2) has superannuated the petitioner who is working on the post of Principal, Gram Bharti College, Ramgarh (Kaimur) with effect from 13.12.2016 on the ground that on 31.12.2016 the petitioner has attained the age of 62 years respectively. A copy of memo no. 2085/ Estab/17 dated 23.09.17 is annexed as Annexure 3 to this application

(iv) Further to quash the notification contained in memo no. 127/Estab/17 dated 23.09.2017 issued by the Registrar Veer Kuwar Singh University, Ara (Resp. no 7) whereby and whereunder one Dr Jawaharlal, Principal A.S. College, Bikramganj has been transferred to G.B. College Ramgarh with immediate effect where the petitioner is working on the post of Principal. A copy of memo no. 127/ Estab/17dated 23.09.2017 is annexed as Annexure 4 to this application.

(v) Further to direct the respondents not to disturb the petitioner from discharging his duty on the post of Principal Gram Bharti College, Ramgarh and further the respondents to allow the petitioner to continue on his post of Principal till he attains the age of superannuation ie., 65 years of age.

And for any other appropriate relief(s) as per the facts and circumstances of the case."

CWJC No.14688 of 2017:

"(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government, by which it has been communicated that the principals posted and working in colleges under different universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from the services of different Universities within the State of Bihar while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 are to be implemented prospectively.

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 22/09/2017 issued by the Registrar of the Patna University, Patna (hereinafter referred to as "the University") by which amongst other persons, the petitioner has been retired from the services of the University from the post of Principal, Patna Law College, Patna which is a constituent unit of

the University in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government.

(iii) Issuance of direction or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to allow the petitioner to continue in the capacity of Principal in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under Section 64 (a) of the Patna University Act, 1976.

(iv) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 26/09/2017 by the Principal Secretary to the Governor, Raj Bhawan, Patna, by which the Vice Chancellors of different universities within the State of Bihar had been directed, inter alia, to compulsorily superannuate all the principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 and further, that clarifications be sought from principals as to why they did not inform their respective universities regarding the date of their retirement, that is the date on which they attained 62 years of age notified for retirement of principals and other non-teaching employees.

(v) Issuance of declaration holding that in terms of the provisions of section 2(r) of the Patna University Act, 1976 as amended by section 2 of the Patna University (Amendment and Validation) Act, 2012 and section 2 of the Patna University (Amendment) Act, 2017, "Principal" is included in the definition of teacher and as such, is entitled for being extended the benefit of age of superannuation as 65 years as is applicable in the cases of teachers working in the services of the University;

(vi) Issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 22/09/2017 by the university in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government;

(vii) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No.14743 of 2017:

"(a) for quashing, (I) the Memo No. 15/M 1-20/2017 (ansh 1)-1703, dated 20.9.17 (Annexure- 11) issued by Sri Manoj Kumar, Additional Secretary, Government of Bihar, Education Department whereby the Registrar, Magadh University along with Registrars, all the traditional Universities of Bihar have been directed to take steps for superannuating those Principals who have attained the age of 62 years or more, (ii) Notification No. 229/2017 contained in and communicated under Memo No.- B/24547-634 dated 22.9.2017

(Annexure-12) issued by the Registrar, T. M. Bhagalpur University, Bhagalpur pursuant to the letter of Under Secretary, Education Department contained in and communicated vide 15/M 1-20/2017 (Ansh-1)-1703, dated - 20.9.17 whereby and whereunder the petitioners have been compelled to retire on completion of 62 years of age before 18.05.2017 with immediate effect and to give the charge of the office of the Principal to Prof.-In-charge immediately and (b) further for direction to the respondent authorities to include the Principal under the category to teacher with retrospective effect pursuant to the Bihar State Universities (Amendment) Act 2017 (Bihar Act-14, 2017)."

CWJC No.14744 of 2017:

"(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government, by which it has been communicated that the principals posted and working in colleges under different universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from the services of different Universities within the State of Bihar while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 22/09/2017 issued by the Registrar of BR Ambedkar, Bihar University, Muzaffarpur (hereinafter referred to as "the University"), by which, amongst other persons, the petitioner has been retired from the services of the University from the post of Principal, L.S. college, Muzaffarpur, which is a constituent unit of the University in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government;

(iii) Issuance of direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to allow the petitioner to continue in the capacity of Principal in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under Section 67 (a) of the Bihar State Universities Act, 1976;

(iv) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 26/09/2017 by the Principal Secretary to the Governor, Raj Bhawan, Patna, by which the Vice Chancellors of different universities within the State of Bihar had been directed, inter alia, to compulsorily superannuate all the principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 and further, that clarifications be sought from principals as to why they did not inform their respective universities regarding the date of their

retirement, that is the date on which they attained 62 years of age notified for retirement of principals and other non-teaching employees;

(v) Issuance of declaration holding that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the Bihar State Universities (Amendment) Act, 2017, "Principal" is included in the definition of teacher and as such, is entitled for being extended the benefit of age of superannuation as 65 years as is applicable in the cases of teachers working in the services of the University;

(vi) Issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 22/09/2017 by the university in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government:

(vii) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No.14748 of 2017:

"(i) Issuance of direction, order or writ, including writ in the nature of certiorari quashing letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government, by which it has been communicated that the principals posted as working in Colleges under different universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from the services of different universities within the State of Bihar while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively.

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the letter dated 23/09/2017 issued by the Secretary, Z.A. Islamia College, Siwan (hereinafter referred to as "the College"), by which in furtherance of the directions contained under the letter dated 20/09/2017 issued by the concerned authorities under the Education Department of the State Government, the petitioner has been retired from the post of Principal of the College with effect from 31/01/2016 upon attaining the age of 62 years;

(iii) Issuance of direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the College to allow the petitioner to continue in the capacity of Principal in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under section 67(a) of the Bihar State Universities Act, 1976;

(iv) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 26/09/2017 by the Principal Secretary to the Governor, Raj Bhawan, Patna, by which the vice chancellors of different universities within the State of Bihar had been directed, inter alia, to compulsorily superannuate all the principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 and further, that clarifications be sought from principals as to why they did not inform their respective universities regarding the date of their retirement, that is the date on which they attained 62 years of age notified for retirement of principals and other non-teaching employees.

(v) Issuance of declaration holding that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the Bihar State University (Amendment) Act, 2017, "Principal" is included in the definition of teacher and as such, is entitled for being extended the benefits of age of superannuation as 65 years as is applicable in the cases of teachers working in the services of the University.

(vi) Issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 23/09/2017 by the College in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government.

(vii) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No.14917 of 2017:

"(i) Issuance of direction, order or writ, including writ in the nature of certiorari quashing letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government, by which it has been communicated that the Principals posted and working in Colleges under different universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from the services of different universities within the State of Bihar while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively.

(ii) Issuance of direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the College to allow the petitioner to continue in the capacity of Principal in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under section 67(a) of the Bihar State Universities Act, 1976;

(iii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing letter dated 26/09/2017 by the Principal Secretary to the Governor, Raj Bhawan, Patna, by which the vice chancellors of different universities within the State of Bihar had been directed, inter alia, to compulsorily superannuate all the principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 and further, that clarifications be sought from principals as to why they did not inform their respective universities regarding the date of their retirement, that is the date on which they attained 62 years of age notified for retirement of principals and other non-teaching employees.

(iv) Issuance of declaration holding that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the Bihar State University (Amendment) Act, 2017, "Principal" is included in the definition of teacher and as such, is entitled for being extended the benefit of age of superannuation as 65 years as is applicable in the cases of teachers working in the services of the University.

(v) Issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 23/09/2017 by the College in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the concerned authorities under the Education Department of the State Government.

(vi) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No.15644 of 2017:

"I. For quashing of office order contained in memo no. 1608 dated 05.10.2017 issued by the Registrar of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga by which the petitioner has been informed that he has been retired from service as Principal, Adinath Parasmani Madhusudan Sanskrit Mahavidyalaya, Rahua-Sangram, Madhubani w.e.f. 31.03.2015 on completing 62 years age in the light of letter no. 15M 1-20/2017 (Part-1)-1703 dated 20/09/2017 issued by the Education Department, Govt. of Bihar and thereupon allow the petitioner to continue as Principal of the College in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under section 67(a) of the Bihar State Universities Act, 1976.

II. For quashing of letter no. 15M1-20/2017 (Part-1)/memo no. 15M1-20/2017 (Part-1)-1703 dated 20/09/2017 issued by the Education Department of the State Government, by which it has been informed to the Registrar of all the Universities that the Principals posted and working in Colleges under different Universities within the State of Bihar, who have attained the age of 62 years prior

to 18/05/2017 have to be retired from service while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively.

III. For also quashing of letter no. PU-6/2017-9711 dated 26/09/2017 issued by the Principal Secretary to the Governor, Raj Bhawan, Patna, directing the Vice Chancellors of different Universities of Bihar, inter alia, to compulsorily superannuate all the Principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 with further, direction to seek clarifications from Principals as to why they did not inform their respective Universities regarding the date of their retirement (date on which they attained 62 years of age).

IV. For issuance of declaration that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the Bihar State University (Amendment) Act, 2017, "Principal" is included in the definition of "Teacher" and as such, is entitled for being extended the benefit of age of superannuation at 65 years as is applicable in the case of teachers working in the services of the University.

V. For issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 05.10.2017 by the Registrar of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the Education Department, Govt. of Bihar.

(vi) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

CWJC No.15800 of 2017:

"I. For quashing of office order contained in memo no. 1609 dated 05.10.2017 issued by the Registrar of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga by which the petitioner has been informed that he has been retired from service as Principal, Awadh Bihari Sanskrit Mahavidyalaya, Rahimpur, Khagaria w.e.f. 31.10.2015 on completing 62 years age in the light of letter no. 15M 1-20/2017 (Part-1)-1703 dated 20/09/2017 issued by the Education Department, Govt. of Bihar and thereupon allow the petitioner to continue as Principal of the College in the services of the University till he attains the age of 65 years, which is prescribed as the age of superannuation for teachers working in the services of the University in terms of the provisions contained under section 67(a) of the Bihar State Universities Act, 1976.

II. For quashing of letter no. 15M1-20/2017 (Part-1)/memo no. 15M1-20/2017 (Part-1)-1703 dated 20/09/2017 issued by the Education Department of the State Government, by which it has been informed to the Registrar of all the Universities that the Principals posted and working in Colleges under different

Universities within the State of Bihar, who have attained the age of 62 years prior to 18/05/2017 have to be retired from service while declaring that the provisions contained under the Bihar State University (Amendment) Act, 2017 is to be implemented prospectively.

III. For also quashing of letter no. PU-6/2017-9711 dated 26/09/2017 issued by the Principal Secretary of the Governor, Raj Bhawan, Patna, directing the Vice Chancellors of different Universities of Bihar, inter alia, to compulsorily superannuate all the Principals who have completed 62 years of age between 27/12/2012 to 15/05/2017 with further, direction to seek clarifications from Principals as to why they did not inform their respective Universities regarding the date of their retirement (date on which they attained 62 years of age).

IV. For issuance of declaration that in terms of the provisions of section 2(v) of the Bihar State Universities Act, 1976 as amended by section 2 of the Bihar State Universities (Amendment and Validation) Act, 2012 and section 2 of the Bihar State University (Amendment) Act, 2017, "Principal" is included in the definition of "Teacher" and as such, is entitled for being extended the benefit of age of superannuation at 65 years as is applicable in the case of teachers working in the services of the University.

V. For issuance of an ad interim order commanding the concerned respondent authorities to restore status quo ante in favour of the petitioner as existed prior to issuance of the office order dated 05.10.2017 by the Registrar of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga in furtherance of the directions contained under the letter dated 20/09/2017 bearing memo no. 1703 issued by the Education Department, Govt. of Bihar.

(vi) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

Interlocutory Application No. 6895 of 2018 in CWJC No.7701 of 2017

"3(v) Respondent may also be directed to quash the memo no.-FSIN/PEN/1000/18 dated 08.08.2018 by which the salary paid since 01.01.2014 to 30.09.2017, to the petitioner has been directed to be recovered/adjusted through the pensionary benefit."

Civil Writ Jurisdiction Case No. 7701 of 2017 and Analogous Cases

2. Keeping in mind the commonalities of the issues involved and the nature of reliefs sought, the instant batch of matters has been heard together and is decided by this common judgement. For convenience, CWJC No.7701 of 2017 is taken as the lead case.

3. The petitioners are aggrieved by various notifications/orders/letters/communications by which their services as principals of colleges has been deemed to be terminated on account of the interpretation accorded, by the concerned authorities, to Section 2(v) of the Bihar State Universities Act, 1976

(hereinafter referred to as the 'Act') as per the amendment brought about by the Bihar State Universities (Amendment & Validation) Act, 2012 (hereinafter referred to as the '2012 Amendment Act') and the corresponding pari materia amendment to Section 2(r) of the Patna University Act, 1976 (hereinafter referred to as the 'Patna University Act') by the Patna University (Amendment and Validation) Act, 2012. The Act and the Patna University Act are collectively referred to hereinafter as the 'Acts'. The 2012 Amendment Act reads thus:

"Bihar State Universities (Amendment and Validation) Act, 2012 [Bihar Act 22, 2012]

An

Act

To amend the Bihar State Universities Act, 1976 (Bihar Act 23, 1976) Preamble.-
Whereas, it is most expedient to make the University Act consistent with and in conformity with standards of University Grants Commission (U.G.C.);

And, whereas, anomalies exist in the provisions of The Bihar State Universities Act, 1976 so amendment is essential for bringing the Act on the line of different regulations/ direction/ instruction of UGC and define teacher in conformity with the definition incorporated in various regulations of UGC and orders issued by Govt. of India.

And, whereas, vide government letter no. 1216 dated 18-09-75 all the Vice-Chancellors of the State have been informed of the abolition of the post of Demonstrator in the light of UGC recommendation. Decision of the State Govt. has also been communicated to the Universities that the Demonstrators appointed on the sanctioned post before 01-01-1973 shall continue but the post shall not be filled up in case of vacancy caused due to retirement or death of the said post holders. On the post sanctioned before 01-01-1973 and appointed temporarily by 18-09-1975, such temporary demonstrators were to be examined in respect of qualification and on finding them fit for permanent appointment concurrence was to be obtained from Bihar State University Service Commission.

And, whereas, all University including Magadh University had been informed vide letter no. 1789 dated 26-08-1977 that on the recommendation of Govt. of India, the post of Demonstrator had been abolished and that no appointment was to be made on such posts. In this letter, Govt. of India decision was quoted as follows :- "The revised scale of Rs. 500- 900 is for the existing Demonstrator/Tutors only. In future Demonstrator/Tutors shall not be appointed in the Universities and Colleges" ?

And, whereas, the UGC Regulation, 1991 prescribed qualification for appointment to teaching post.

And, whereas, the UGC recognises only three tier teaching post namely Lecturer, Reader and Professor.

And, whereas, definition of Teacher under the Bihar State Universities Act, 1976 is not clear, due to which non teaching employees not holding the qualification of a teacher have been defined as a Teacher from the date of appointment and the question of adjustment of service of non-teaching employees appointed/ working against Unsanctioned Post on the basis of Staffing Pattern has arisen. Therefore for promotion of educational environment and for attaining academic excellence in these institutions as per the expectation of U.G.C., it is essential to amend the existing relevant provisions of The Bihar State Universities Act, 1976. And, whereas, the Division Bench of Patna High Court, Ranchi Bench in LPA No. 274/1997 (R) while partly allowing the appeal set aside the direction of the Single Judge dated 3.4.1997 in CWJC No. 2176/1996(R) to treat the Lab. Assistant as teacher.

And, whereas, the apex court while dismissing Civil Appeal No. 4215-16/2002 dated 22.7.2002 held that the order of the Division Bench cannot be faulted with apart from the fact that no such specific prayer was made. The Bench observed that such general direction could not be issued as the qualifications and other relevant facts in respect of each Lab. Assistants may have to be examined by the State Government while considering their representation. The Hon'ble apex court did not find merit in the challenge made against that part of the order of the Division Bench. The apex court held that Lab personnel can't be declared Teacher. And, whereas, after the Cabinet decision letter No. 1115 dated 14.6.2006 was issued for re-designation of Lab. Personnel.

And, whereas, modification in the letter no. 1115 was made vide memo no. 1456 dated 1.8.2006 without cabinet decision. And, whereas, on 18.12.2008 the State Govt. clarified that re-designation as Demonstrator was issued only for pay scale and allowance and not to convert them as teacher. And, whereas, on 21.9.2010 the Hon'ble Patna High Court in CWJC No. 1377/2010 held that re-designated Demonstrators acquired the status of teacher in terms of the definition of teacher under the Bihar State Universities Act, 1976 and as such entitled to all benefits.

And, whereas, on appeal LPA Court in LPA No. 981/2011 dated 11.7.2011 held that inspite of the decision of the Division Bench of the then Ranchi Bench of the Patna High Court confirmed by the Hon'ble Supreme Court, the Government of Bihar in its wisdom took a decision on 14.6.2006, to re-designate the graduate Laboratory Assistant/Junior Laboratory Assistant/Laboratory Incharge/ Lab. Technician/Technical Assistant, etc. appointed in the Laboratory of the constituent colleges as Demonstrators. Under the said decision, it was specifically decided that since re-designation as Demonstrators the concerned employees will be entitled to all the benefits of the post of Demonstrator.

And, whereas, the apex court dismissed SLP(C) No. CC-1324/2012 filed against the order of said LPA in limine.

And, whereas, redesignation of non teaching posts has arisen on account of vagueness and flaw in the definition of 'teacher'. And, whereas, the State Cabinet

decided to rectify mistake in the light of legal opinion and the observation of the LPA court and decided to withdraw the previous decision of re-designation of Lab. Personnel as Demonstrator with effect from the date of issuance of letter of re-designation dated 14.6.2006 and its modification dated 1.8.2006 and Government resolution no. 608 dated 10.4.2012 was issued.

And, whereas, it is necessary to amend the definition of the teacher to exclude the non-teaching employee Lab. Personnel re-designated Demonstrator with effect from the date of re-designation, as UGC and Central Govt. do not recognise Demonstrator as teaching employee in the context of observation of the LPA court in LPA No. 981 of 2011 as well as Legal Advice.

Be it enacted by the Legislature of the State of Bihar in the sixty third year of the Republic of India as follows:-

1. Short title and Commencement - (1) This Act may be called The Bihar State Universities (Amendment and Validation) Act, 2012.

(2) This Act shall be deemed to come into force from the date of issue of U.G.C. Regulation, 1991 i.e. with effect from 05 October, 1991.

2. Amendment in Section-2 of the Bihar Act-23, 1976 - Clause (v) of section-2 shall be substituted by the following:-

"(v) "Teacher" means person holding the post of only University Professor/ Professor, Reader, and Lecturer and such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time;

Provided, that notwithstanding the said substitution in Section-2(v), the action taken in respect of working Demonstrators appointed before 18-09-1975 on the post sanctioned before 01-01-1973 with the concurrence of Bihar Public Service Commission or Bihar State University Service Commission shall not be affected by this substitution.

3. Overriding effect of the Act -Notwithstanding anything contained contrary in this Act or any other Act, Ordinances, Rules or decision or judgment or decree of any court the provisions of this Act shall have overriding effect."

4. An amendment pari materia to the 2012 Amendment Act was effected in the Patna University Act by the Patna University (Amendment and Validation) Act, 2012, which is extracted below:

"Patna University (Amendment and Validation) Act, 2012 [Bihar Act 21, 2012]

AN ACT

To amend the Patna University Act,

1976 (Bihar Act 24, 1976)

Preamble.-Whereas, it is most expedient to make the University Act consistent

with and in conformity with standards of University Grants Commission (U.G.C.); And, whereas, anomalies exist in the provisions of The Patna University Act, 1976 so amendment is essential for bringing the Act on the line of different regulations/ direction/ instruction of UGC and define teacher in conformity with the definition incorporated in various regulations of UGC and orders issued by Govt. of India.

And, whereas, vide government letter no. 1216 dated 18-09-75 all the Vice-Chancellors of the State have been informed of the abolition of the post of Demonstrator in the light of UGC recommendation, decision of the State Govt. has also been communicated to the Universities that the Demonstrators appointed on the sanctioned post before 01-01- 1973 shall continue but the post shall not be filled up in case of vacancy caused due to retirement or death of the said post holders. On the post sanctioned before 01-01-1973 and appointed temporarily by 18-09-1975, such temporary demonstrators were to be examined in respect of qualification and on finding them fit for permanent appointment concurrence was to be obtained from Bihar State University Service Commission.

And, whereas, all university including Magadh University had been informed vide letter no. 1789 dated 26-08-1977 that on the recommendation of Govt. of India, the post of Demonstrator had been abolished and that no appointment was to be made on such posts. In this letter, Govt. of India decision was quoted as follows:- "The revised scale of Rs. 500- 900 is for the existing Demonstrator/ Tutors only. In future Demonstrator/Tutors shall not be appointed in the Universities and Colleges", And, whereas, the UGC Regulation, 1991 prescribed qualification for appointment to teaching post. And, whereas, the UGC recognises only three tier teaching post namely Lecturer, Reader and Professor.

And, whereas, definition of Teacher under the Patna University Act, 1976 is not clear, due to which non teaching employees not holding the qualification of a teacher have been defined as a Teacher from the date of appointment and the question of adjustment of service of non-teaching employees appointed/ working against Unsanctioned Post on the basis of Staffing Pattern has arisen. Therefore for promotion of educational environment and for attaining academic excellence in these institutions as per the expectation of U.G.C., it is essential to amend the existing relevant provisions of The Patna University Act, 1976. And, whereas, the Division Bench of Patna High Court, Ranchi Bench in LPA No. 274/1997 (R) while partly allowing the appeal set aside the direction of the Single Judge dated 3.4.1997 in CWJC No. 2176/1996(R) to treat the Lab. Assistant as teacher. And, whereas, the apex court while dismissing Civil Appeal No. 4215- 16/2002 dated 22.7.2002 held that the order of the Division Bench cannot be faulted with apart from the fact that no such specific prayer was made. The Bench observed that such general direction could not be issued as the qualifications and other relevant facts in respect of each Lab. Assistants may have to be examined by the State Government while considering their representation. The Hon'ble apex court did not find merit in the challenge made against that part of the order of the Division

Bench. The apex court held that Lab personnel can't be declared Teacher.

And, whereas, after the Cabinet decision letter No. 1115 dated 14.6.2006 was issued for re-designation of Lab. Personnel.

And, whereas, modification in the letter no. 1115 was made vide memo no. 1456 dated 1.8.2006 without cabinet decision. And, whereas, on 18.12.2008 the State Govt. clarified that re-designation as Demonstrator was issued only for pay scale and allowance and not to convert them as teacher. And, whereas, on 21.9.2010 the Hon'ble Patna High Court in CWJC No. 1377/2010 held that re-designated Demonstrators acquired the status of teacher in terms of the definition of teacher under the Patna University Act, 1976 and as such entitled to all benefits.

And, whereas, on appeal LPA Court in LPA No. 981/2011 dated 11.7.2011 held that inspite of the decision of the Division Bench of the then Ranchi Bench of the Patna High Court confirmed by the Hon'ble Supreme Court, the Government of Bihar in its wisdom took a decision on 14.6.2006, to re-designate the graduate Laboratory Assistant/Junior Laboratory Assistant/Laboratory Incharge/ Lab. Technician/Technical Assistant, etc. appointed in the Laboratory of the constituent colleges as Demonstrators. Under the said decision, it was specifically decided that since re-designation as Demonstrators the concerned employees will be entitled to all the benefits of the post of Demonstrator.

And, whereas, the apex court dismissed SLP(C) No. CC-1324/2012 filed against the order of said LPA in limine.

And, whereas, redesignation of non teaching posts has arisen on account of vagueness and flaw in the definition of 'teacher'. And, whereas, the State Cabinet decided to rectify mistake in the light of legal opinion and the observation of the LPA court and decided to withdraw the previous decision of re-designation of Lab. Personnel as Demonstrator with effect from the date of issuance of letter of re-designation dated 14.6.2006 and its modification dated 1.8.2006 and Government resolution no. 608 dated 10.4.2012 was issued.

And, whereas, it is necessary to amend the definition of the teacher to exclude the non-teaching employee Lab.

Personnel re-designated Demonstrator with effect from the date of re-designation, as UGC and Central Govt. do not recognise Demonstrator as teaching employee in the context of observation of the LPA court in LPA No. 981 of 2011 as well as Legal Advice.

Be it enacted by the Legislature of the State of Bihar in the sixty third year of the Republic of India as follows :-

1. Short title and Commencement.- (1) This Act may be called The Patna University (Amendment and Validation) Act, 2012. (2) This Act shall be deemed to come into force from the date of issue of U.G.C. Regulation, 1991 i.e. with effect from 05 October, 1991.

2. Amendment in Section-2 of the Bihar Act-24, 1976 - clause (r) of section-2 shall be substituted by the following :- "(r) "Teacher" means person holding the post of only University Professor/ Professor, Reader, and Lecturer and such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time; Provided, that notwithstanding the said substitution in Section-2(r), the action taken in respect of working Demonstrators appointed before 18-09-1975 on the post sanctioned before 01-01-1973 with the concurrence of Bihar Public Service Commission or Bihar State University Service Commission shall not be affected by this substitution.

3. Overriding effect of the Act.-Notwithstanding anything contained contrary in this Act or any other Act, Ordinances, Rules or decision or judgment or decree of any court the provisions of this Act shall have overriding effect."

5. Later, the Bihar State University (Amendment) Act, 2017 (hereinafter referred to as the '2017 Amendment Act') was enacted:

"Bihar State University (Amendment) Act, 2017

AN ACT

To amend the Bihar State University Act, 1976 (Bihar Act 23, 1976)

Preamble- Whereas, it is expedient to incorporate Principals of colleges under the Universities of the Bihar within the definition of teachers of the University.

And, whereas, it is proper to take the services of experienced retired officers of Bihar Administrative Service to the post of Registrar in the Universities of Bihar.

Now, therefore, it is necessary to amend section 2 and section 15 of Bihar State University Act, 1976.

Be it enacted by the Legislature of the State of Bihar in the Sixty eighth year of the Republic of India as follows:-

1. Short title and Commencement.-This Act may be called The Bihar State University (Amendment) Act, 2017. (2) It shall come into force at once.

2. Amendment in Section-2 of Bihar Act, 23, 1976- The main part of section 2 (v) of the Bihar State University Act, 1976 (Bihar Act 23, 1976) shall be substituted by the following:- "(r) "Teacher" means person holding the post of only university Professor/Professor, Principal, Associate Professor (Reader) and Assistant Professor (Lecturer) and such sanctioned post in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time.

3. Amendment in section-16 of the Bihar Act 24, 1976.- (1) sub-section (1) of section 15 of Bihar State University Act, 1976 shall be substituted by the following :- "(1) Notwithstanding any provisions of the Act, if the Chancellor thinks fit, he may request the State Government, Central Government, University Grant Commission or any University to send names of suitable officers including the retired officers of Bihar Administrative Service for the post of Registrar, and

in that case State Government, Central Government, University Grant Commission or any University may send the name of one or more officers for consideration for appointment as Registrar under such terms and conditions of service, as he may consider fit, and then the Chancellor shall appoint the Registrar from amongst them.

4. Saving - Notwithstanding the amendment made in section-2 (v) and sub-section (1) of section-15 of this Act, anything done or decision or action taken prior to it shall be deemed to have been validly done or taken and shall not be questioned on the ground of amendment."

6. An amendment pari materia to the 2017 Amendment Act was also made in the Patna University Act by the Patna University (Amendment) Act, 2017, extracted below:

"Patna University (Amendment) Act, 2017

AN ACT

To amend Patna University Act, 1976 (Bihar Act 24, 1976)

Preamble- Whereas, it is expedient to incorporate Principals of colleges under Patna University within the definition of teachers of the University.

And, whereas, it is proper to take the services of experienced retired officers of Bihar Administrative Service to the post of Registrar in Patna University. Hence, it is necessary to amend section 2 and section 16 of Patna University Act, 1976.

Be it enacted by the Legislature of the State of Bihar in the Sixty eighth year of the Republic of India as follows:-

1. Short title and Commencement.-This Act may be called The Patna University (Amendment) Act, 2017. (2) It shall come into force at once.

2. Amendment in Section-2 of Bihar Act, 24, 1976- The main part of section 2 (r) of the Patna University Act, 1976 (Bihar Act 24, 1976) shall be substituted by the following:- "(r) "Teacher" means person holding the post of only university Professor/Professor, Principal, Associate Professor (Reader) and Assistant Professor (Lecturer) and such sanctioned post in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time.

3. Amendment in section-16 of the Bihar Act 24, 1976.- (1) sub-section (1) of section 16 of Patna University Act, 1976 shall be substituted by the following :- "(1) Notwithstanding any provisions of the Act, if the Chancellor thinks fit, he may request the State

Government, Central Government, University Grant Commission or any University to send names of suitable officers including the retired officers of Bihar Administrative Service for the post of Registrar, and in that case State Government, Central Government, University Grant Commission or any University may send the name of one or more officers for consideration for

appointment as Registrar under such terms and conditions of service, as he may consider fit, and then the Chancellor shall appoint the Registrar from amongst them.

4. Saving - Notwithstanding the amendment made in section-2 (r) and sub-section (1) of section-16 of this Act, anything done or decision or action taken prior to it shall be deemed to have been validly done or taken and shall not be questioned on the ground of amendment."

7. References in this judgement hereinafter to the 2012 Amendment Act also include the Patna University (Amendment and Validation) Act, 2012. Likewise, references hereinafter to the 2017 Amendment Act would also include the Patna University (Amendment) Act, 2017. So also, references hereinafter to the Act would include the Patna University Act.

8. The petitioners held, at the relevant time, the posts of Professors/Readers when, pursuant to a formal advertisement, they were selected and appointed as principals in various colleges and have continued on the post much prior to 2012 Amendment Act coming into force. However, it appears that in the year 2017, the Section(s) in question was further amended by the 2017 Amendment Act with effect from 18.05.2017. This was the basis for the authorities to take a plea that the petitioners had continued wrongly as principals, even after attaining the age of 62 years as by the 2012 Amendment Act, they have been held to have superannuated with retrospective effect, since the post of principal was removed from the category of teachers. This has subsequently been reinserted by the 2017 Amendment Act. Thus, in many cases, including that of the petitioners', they had continued to hold the posts without any objection from any quarter even after having crossed the age of 62 years being considered to be teachers. However, after the 2017 Amendment Act, orders holding them to have superannuated upon completion of 62 years have been issued. The said order(s) are impugned herein, leading to the instant writ application(s).

9. Learned counsel for the petitioners contended that the 2012 Amendment Act lays out the aims and objects which leave no confusion or ambiguity and the sole purpose was to bring the Acts in consonance with the Regulations laid down by the University Grants Commission (hereinafter referred to as the 'UGC'). It was submitted that the object was that those categories of persons who had nothing to do with teaching were included in the definition of 'teachers' which led to them getting benefit, which otherwise was not due to them and in this connection, the specific focus was on the post of 'demonstrator', as prior to the 2012 Amendment Act, a demonstrator was included in the definition of 'teacher'. However, it was submitted that when the ultimate and final language of the 2012 Amendment Act was drafted, to replace the existing definitions under Section 2(v) of the Act and Section 2(r) of the Patna University Act, while taking away the term 'demonstrator', the term 'principal' was also done away with. It was replaced by a further addition, that is, "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time". Thus, submitted

learned counsel, a situation arose where the aggrieved persons moved the High Court challenging such amendment. The Court notes such group includes only the demonstrators. However, their challenge did not succeed, neither before this Court nor before the Hon'ble Supreme Court and matters attained finality.

10. It was submitted that, however, principals, who were holding the posts at the time when the 2012 Amendment Act came, not being under any threat, either perceived or received and no action having been taken by the authorities, had no occasion to be aggrieved, and consequently, did not challenge the 2012 Amendment Act. Even by their conduct, stated learned counsel, the State/authorities never gave any occasion for the petitioners and/or other similarly situated persons to move before any forum or authority with regard to them being considered separate and distinct from teachers and not falling in the category of teaching employee. Such situation prevailed for almost five years and then by the 2017 Amendment Act, Section 2(v) of the Act and Section 2(r) of the Patna University Act, the term 'principal' was once again incorporated in the definition of teachers without making any other changes to the provision.

11. Learned counsel submitted that the so-called mischief was created by this innocuous, superfluous and redundant amendment for in effect it did not change either the law or the intention or the existing position. It was merely clarificatory in nature for the reason that even prior to the 2012 Amendment Act, when specifically, the term 'principal' was included in the definition of teacher, the 2012 Amendment Act merely brought it in line with the UGC Regulations, where the principal, being a post sanctioned in the teachers grade, already found mention. Hence, to avoid repetition or the definition becoming superfluous, the term 'principal' was also removed as a specific post for the reason that it stood automatically covered as a post sanctioned in the teachers grade in the UGC Regulations. The phrase "such sanctioned post in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" was inserted by the 2012 Amendment Act. Thus, it was contended that the main thrust being on the removal of the ineligible group from the definition of teacher, being 'demonstrator' which was so done and, as submitted earlier, gave rise to challenge, ultimately repelled, before this Court as well as the Hon'ble Supreme Court. Learned counsel submitted that such confusion could not even have been perceived and the action of the State, in going in for another amendment by incorporating the word 'principal' was unnecessary, or at best, clarificatory but would not lead to the consequences that what is or was the position in law would change. It was advanced by learned counsel that from the beginning, the post of principal was restricted only to the senior-most teaching post of Professor and Reader which formed the minimum eligibility criteria. It was submitted that a conjoint reading of Section 2(r) with Section 7 of the Patna University Act would clarify the matter beyond any doubt that the principal is also a teacher, as held by the learned Third Judge of this Court in Dr. (Mrs.) Annapurna Devi v. State of Bihar, 1997 (1) PLJR 965, after a divergence of views amongst 2 learned Judges of a Division Bench.

12. Learned counsel submitted that eligibility for a post is directly relatable to the position for which the person is applying for or being considered for. It was submitted that there must be a direct nexus to the object sought to be achieved and the provision for the purpose. In the case at hand, when the basic requirement of eligibility to apply for the post of principal is that a person should be either in the scale of Professor or Reader, the obvious and natural import would be that the post would come under the broader umbrella of 'teacher' and cannot be looked at de hors the post of a teacher itself. Learned counsel submitted that even after becoming a principal of a college, the UGC Regulations as well as the Acts, do not debar the principal from engaging classes which are recognized for such purposes as proper academic classes, and not merely considered as extra-tutorial classes. Learned counsel submitted that apart from the above, the principals are also performing the role of guides for students pursuing their M.Phil and Ph.D. courses which have been duly approved and recognized under the relevant Statutes.

13. Learned counsel submitted that the 2012 Amendment Act was, in essence, brought about to remove the ambiguity in 'teacher' as defined under the Act, due to which non-teaching employees not holding qualification of teacher had been included, from the date of appointment within 'teacher' and the question arose of adjustment of service of non-teaching employees appointed/working against unsanctioned posts on the basis of the then Staffing Pattern. As such, learned counsel urged, that for promotion of educational environment and for attaining academic excellence in these institutions as per the expectations of UGC, it was deemed essential to amend the existing relevant provisions of the Act so as to bring it in sync with the UGC Regulations.

14. Learned counsel submitted that the above would be manifest from a bare perusal of the Preamble to the 2012 Amendment Act which clearly sets out the intention of the Legislature, which is confined qua the earlier inclusion of class of Demonstrators and Lab Assistants as teaching staff notwithstanding that Demonstrators and Lab Assistants did not possess the qualification of a teacher and the UGC did not recognize them as teachers. The seventh Paragraph of the preamble, which reads as under is a clear testimony to this, contended learned counsel:

"And, whereas, definition of Teacher under the Bihar State Universities Act, 1976 is not clear, due to which non teaching employees not holding the qualification of a teacher have been defined as a Teacher..."

15. As such the 2012 Amendment Act, when seen in light of the Objects and Reasons thereof the Amendment Act and applying the 'Mischief Rule' of interpretation, it becomes abundantly clear that the purpose of the Amendment was to exclude from 'teacher', non-teaching staff like lab personnel and demonstrators, who did not qualify as teachers under the UGC Regulations and did not possess the educational qualification to be so appointed. Reliance was placed on *Oriental Insurance Company Ltd. V Hansrajbhai V. Kodala*, (2001) 5

SCC 175, specifically on paragraphs 14-15.

16. Further, learned counsel stated that a bare glance at Section 2(v) of the Act, as amended by the 2012 Amendment Act, reveals that inclusive definition has been replaced by an exhaustive definition by use of 'means'. It was submitted that the word 'principal' has been, though, deleted from the illustrative list of the hierarchy of teachers, a completely new class has been inserted by the phrase "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time." Learned counsel submitted that this second class/category, in the definition of 'teacher', added by the 2012 Amendment Act categorically provides for inclusion of principals in the definition of teacher and, in fact, is a much broader classification. Therefore, 'principal' while being deleted from the opening part, has been included in the second part and the same, when read with the Preamble, which only was intended to exclude the class of demonstrators and lab assistants on account of their being non-teaching staff and did not possess even the minimum qualification for being appointed as teachers.

17. Learned counsel countered the Respondents' contention that the second part of the definition is superfluous and redundant and only meant for some future use or application, as being against the settled canons of interpretation. Although on one hand, it is not permissible to add words or to fill in a gap or lacuna, on the other hand, every effort should be made to give meaning to each and every word used by the Legislature. It was held, stated learned counsel, in *Aswini Kumar Ghosh v Arabinda Bose*, AIR 1952 SC 369 that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. It is incumbent to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning/application. While interpreting statutes, it is always to be presumed that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted, except for compelling reasons.

18. Learned counsel further submitted that this is even more evident from a reading of the proviso to the amended provision, which is in the nature of a saving clause in respect of the status of such demonstrators as teachers, who were appointed before 18.09.1975 on the post sanctioned before 01.01.1973 with the concurrence of the Bihar Public Service Commission or the Bihar State University Service Commission. It was submitted that Section 2(am) of the Act which defines equivalent post when read with Section 10(14) would make it abundantly plain and clear that the posts of principals are in the teachers' grade of Professors and Readers (or Associate Professors). Learned counsel canvassed that it is admittedly undisputed the post of principal is a sanctioned post, and in

the teachers' grade viz. the grade of Professor or Associate Professor (Reader).

19. Learned counsel next submitted that the UGC, as an expert body, has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the Universities. He emphasised that the UGC makes no distinction between teachers and principals working in the colleges as teaching staff. Learned counsel submitted that the University Grants Commission Act, 1956 (hereinafter referred to as the 'UGC Act') was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India while the Act was enacted by the State Legislature of Bihar exercising powers under Entry 25 of List III thereof and as such, the provisions of the UGC Act are binding on all Universities notwithstanding any repugnancy contained in the state enactment as held in *Annamalai University v Secretary to Government, Information & Tourism Department*, (2009) 4 SCC 590. Learned counsel further submitted that *Annamalai University* (supra) held that the powers of the UGC under Section 26(1)(e), UGC Act are of wide amplitude and form part of the Act itself. It was submitted that Section 26, UGC Act empowers the UGC to make Regulations. Under Section 26(1)(e), UGC Act, the UGC is empowered to make Regulations defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of a University, while under Clause (g), it can frame Regulations for the maintenance of standard and the co-ordination of work/facilities in the universities. Exercising such powers under Section 26(1)(e) & (g), the UGC has framed the University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (hereinafter referred to as the '2010 UGC Regulations'). These Regulations provide for minimum qualification for direct recruitment of teachers in Clause 4, and minimum qualification required for principal in Clause 4.2.0.

20. Learned counsel submitted that the provisions of the 2010 UGC Regulations including the requirement of teaching experience is conclusive that the UGC regards principals as teachers and, in any view of the matter, as teaching staff of the college/university and does not distinguish between principals and teachers. Learned counsel submitted that the 2010 UGC Regulations provide for pay-scale based on posts held while discharging duties in the University on different posts viz. Professors, Associate Professors, Assistant Professors, Readers and Lecturers and such sanctioned posts in the teachers' grade on the basis of the Regulations issued by the UGC and it is for this reason, the pay-scales of the principals of Under-Graduate and Post-Graduate Colleges have been directed to be fixed by the concerned university based on the eligibility in respect of educational qualifications and teaching/research experiences earned during their service. Appendix I to the 2010 UGC Regulations which is a Scheme for Revision of Pay of Teachers and Equivalent Cadres in Universities and Colleges (hereinafter referred to as the 'Scheme') clearly provide for the pay scale of principals in the same pay bands as teachers, apparent from Clause 1(iii) read with Clause 4. Furthermore,

submitted learned counsel, principals, just like Professors and Readers, are entitled to Academic Grade Pay, which is admissible to teachers alone. As such Clauses 1 & 4 of Appendix I, read in conjunction with Section 2(am) of the Act, defining equivalent posts, would leave no manner of doubt that the post of Principal is one of a teacher or, alternatively, is a post in the teacher's grade. Clause 8(f) of the Scheme enhances the age of superannuation of teachers from 62 years to 65 years. Clause 8(p) of the Scheme delineates the applicability of the scheme and in sub-clauses (ii), (iii) & (iv) thereof only excludes the class of Registrar, Finance Officer and Controller of Examinations, Accompanists, Coaches, Tutors, Demonstrators, System Analysts, Senior Analysts, Research Officers, etc.

21. Learned counsel submitted that the aforesaid Scheme, as contained in Appendix I has been adopted by the State Government in toto, pursuant to which the State Government has even accepted grants from the UGC and made payments under the head of teaching posts to Principals even after the 2012 Amendment Act, as also manifest from the Budget of the Magadh University brought on record vide Annexure 12, Pgs. 76-93. The UGC through Memo No. 2/2/15 dated 13.08.2015 has mandated that supervision of research work for award of M.Phil./Ph.D. can only be undertaken by regular teachers of the Universities in terms of its 2009 Regulations. The petitioners claim to have supervised research works of a number of scholars, who have been awarded Ph.D. on the basis of theses prepared under the supervision of the petitioners. A chart showing the list of such research scholars under the supervision of Petitioner No. 3 [Annexure 15, Pgs. 99-100; Annexure 16, Pg. 101] has been shown to the Court.

22. Learned counsel submitted that it is a settled proposition that a definition section does not control the substantive provisions of the Act, which is also made clear by the very opening words of Section 2 of the Act, which state "In the Act, unless there is anything repugnant in the subject or context". As such, the definition section of an Act is subservient to the substantive provisions of the Act. In the instant case, learned counsel stated that if the intention of the Legislature was to exclude the post of principals from the definition of 'teacher' by the 2012 Amendment Act, corresponding amendments would have been made in the substantive provisions of the Act to save the same from being rendered absurd and/or unworkable. The above position would be manifest from a bare perusal of the substantive provisions of the Act, which have been, inter alia, left untouched by the 2012 Amendment Act:

22.1. The statutory scheme of the Act including the Statutes framed thereunder, which are still in force post the 2012 Amendment Act, would reveal that Principals are still appointed on sanctioned posts which are either in Professor/Reader grade and in terms of Section 2(am) of the Act, equivalent to that of a 'teacher'.

22.2. Section 57 of the Act provides for constitution of Selection Committee for

appointment to the post of teachers and officers, other than Vice-Chancellor, Pro Vice-Chancellor, Registrar and Dean of faculty) of the University, while Section 57A provides for constitution of Selection Committee for appointment of teachers of affiliated colleges not maintained by the State Government and the latter includes Principal of the College as one of the Members of the Selection Committee.

22.3. Section 57B of the Act mandates that notwithstanding anything to the contrary, the Selection Committee constituted under Sections 57 and 57 A of the Act shall be bound by the procedure of selection to be prescribed by Statute to be framed by the University in accordance with procedure prescribed under the Act. Accordingly, a Revised Statute for prescribing qualification and procedure for selection of teachers and officers of the Universities of Bihar as contemplated under Section 57B of the Act was framed on 30.06.2008. (Part II, University Manual, Pg. 313). Perusal of Clause 7 of the said Statute reveals, per learned counsel, that Principals are to be appointed either in Professor grade or in the Reader grade. The same is also evident from the undisputed fact that the pay scales of post of Principals either in Professor/Reader grade is the same as that of the posts of Professor/Reader.

22.4. Furthermore, the selection committee is to comprise of three experts, who have to be of the rank of University Professor and at least one shall be the VC/ Former VC/Director/Principal of a constituent college. As such, the post of Principal being a sanctioned post and falling in the rank/grade of a Professor/Reader is clearly covered under the substituted definition of 'teacher', brought about by the 2012 Amendment Act.

22.5. Section 7 of the Act defines Officers of the Universities. Under Section 9(7) (i) of the Act, the Chancellor of a University has been invested with powers to transfer officers and teachers of the Universities from one university to another or in the same university on the same post or on any other equivalent post, while retaining their seniority. If the contention of the Respondents is accepted, submitted learned counsel, then post the 2012 Amendment Act, the Principal, being neither a teacher nor an officer of the University, even the Chancellor would be powerless to transfer him/her.

22.6. Similarly, Section 10(14) of the Act empowers the Vice-Chancellor to transfer any teacher of any department/college to another department/college on equivalent post in terms of approved guidelines of Chancellor. The Illustration to this Section clearly provides that 'equivalent post' means Reader and Principal in the pay-scale of Reader, Professor and Principal in the pay-scale of Professor.

22.7. A perusal of Sections 14 and 26 of the Act, would also indicate that the post of Principal is that of a teacher even post the 2012 Amendment Act. Section 14(1) provides that the Dean of Students' Welfare shall be appointed from amongst the University Professors, Readers or Principals, Section 14(3) uses the term 'teacher', while providing that the "teacher appointed as Dean, Students'

Welfare under sub section (1) shall hold lien on his original post, and he shall be eligible for all the benefits which would have otherwise accrued to him..."

23. Developing the argument, learned counsel submitted that, similarly, Section 26(5)(i)(a) provides for Dean of faculty, who has to be appointed by the Vice-Chancellor from amongst the University Professors and the Principals of the rank of University Professors. Sub-clause (b) thereof mandates that for appointment as Dean of the Faculty, it would be necessary for the person concerned to be a teacher in the faculty. A conjoint reading of sub-clauses (a) & (b) of Section 26(5) (i) and Section 14(1) & 14(3) reveals that the post of principal is that of a teacher, contended learned counsel.

24. Learned counsel submitted that the contention that, in terms of the 2012 Amendment Act, a person upon being appointed as a Principal, becomes non-teaching staff of the university, would lead to a situation not envisaged by the Legislature, inasmuch as all such University Professors and Readers, who are otherwise eligible to hold the posts of Principal would be barred from applying for the post if they have crossed the age of 62 years, which is not a criterion stipulated by the UGC while fixing the qualification for appointment as Principal. Learned counsel added that similarly, a Principal of a college, who is essentially of the grade of a University Professor or Reader, may during his tenure be transferred and reverted to the post of a Professor or Reader in another college. Learned counsel submitted that as per the interpretation being accorded to the 2012 Amendment Act by the Respondents, the age of superannuation of the concerned person(s) would keep vacillating between 62 years and 65 years, on the basis of the post held.

25. Learned counsel pointed out that there exist several instances of Principals, upon transfer, being posted as Professors/Readers in the college/s to which transferred. Illustratively, (a) Dr. Umesh Mishra, who was Principal, Magadh Mahila College, Patna under the Patna University, was transferred as University Professor to the Post Graduate Department of Applied Economics & Commerce, Patna University vide Memo No. 979/R dated 11.05.2015, and; (b) Dr. Dolly Sinha, Principal, Vanijya Mahavidyalaya, Patna was transferred as University Professor in the Post Graduate Department of Physics, Patna University vide Memo No. 980/R dated 11.05.2015. It was submitted that if the post of Principal is treated as a non-teaching post, no Professor or Reader, otherwise eligible for being appointed as Principal, would apply for appointment as Principal and thereby, voluntarily lose out on three years of active service with full salary and emoluments.

26. Learned counsel submitted that pursuant to the directions issued by the office of the Hon'ble Chancellor, the Vice-Chancellor, Magadh University vide Letter No. 176/G1A dated 08.05.2013 had directed Principals of all colleges to provide their details in the prescribed format for determination of seniority in matter of their appointment as Dean of Faculties. Accordingly, the Petitioner No. 3 by letter dated 24.05.2013 submitted his details to the Vice-Chancellor,

pursuant where to he, while posted as Principal, College of Commerce, Patna was appointed Dean, Faculty of Law, Magadh University through Memo No. 31/98-389/G1A dated 15.09.2014.

27. Further, it was urged that not only the Universities covered by the Act, the Patna University Act and under the State Government, but the Ministry of Human Resource Development (in praesenti renamed as the Ministry of Education), Government of India also treats Principals as a teaching post, as evincible from letter dated 26.08.2010 of the Director, Ministry of HRD, Government of India written to the UGC, New Delhi wherein in lieu of the recommendations of the Sixth Pay Commission, the pay of Principal has been revised as that of a teacher. Accordingly, budgetary allocations for payment of Principals' salaries is made under the budgetary allotment for teaching posts as can be evinced from the proposed Budget prepared by the Magadh University for Financial Year 2016-2017. Perusal thereof the same would reveal that the post of Principal has been accounted for in the sanctioned posts for teachers and budgetary allocations have also been made under the head for Teachers. Pursuant to the Budget being approved, funds have been released by Memo No. 274 dated 26.02.17 by the Director, Higher Education, Government of Bihar in favour of the Principals. The State Government, it was stated, has been releasing funds on the basis of such audits treating Principals as teachers even post the 2012 Amendment Act and never, previously, objected. The Ministry of Human Resources Development, Government of India started a web-based All India Survey on Higher Education (hereinafter referred to as 'AISHE') since 2010-2011, which covers all institutions in the country engaged in imparting higher education, where data is collected on several parameters such as teachers, student enrolment, programmes, examination results, education finance, and infrastructure. Under the AISHE the Colleges are required to submit the details with regard to the infrastructure etc. vide DCF Form I, while the details with regard to teaching posts are submitted through DCF Form II, which includes the post of Principal in the college. Pursuant to letter dated 15.02.2017 by the Department of Education, Government of Bihar, the Vice-Chancellor, Magadh University by Memo No. 21/17 dated 07.04.2017 directed the Principals of all colleges to upload all data pertaining to DCF Form II by 13.04.2017. The said details were uploaded on 13.04.2017, including the post of Principal alongwith other teaching posts.

28. Wrapping up, learned counsel stated that principals, apart from carrying out other administrative and supervisory functions also take routine/regular classes in the colleges and are mandated to do so as evident from the Magadh University Resolution dated 08.09.2010 passed in a meeting of all the Principals of the constituent colleges of the University. It was advanced that the principals have continued to take classes even after the 2012 Amendment Act.

29. Mr. Lalit Kishore, learned Advocate General appearing for the State, opposed the writ petitions. He submitted that the petitioners' stand was misconceived. He

submitted that the petitioner cannot succeed without challenging the 2017 Amendment Act, as only by such amendment, the term 'principal' has been incorporated in the definition of teacher and the same had been deliberately taken out from the definition of the teacher in the year 2012, there cannot be any ambiguity as to the intention of the Legislature which in its wisdom has taken a conscious decision to bring out of the definition of 'teacher', both the posts, of 'principal' as well as demonstrator. He submitted that once the cause or the grievance of the petitioners cannot be gone into without considering the validity and vires of the 2017 Amendment Act, the instant batch of writ petitions cannot be adjudicated before a Single Bench as the same has to be placed before a Division Bench in terms of the roster of cases allocated by the Hon'ble the Chief Justice.

30. He submitted that on the 2012 Amendment Act, when the language of the statute is clear and unambiguous, the Court would not be required to go into any reading down or purposive interpretation, which course is open only where either the language is unclear or which leads to various discrepancies in balancing the overall provisions of the statute. It was submitted that in the present case, if the post of 'principal' is removed from the category of teachers, there will be no disturbance to the general provisions of the Acts and 'principal' coming out from the teaching category to non-teaching category would not lead to a situation where the Court would be called upon to clarify or give any interpretation, other than what is clear and apparent in black and white from the language itself. It was further submitted that the Court need not unnecessarily labour with the issue for the reason that the 2012 Amendment Act was subject-matter of a writ petition before this Court and the vires thereof had been upheld by the Hon'ble Supreme Court. He exhorted the Court not to go into the exercise of dissecting a portion of the Acts for the purposes of holding that only the removal of the post of 'demonstrator' from 'teacher' has been upheld whereas the post of 'principal' is still open to another interpretation by the Court. It was further submitted that 'principal' is not a sanctioned post in the teacher's grade. He submitted that the post of 'principal' is a separate post and a separate cadre, which cannot be said to be either complementary to or inclusive in the broad cadre of teachers. Canvassing this proposition, the learned Advocate General relied upon decisions of the Privy Council in the case of *D. R. Fraser & Co. v Revenue Minister*, AIR (36) 1949 PC 120, the relevant being at paragraph no. 11; *W. I. Theatres v Municipal Corporation, Poona*, AIR 1959 SC 586, the relevant being at paragraph no. 6, and; *State of UP v Malik Zarid Khalid*, (1988) 1 SCC 145, the relevant being at paragraph no. 10.

31. Learned counsel for the UGC submitted that, as of now, there is no clear-cut statutory provision which may put the post of 'principal' in any specific and straight jacket definition of a teacher or a non-teacher. It was submitted that till now, the UGC has never taken a stand or has considered the post of principal not to come under the category of 'teacher'. He submitted that for all practical purposes and as far as the UGC was concerned, principal would be deemed to be

the post under the broad definition of a teacher, subject to the actual responsibilities and manner and mode of appointment which may be distinct vis-à-vis other purely teaching staff. By way of analogy, he submitted that as the sphere of intervention and power of the UGC is restricted to the academic functioning of the higher educational institutions, all Regulations made by it, pertain to the academic domain, including teachers and staff with regard, covering the post of principal also. By adoption and/or by implication of the Regulations framed by the UGC, the post of principal would be included as an academic teaching post.

32. He stated that as the qualification for appointment as principal is mentioned in the UGC Regulations, such post becomes an academic/teaching post. Learned counsel submitted that by way of further clarification, the UGC is not empowered to make any regulation for non-teaching staff/employees, and therefore, the Regulations, including the provisions relating to the post of principal would indicate that the post of principal comes under the teaching grade.

33. Learned counsel for the Hon'ble Chancellor submitted that he would be adopting the arguments of learned Advocate General. However, he submitted that the UGC Regulations are not mandatorily and automatically applicable to the State as the same have to be adopted and the Hon'ble Supreme Court had clarified that especially in matters relating to age of superannuation, it would be the concerned State which had to take a call.

34. Learned counsel on behalf of the Intervenors submitted that the writ petitions are misconceived. It was submitted that the petitioners had challenged the Notification of the Education Department, Government of Bihar contained in Memo No. 1703 dated 20.09.2017, by which the Registrars of the petitioners' universities, including Magadh University, had been communicated that all those principals who have attained 65 years of age will retire as they were no more teachers and in view of the 2017 Amendment Act, 'principal' in the definition of 'teacher', has been brought back, but has come into force with prospective effect and, thus, the petitioners who had attained the age of 62 years prior to the 2017 Amendment Act, shall be considered to have superannuated. It was advanced that prior to 27.12.2012, before the 2012 Amendment Act, the terms 'principal' and 'demonstrator' were included, but in the redefined Section 2(v) of the Act, have been deliberately left out and 'principal', thus, goes out of the scope of being considered 'teacher' for the purposes of the Act. It was submitted that Section 2(m) of the Act defines Principal as head of a college and Lecturer, Reader and Professor are separately defined in Sections 2(s), 2(r) and 2(o) of the Act.

35. In exercise of power conferred by Section 26(1)(e) of the UGC Act, the University Grants Commission (Qualifications Required of a Person to be Appointed to be Teaching Staff of the University and Institution Affiliated to it), Regulations, 1991 (hereinafter referred to as the '1991 UGC Regulations') came into effect from 05.10.1991. The 1991 UGC Regulations defined only three types

of teachers viz. Lecturer, Reader and Professor and did not include Principal as teaching staff of the university. Further, submitted learned counsel, Section 57 of the Act was amended and was substituted by the Bihar State Universities (Amendment) Act, 2007 where provision was made that appointment to the posts of teachers and officers of the University shall be made by the University on recommendations of the concerned University's Selection Committee. In terms thereof, a revised Statute dated 30.06.2008 was framed prescribing the procedure of selection. Later, in 2010, exercising power under Section 26(1)(e) and (g) of the UGC Act, the UGC came out with the 2010 UGC Regulations on 30.06.2010, made effective from 18.09.2010, upon publication in the Gazette. Learned counsel submitted that the 2010 UGC Regulations also recognised only three categories as teachers in universities viz. Assistant Professors, Associate Professors and Professors. Learned counsel urged that the Court would take note of the fact that apart from the university's teaching staff, Principal, Registrar, Laboratory and Physical Education Personnel at various levels were also included in the 2010 UGC Regulations under 'Other Academic Staff in the Universities and Colleges' as the 2010 UGC Regulations were framed under Section 26(1)(e) and (g) of the UGC Act. It was, thus contended, that the petitioners' stand that the expression 'teaching staff of the university' in Section 26(1)(e) of the UGC Act, includes principals, is not tenable.

36. Learned counsel submitted that as a consequence thereof, to remove the anomalies in the definition of 'teacher' and to bring the Acts in consonance with the UGC Act and the Regulations framed thereunder from time to time, Section 2(v) of the Act was substituted by a new definition of 'teacher' by the 2012 Amendment Act. A striking feature of the 2012 Amendment Act, per learned counsel, was that it was made operative with retrospective effect from 05.10.1991, which is also the day the 1991 UGC Regulations came into operation. The deliberate omission of 'principal' and 'demonstrator' was a conscious exercise of the Legislature which had to be given due weightage. Further, after the 2012 Amendment Act, Section 57 of the Act was again amended by the Bihar State Universities (Amendment) Act, 2013 (hereinafter referred to as the '2013 Amendment Act') providing for appointment of teachers on the recommendation of the Bihar Public Service Commission. However, appointments of Principals and Officers was left to be made by the internal Selection Committee, clearly indicating that they were distinct from the teaching staff of the universities and colleges.

37. Learned counsel submitted that the validity of the 2012 Amendment Act was challenged in various writ petitions by Demonstrators in this Court which was negated by the Division Bench, dismissing all such applications on the grounds that neither the impugned enactment was void for want of legislative intent, nor was it arbitrary and discriminatory, and also was not a colourable legislation. In this connection, learned counsel drew the Court's attention to the judgement of a Division Bench of this Court in *Akhauri Bijay Prakash Sinha v State of Bihar* 2014 (2) PLJR 798, the relevant being at paragraphs no. 12, 15, 24, 33 and 34.

He referred specifically to the portion of the judgement that reads:

"Thus it is apparent that apart from the aforesaid three categories of Professor, Reader and Lecturer, other cadres in a Uni-versity or affiliated institutions are not re-cognized as teaching posts under the UGC Act and the UGC Regulations."

38. Learned counsel submitted that Akhauri Bijay Prakash Sinha (supra) was taken to the Hon'ble Supreme Court, but not interfered with. Learned counsel submitted also that no principal of any college university in Bihar had challenged the 2012 Amendment Act which deleted 'principal' from the definition of 'teacher'. It was contended that Section 67 of the Act mentions that the date of retirement of a teaching employee of the university or college shall be the date on which he attains the age of 62 years and further, the date of retirement of a teaching employee will be the same which would be decided by the UGC in future. It was submitted that the Section further stipulates that the date of retirement of non-teaching employees (other than the inferior servants) shall be the date on which they attain the age of 62 years and also that the University shall, in no case, extend the period of any of the teaching or non-teaching employees, after the age of 62 years, as the case may be. Later, in the year 2011, considering the acute shortage of teachers, the age of teaching employees only was enhanced from 62 to 65, years but a corresponding change was not made with regard to non-teaching employees.

39. Learned counsel advanced that the intervenor had filed CWJC No.2250 of 2017 (part of the current batch) seeking the issuance of a writ of quo warranto against Dr. Baban Singh, who was holding the post of Principal, College of Commerce, Art and Science, Patna under Magadh University as he was il-legally continuing on the said post after crossing the age of 62 years. Learned counsel informed that on 02.03.2017, the Court issued notice to Dr. Singh and observed that the pendency of the case would not come in the way of either the State authorities or Magadh University in proceeding in any manner in accordance with law. He submitted that in CWJC No. 2250 of 2017, the State has filed an affidavit taking a categorical stand that after the 2012 Amendment Act, principals have come under the cat-egory of non-teaching staff of the university and hence shall re-tire upon attaining the age of 62 years. The State, again by the 2017 Amendment Act, has included 'principal' in the definition of 'teacher' in Section 2(v) of the Act. It was contended that though 'principal' has been brought into the definition of 'teacher', but the same is prospective with effect from 18.05.2017 after publication in the Gazette and the 2017 Amendment Act did not operate retrospectively.

40. Learned counsel further advanced that the State had enacted the Bihar State University Service Commission Act, 2017 for selecting teachers but the same did not include prin-cipal. In view of the guidelines sought by the Registrar, Magadh University from the State Government regarding age of superan-nuation of college principals, the Education Department, Gov-ernment of Bihar took a stand that all principals would retire on the day they attain 62 years of age. Learned

counsel submitted that the impugned Notifications are the result of such stand of the State Government. It was urged that the petitioners' contention that principals stand included in the latter portion of Section 2(v) of the Act after the 2012 Amendment Act, and would come under "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" is untenable as such sanctioned post means Lecturer (Senior Scale), Assistant Professor, Associate Professor etc. which are recognized as teacher by the UGC. By way of explanation, learned counsel submitted that if principal was included in such definition even after the 2012 Amendment Act, the State would not have come out with the 2017 Amendment, specifically for including 'principal'. Just equivalence of the pay-scales of Professor and Principal would not, in the eyes of law, automatically place principal as equivalent to teacher as such equivalence is not the only factor to judge whether posts of Principal and Professors/Readers stand included in the category of teachers. Per learned counsel, the test would be as to whether they were of equal status and responsibility. For such proposition, learned counsel relied upon *Vice-Chancellor, L.N. Mithila University v Dayanand Jha*, AIR 1986 SC 1200, the relevant being at paragraphs no. 7-8, wherein it has been held that the criteria for equivalence is the status, nature and responsibility of the duties attached to the posts. It was submitted that though the posts of Principal and Reader are in the same pay-scale, the post of Principal undoubtedly has higher duties and responsibilities. He urged that the submissions of the learned counsel for the petitioners that Professor/Reader is equivalent to Principal under Section 10(14) of the Act cannot be accepted.

41. On the question of interpretation, learned counsel submitted that the cardinal principle of construction is, when plain and unambiguous, the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. For such proposition, he relied upon *Union of India v Hansoli Devi*, (2002) 7 SCC 273, the relevant being at paragraph no. 9.

42. Learned counsel submitted that where the language of an Act is clear and exclusive, the Court must give effect to it, whatever be the consequences, for the words reflect the intention of the Legislature. For such proposition, he relied upon *Dr. Ganga Prasad Verma v State of Bihar*, 1995 Supp (1) SCC 192, the relevant being at paragraph no. 5. Learned counsel further submitted that, similarly, in *Nathi Devi v Radha Devi Gupta*, (2005) 2 SCC 271, the relevant being at paragraphs no. 13-18, the Hon'ble Supreme Court has held that the interpretative function of the Court is to discover the true legislative intent and when the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, the Courts must give that meaning irrespective of the consequences, as the Courts are not concerned with the policy involved, whether the results are injurious or otherwise, which may follow from giving effect to the language used.

43. Further, he contended that the Hon'ble Supreme Court has held that efforts should be made to give effect to each and every word used by the Legislature, as the Courts always presume that they were inserted for the purpose and the legislative intention is that every part of a statute should have effect and any construction which attributes redundancy to the Legislature should not be accepted except for compelling reasons such as obvious drafting errors. It was, submitted learned counsel, also held that even if some ambiguity exists in the language and the same is capable of two interpretations, the interpretation which serves the object and purpose of the Act must be given effect to by adopting the Doctrine of Purposive Construction. Learned counsel submitted that in view of this standpoint of law, the petitioners' stand that 'principal' being subsequently reintroduced by the 2017 Amendment Act, was only clarificatory in nature cannot be accepted. Moreover, it was held that it was not permissible to add or subtract what is not there unless a literal construction being given to a part of the statute becomes meaning-less.

44. Learned counsel submitted that under the Act, Principals are appointed substantively on permanent post and they continue on the said post till their retirement and the policy of reservation and roster is strictly followed in such appointment. He submitted that after appointment, they are on probation for a period of two years and then, their service is confirmed in the cadre of Principal whereas the 2010 UGC Regulations do not recognise a permanent Principal as the term of appointment of Principal under the 2010 UGC Regulations is restricted to five years, after which he reverts back to the academic post of teacher, having retained his lien on the post during tenure as Principal. In the present scenario, the moment the tenure exceeds five years, the lien will lapse automatically and, thus, a principal cannot come back to the academic post of teacher to continue till the enhanced age of superannuation permissible to the post of teacher. Learned counsel submitted that the position with regard to the Principal's post being a tenure post of five years has also been clarified by the UGC vide Public Notice dated 17.05.2017 and that the person retains his/her lien in the parent college/university as per the extant Central/State Government rules. It was urged that the 2010 UGC Regulations have not been adopted in context of making the post of principal a tenure post in Bihar by the State Government. By way of illustration, Clause 12.0 of the 2010 UGC Regulations talks of the creation and filling-up of teaching post, followed by Clause 12.1 which says that teaching post in the universities may, as far as feasible, be created in a premeditated order i.e., for instance, for one post of Professor, there shall be two posts of Associate Professors and four posts of Assistant Professors per Department. Thus, it was submitted that, even here, the 2010 UGC Regulations do not indicate that principal is a teaching post.

45. Learned counsel submitted that the intervenor along with two other teachers has also challenged the validity of the 2017 Amendment Act in CWJCs No. 16994 of 2017 and 17133 of 2017, on the ground that the same conflict with the 2010 UGC Regulations, which, they contend, is a central legislation. Thus, as

ultimately all these issues relate to the vires and validity of the 2012 Amendment Act vis-à-vis the 2017 Amend-ment Act and the 2010 UGC Regulations, they would require to be heard by a Division Bench.

46. It is noted that, on date, CWJC Nos. 16994 of 2017 are pending before a learned Division Bench of this Court.

47. In reply, learned counsel for the petitioners sub-mitted that the contention that the word 'principal' has been ex-pressly deleted and, thus, has to be given effect to, in a literal sense, is misconceived as the Legislature, keeping in view the clear provision of the amended Section 2(v) of the Act read with the Preamble to the 2012 Amendment Act has only picked out 'principal' and included it in the expression "such sanctioned posts in the teacher's grade...". It was advanced that this clearly shows that a broader class of persons come within the definition of teacher, which would include the likes of Principal, Dean etc. Admittedly, urged learned counsel, Deans are also teachers and once the same also do not specifically find place in the defini-tion of teachers but still, without controversy, remain in the cat-egory of teachers, by the same analogy, 'principal' not being specifically mentioned would need to be necessarily read into the addition made by the 2012 Amendment Act in light of the pointed expression "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time". Learned counsel advanced that, in fact, the ultimate im-port of the judgements cited by learned counsel for the Intervenors viz. Nathi Devi (supra), Hansoli Devi (supra) and Dr. Ganga Prasad Verma (supra) support the petitioners rather than the intervenors for the reason that each and every word of the legislation is to be given effect to as they have been inserted for a purpose and the Court while interpreting a provision cannot add or subtract words.

48. Additionally, learned counsel stated that the above-referred decisions also stipulate that the intention of the Legislature must be found out from the Scheme of the Act, that is, by reading the entire Act as a whole, and further, that an in-terpretation which renders a particular provision redundant or otiose should be avoided and construction should be avoided. Construction to brush it aside, or treat it as surplusage also is to be avoided. He drew this Court's attention to paragraphs no. 14, 16 and 18 of the Constitution Bench judgement in Nathi Devi (supra) to submit that the stand of the Respondents to completely ignore the second category of posts to be included in the definition by the expression "persons holding such sanc-tioned posts in the teacher's grade" would render it otiose, which is impermissible.

49. It was advanced that the Legislature's intention is clear, both from the Preamble to the 2012 Amendment Act, and also from the words used viz. a person must be holding a sanc-tioned post, and such sanctioned post must be in the teacher's grade on the basis of the UGC Regulations holding the field. If the twin conditions stood fulfilled, such category of post would get included in the amended definition of 'teacher' in Section 2(v) of the Act. Here, learned counsel

stated that the Court should take special note that the proviso to Section 2(v), after the 2012 Amendment Act, which would show that protection was accorded to Demonstrators appointed prior to 18.09.1975 on posts sanctioned before 01.01.1973, but such protection was not accorded to any other category, including Principals, indicating there was no intention of 'principal' not being within 'teacher' by the Legislature when enacting the 2012 Amendment Act.

50. Learned counsel advanced that from the recital in the Preamble to the 2012 Amendment Act, the intention of the Legislature is disclosed as reasons have been assigned for the same which leave no ambiguity inter alia to conclude that Demonstrators and Lab Assistants were intentionally and deliberately excluded for not possessing the minimum qualification to be appointed teachers. The reason behind the 2012 Amendment Act was to ensure that persons lacking minimum qualification to be retained in the category of teachers do not get the benefit by being included in 'teacher' in the Act. The specific object being exclusion of Demonstrators and Lab Assistants, coupled with the expression "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" covering principals makes the position of principals being teachers clear. He further contended that the provisions of the Act have to be read in continuity for the purpose of harmonious construction with the 2012 Amendment Act in the background of judicial pronouncements which hold that any part, especially amended provisions, need to be read as a whole bearing in mind the entire scheme of the Act. Thus, only due to removal of the term 'principal', principals cannot be deemed to have been deliberately and/or intentionally excluded, as such interpretation is not in conformity with settled principles governing interpretation of statutes.

51. Learned counsel submitted that Section 2(am) of the Act, which forms part of the definition clauses, was inserted vide Act 68 of 1982 and provides for equivalence of post on matrix of scale of pay meaning thereby that pay-scale is also a pointer as to the category under which the post has to be in order to avoid contradiction amongst the various provisions of the Act. Another pointer in support of his contention is, he submitted, was Section 10(14) of the Act, empowering the VC to transfer any teacher of any department of any college to another department or college on equivalent post in terms of approved guidelines of the Hon'ble Chancellor. The illustration to the said Section states that equivalent post means Reader and Principal in the pay-scale of Reader and Professor and Principal in the pay-scale of Professor. Accordingly, as per him, when the Act's illustration clarifies the above equivalence, the State has created an unnecessary and unwarranted controversy by adopting a myopic, and legally incorrect stance, based merely on the over-simplistic premise that the term 'principal' subsequent to the 2012 Amendment Act does not find place in the definition of teacher in Section 2(v) of the Act. At the cost of repetition, he submitted that a new category was introduced by the 2012 Amendment Act which has to be fully effected without restriction. The post of Principals and Professors/Readers are basically interchangeable as would be obvious from

Sections 9(7)(i), 10(14), 14 and 26 of the Act which suggest that Principals are within the definition of 'teacher' in the statutory framework. In this connection, learned counsel drew the Court's attention to the averments made in paragraphs no. 45-46 in CWJC No. 14428 of 2017 where it has been stated that there are at least two instances where the Patna University has transferred and/or shifted a person holding the post of Principal to that of Reader and Professor. He submitted that if the cadre of Principal was totally insulated from and unconnected with teacher, then such action of the Patna University could not have been resorted to, as it would be impermissible under law.

52. Learned counsel submitted that the contention of the Respondents, that the second category created by the 2012 Amendment Act would only take within its ambit Principals not part of the permanent cadre of Principals, is wholly misconceived in view of Section 10(14) of the Act and the UGC Regulations. Moreover, such construction would lead to, in fact, a situation where it would take away the vested interest of Reader and Professor grade to be appointed as Principal, which was never the scheme of the Act, even prior to and after the 2012 Amendment Act. In furtherance of such proposition, he submitted that the respondents' submission that the post of Principal unless defined by tenure would not permit the holder of the post thereof to claim the post of teacher is also misconceived, as the post of Principal itself is either in the Reader or Professor grade, and hence, a Principal would retain his/her basic identity, such status/identity having been conferred on him/her by the Act, would be taken away if such contention of the respondents was upheld. It was advanced that on the appointment of the petitioners to the post of Principal in Reader or Professor grade, the right to the post of Principal vesting at the relevant time with the vested right of being Reader or Professor which, admittedly, are teaching posts would indicate they are still within 'teacher'.

53. He submitted that even if it is assumed that the 2012 Amendment Act removed 'principal', as the law does not permit taking away a vested interest without the due process of law or with retrospective effect, 'principal' would stand obviously and necessarily covered in the second category introduced by the 2012 Amendment Act.

54. He submitted that the matter has been unnecessarily pursued by the respondents on the reasoning that a Reader/Professor cannot be appointed as Principal of a college, if the subject he/she teaches is not taught in such college. The admitted position clinches the issue to establish that the Principal remains basically a teacher as the post of principal was never meant to be out from the category of 'teacher'. Building such line of arguments, he proceeded to submit that if at all the Principal does not come under 'teacher', the stipulation, requiring him/her to be a teacher of a subject taught in the college where he is appointed/proposed to be appointed as Principal, would become arbitrary and unreasonable having no nexus with such appointment, if a Principal were to lose the identity/status of teacher. In this connection, he advanced that in Dr. (Mrs.)

Annapurna Devi (supra), the Court explained the scheme of the Act, though prior to the 2012 Amendment Act, and analysed the role and position of a Principal, based both on academic qualification and entitlement to be so appointed, more importantly relating to the subject taught as a teacher. In addition, he referred to the two separate statutes regarding formation of Selection Committees for appointment of Principals in single-faculty and multi-faculty colleges which provide that, for single-faculty colleges, the expert has to be of the particular subject taught in the college and thus, the Principal also has to be teacher of the same subject, whereas, in respect of a multi-faculty college, the expert can be of any of the subjects taught in such college, and the Principal has to be a teacher of any one of the subjects taught in the college.

55. Learned counsel submitted that the issue as to whether the Principal is a teacher entitled to conduct teaching work in a college/faculty came up for consideration in Dr. (Mrs.) Annapurna Devi (supra) and the Court answered in light of Sections 2(k) and (v) read with 7 of the Patna University Act, which is *pari materia* Section 2(m) and (v) of the Act, holding that a Principal is a teacher entitled to teach. Learned counsel reiterated that Principals have been acting as guides for students pursuing M.Phil. and/or Ph.D., and being guides is permissible under the UGC Regulations only to teachers possessing the requisite prescribed qualification.

56. Countering the contention of learned Advocate General that the second class of persons who were also brought into the definition of 'teacher' by the 2012 Amendment Act was only an enabling provision to provide for a group which would include all such categories as teachers on the basis of future UGC Guidelines/Regulations, is not fit to be accepted for the reason that the Advanced Law Lexicon, 3rd Edition, 2005 at page no. 1589 defines enabling Statute or Act as one which makes it lawful to do something which would otherwise not be lawful. By way of example, learned counsel drew an analogy for compulsory take-over of land being authorized under law. He relied on the Constitution Bench judgement in *M. Nagaraj v Union of India*, (2006) 8 SCC 212, the relevant being at paragraph no. 106 which held that the enabling provision of Article 16(4-A) and 16(4-B) of the Constitution of India confers authority on the Executive to provide for positive discrimination which is applicable qua enabling Statutes that if the Legislature enables something to be done, it gives power and at the same time, by necessary implication, such powers which are indispensable for the purpose of carrying it out even though the same may not be specifically enumerated therein. It was contended that perusal of Section 2(v) of the Act would demonstrate that it is merely a definition of 'teacher' without confirming any power of enablement. It was further contended that the contention on behalf of the State that such further group which has been added by the 2012 Amendment Act would only be relevant prospectively, as and when the UGC makes any addition is erroneous, for the reason that no such restrictive meaning has either been imposed by the Legislature or can be inferred both by plain reading of the Statute or even by the authorities and precedents relied on by the

State. Learned counsel submitted that as far as the 2017 Amendment Act is concerned, it has only expressly in so many words included the term 'principal' which was all along implicit earlier and also to remove any ambiguity or confusion on the issue even though the same was not imperative or required to be gone into by the State.

57. He urged that the 2017 Amendment Act did not adversely affect the case of the petitioners as the 2012 Amendment Act did not make the State take steps remove 'principal' from 'teacher' either in view of the Preamble to the said amendment or by any intention/conduct of the State, inasmuch as the petitioners were allowed to continue on such post even after crossing the age of 62 years but for the controversy created by the 2017 Amendment Act. Reliance was placed on the decision in *Zile Singh v State of Haryana*, (2004) 8 SCC 1, the relevant being from paragraphs no. 12-24.

58. Learned counsel, by way of explanation, further submitted that the definition section/clauses of any Act do not control the substantive provision of the Act which itself stands clarified by the very opening lines of Section 2 of the Act which state "in this Act, unless there is anything repugnant in the subject or context". In this connection, the contention of the respondents that the UGC recognizes only three categories as teachers which does not include Principal was flawed, it was submitted, as the mere fact that the Principal post is either in the Professor grade or Reader grade does not leave anything to imagination or create any controversy of the Principal post being a teacher post. Moreover, it was submitted that the Principal was all along an equivalent post in the teachers grade, either Professor or Associate Professor which are equivalent posts provided for, both by Act as well as UGC Regulations, which issue has not been answered by the respondents.

59. On the respondents' arguments that teachers are a separate class and Principals do not fall in the category on the strength of qualification for appointment as Principal as the agencies entrusted with their selection are different in view of the substituted Section 57 of the Act and subsequent amendment incorporated in the year 2013, it was contended that various provisions providing for equivalent post and cadre by the Acts as well as the UGC has not been examined by learned counsel for the respondents and the definition providing for a separate class to be included within the definition of the word 'teacher' flows from the UGC recognising a Principal as teaching staff. To the contention of the respondents that the omission of the word 'principal' by the 2012 Amendment Act had to be challenged by the petitioners, it was submitted that the same was not required as it was nobody's case that the Principals were in the category which was either meant to be or was actually removed from the definition of 'teacher' by the 2012 Amendment Act. Such challenge, submitted learned counsel, would amount to creating a ghost and then killing it. It was further submitted that the 2017 Amendment was clarificatory as the purpose of the said amendment was that Principals were included in the definition of

teachers. It was advanced that while exercising powers under Section 26(1)(e) and (g) of the UGC Act, the UGC is empowered to define the qualifications that should ordinarily be re-quired for any person to be appointed to the teaching staff of the University; it was stated that the 2010 UGC Regulations provide for minimum qualification for direct recruitment of teachers in Clause 4, for minimum qualification required for Principal in Clause 4.2.0. It was submitted that Appendix 1 to these Regula-tions, relied upon by the respondents, categorically provides for a scheme for revision of pay of teachers and equivalent cadres in Universities and Colleges. It was submitted that while refer-ence was made to Clause (1)(i) thereof, Clause 1(iii) was com-pletely lost sight of which provides for pay of teachers and equi-valent posts in Universities and Colleges in two bands of pay scale with appropriate Academic Grade Pay. It was further sub-mitted that Clause 4 provides one of two pay-scales of teachers to Principal and as such Principals are appointed in the teachers grade. Learned counsel submitted that Clause 8(b) provides that the scheme is applicable to teachers and equivalent cadres and by Clause 8(b)(ii) to (iv) provides for posts to which it is not ap-plicable, which pointedly does not exclude the post of Principal.

60. It was submitted that in Dr. (Mrs.) Annapurna Devi (supra), this Court had already held that principals are en-titled to teach. Learned counsel, in this connection, drew the attention of the Court to Annexure-14 in CWJC No.14428 of 2017, which is Resolution adopted at a meeting of Principals of constituent colleges dated 08.09.2010, under the chairmanship of the Vice-Chancellor, Magadh University, wherein the Fin-ance Officer, Registrar, C.C.D.C., Financial Advisor, Nodal Of-ficer, Controller of Exams, Development Officers and Dean Sci-ence were present, and among various decisions taken, it was also decided that principals will engage at least 1 or 2 hours of classes every week.

61. Although learned counsel for the intervenors had already concluded arguments, they wanted to further assist the Court which was permitted. It was contended petitioners' argument that principals have been transferred and posted as Professor/Reader in the colleges on which they have been transferred, namely Dr. Umesh Mishra and Dr. Dolly Sinha, conceals the real facts, as both were appointed principals for a period of five years and after completing the said term, were not appointed as principal permanently.

62. At this juncture, learned counsel for the petitioner submitted that the intervenors have now started approbating and reprobating their stance. It was submitted that initially they had taken a stand that the Universities were not appointing principals on tenure post, but by making the present submission they had accepted that the Universities were also making appointment on tenure posts and more importantly, if at all, the 2012 Amendment Act has been fully upheld, even it is retrospective effect from the year 1991 has been upheld and, thus, all such actions of the Universities are deemed to have been under and within the ambit of the law. He submitted that it was not a matter of dispute that the petitioners not having been disturbed even after attaining the age of 62

years even after passing of the 2012 Amendment Act, the respondents, more importantly, the State and the respective Universities were clear that principals were neither intended to be nor actually were removed from the definition of 'teacher', even after the 2012 Amendment Act.

63. Learned counsel for the respondents referred to paragraph no. 8 of Dayanand Jha (*supra*), wherein the Court had held that the power of the Vice-Chancellor to transfer the Principal to the post of Reader was not available as per the provisions of the Act. Learned counsel for the petitioners pointed out that the judgment belonged to the year 1986 by the Amendment brought in Section 10(14) of the Act, by way of addition of illustration in the year 1990, "equivalent post" meant Reader and Principal in the pay-scale of Reader, Professor and Professor in the pay-scale of Principal.

64. Learned counsel for the respondents submitted that the Principal is the Research Supervisor also but as per Clause 6.2 of the University Grants Commission (Minimum Standards and Procedure for Award of M.PHIL./PH.D. Degrees) Regulations, 2016 (hereinafter referred to as the '2016 UGC Regulations'), only a full-time regular teacher of the concerned University/institution shall be deemed to be a supervisor and, thus, principal would not fall into such category.

65. Again, the petitioners' counsel submitted that the issue is not whether the Principal can be considered as a regular and full-time teacher but whether he would come under the definition of 'teacher' and, thus, as long as the principal is permitted to hold classes, without objection or in contravention of any of the UGC Regulations, he/she cannot be considered outside the purview of 'teacher' in any manner under the UGC Regulations and, thus, by implication even in the amended definition 2(v) of the Act and 2(r) of the Patna University Act.

66. Heard learned counsel for the parties, perused the materials on record and surveyed the judicial precedents.

67. Challenge is laid to the impugned Notifications/Orders impacting the petitioners. The outcome of these petitions is contingent on the interpretation to be given to the amendments in question. Significantly, the petitioners have not assailed the vires or the constitutional validity of either the 2012 Amendment Act or the 2017 Amendment Act. In these circumstances, the Court sees no reason as to why these petitions cannot be adjudicated by a Single Bench. There is no requirement for these petitions to be heard by a Division Bench.

68. These petitions pose an interesting question, but in the opinion of the Court, may not be as vexed as has been made out to be.

69. The genesis of the present controversy is traceable to the 2012 Amendment Act. A glance at the same would disclose that the object of bringing about the said amendment was strictly focused on the post of demonstrators which had given rise to various anomalies. Thus, a detailed discussion was incorporated into the

Preamble to the 2012 Amendment Act that the same was necessitated to bring the Act in tune with the 1991 UGC Regulations as also the decision of the Division Bench of the erstwhile Ranchi Bench of this Court in LPA No. 274 of 1997 (R) not to treat Lab Assistant as teacher which was not interfered with by the Hon'ble Supreme Court; that their re-designation as Demonstrator had acquired the status of teacher in terms of the definition of 'teacher' under the Act, the decision in LPA No. 981 of 2011 dated 11.07.2011, which was upheld by the Hon'ble Supreme Court leading to the Government of Bihar taking a decision on 14.06.2006 to re-designate the Graduate Laboratory Assistant/Junior Laboratory Assistant/Laboratory In-charge/Lab Technician/Technical Assistant etc. appointed in the laboratories of the constituent colleges as demonstrators and upon such re-designation as demonstrator, the concerned employees were entitled to all benefits of the post of demonstrator and therefore, re-designation of non-teaching post had arisen. It was further stated that the State Cabinet had decided to rectify the mistake in light of the legal opinion and observation of the LPA Court and decided to withdraw the previous decision to re-designate lab personnel as Demonstrator with effect from the date of issuance of letter of re-designation dated 14.06.2006 and its modification dated 01.08.2006 leading to issuance of Government Resolution No. 608 dated 10.04.2012. Thereafter, the aim and object of the 2012 Amendment Act has been spelt out in which it has been stated that it was necessary to amend the definition of 'teacher' to exclude non-teaching employee lab personnel re-designated Demonstrator with effect from the date of re-designation, as the UGC and Central Government did not recognize Demonstrator as teaching employee. Accordingly, the said amendment was effectuated whereby Section 2(v) of the Act was substituted.

70. From the aforesaid, there cannot be any controversy or dispute that the sole object of bringing about the amendment was to remove the lab personnel re-designated demonstrator out of the definition of teacher. Moreover, the inclusion of "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" is further indicative of the legislative intent behind such amendment. Moreover, the Preamble to a statute can serve to find out the intent of what the statute seeks to implement. The observation in *Bishwambar Singh v State of Orissa*, 1954 SCR 842 by a Constitution Bench of the Hon'ble Supreme Court enables this view:

"17. The long title of the Act and the two preambles which have been quoted above clearly indicate that the object and purpose of the Act is to abolish all the rights, title and interest in land of intermediaries by whatever name known. This is a clear enunciation of the policy which is sought to be implemented by the operative provisions of the Act..."

(emphasis supplied)

71. This is further reinforced by *In Re The Kerala Education Bill*, 1959 SCR 995, as follows:

"9. The long title of the said Bill describes it as "A Bill to provide for the better organisation and development of educational institutions in the State". Its preamble recites thus: "Whereas it is deemed necessary to provide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service throughout the State". We must, therefore, approach the substantive provisions of the said Bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and the preamble and so construe the clauses of the said Bill as will subserve the said policy and purpose...

xxx

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in *Bishambar Singh v. State of Orissa* [(1954) SCR 842, 855] as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the pre-ambule is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State". Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. ... The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose..."

(emphasis supplied)

72. Learned counsel for the petitioners rightly submitted that by the 2012 Amendment Act, the word 'principal' being removed along with 'demonstrator' was for the obvious reason that principal already stood included in sanctioned posts in the teacher grade on the basis of regulation issued by the UGC from time to time. Learned counsel submitted that the confusion appears to have occurred due to the 2017 Amendment Act with effect from 18.05.2017 where once again 'principal' has been included in 'teacher'. Learned counsel for the petitioners are justified in contending that the Aims and Object of the 2012 Amendment Act leave no doubt that the sole purpose of behind the 2012 Amendment Act was to exclude and remove persons who had nothing to do with teaching but were still included within the definition of 'teacher'.

73. With regard to the strong emphasis laid by learned counsel for the intervenors that the word 'principal' was also deleted along with 'demonstrator' and the 2012 Amendment Act not being interdicted till the level of the Hon'ble Supreme Court, the same cannot be viewed at in isolation without going into the fact that the challenge to the same was only by Demonstrators. Further, no principal had knocked the doors of the Court because both, they as well as the State authorities, including the Universities, believed that they already stood covered in the amended definition reading "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time". Moreover, it cannot be lost sight of that even after the 2012 Amendment Act, the Principals who had crossed the age of 62 were not called upon to demit office and/or removed upon attaining the age of 62 years on the ground that they came under the category of non-teaching employees whose age of superannuation was fixed as 62 years and not teachers where the age of retirement was fixed as 65 years. This is the major bone of contention between the parties as any category which comes under the definition of 'teacher' would be superannuating upon attaining the age of 65 years whereas non-teachers would superannuate upon attaining the age of 62 years.

74. Going by the conduct of the State as well, no step was ever taken after the 2012 Amendment Act to disturb the Principals who were holding such posts even after they attained the age of 62 years, till much after the 2017 Amendment Act having come into force.

75. The 2017 Amendment Act which again incorporated the word 'principal' in the definition of 'teacher' can, at best, be labelled clarificatory. It appears that the 2017 Amendment Act was brought in by the State ex abundanti cautela. The post of Principal having been restricted to senior persons holding the post of Professor and Reader is yet another pointer that the Principal cannot be termed as a non-teaching employee/staff, as also held in Dr. (Mrs) Annapurna Devi (supra). It has rightly been contended on behalf of the petitioners that the eligibility of the post of being directly related to the post of person applied for it having direct nexus to the object sought to be achieved and the provision is yet another indication that the post of Principal would come under the definition in the teacher.

76. The fact that on the one hand though the word 'principal' has been deleted along with the word 'demonstrator' from the definition of 'teacher' by the 2012 Amendment Act but equally on the other hand, the fact remains that another group has been included, that is, "persons holding such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time". Thus, the settled principles of interpretation being not to hold any portion of the statute to be superfluous or redundant and also to give meaning to each and every word used by the Legislature, a 'principal' would necessarily, and axiomatically, anyway be included in such portion of the definition of 'teacher' in the 2012 Amendment Act. In this connection, rightly learned counsel for the

petitioners have relied upon the decision in Aswini Kumar Ghosh (supra). The proviso to such definition in the 2012 Amendment Act, where there is a Saving clause in respect of the status of demonstrators as teachers, who were appointed before 18.09.1975, would also make it clear that by such amendment, the sole purpose of the Legislature was to remove 'demonstrator' from 'teacher' and ipso facto would not imply that the post of principal has been removed, because as dealt with hereinabove, principal would be included in the latter part of the substituted definition.

77. Learned counsel for the UGC has been clear in his submissions that the post of principal was never contemplated to be outside the broad definition of 'teacher' and, also by implication, would most definitely form part of academic/teaching post. Further, he submitted, the post of principal being incorporated in the UGC Regulations is suggestive that the same comes under teacher grade, as the the UGC is empowered to make regulations only in respect of teaching staff/employees, and not non-teaching staff/employees.

78. The 2010 UGC Regulations do not provide for any distinction between principals and teachers. It also provides pay-scale of the posts of Professor, Associate Professor, Assistant Professor, Reader and Lecturer and the pay-scale of principals of undergraduate and postgraduate colleges has been directed to be fixed by the concerned University based on eligibility in respect of educational qualification and teaching/research experience earning during service. Furthermore, the 2010 UGC Regulations provide for the pay-scale of principals in the same pay-band as teachers. It is thus, beyond the shadow of doubt, that principals come under the category of teachers as per the 2010 UGC Regulations. Moreover, the UGC having issued Memo No. 2/2015 dated 13.08.2015 mandating that provision of research work of M.Phil./Ph.D. degrees can be undertaken only by a regular teacher of University in terms of its 2009 Regulations, some of the petitioners having supervised research work or scholars leading to them being awarded Ph.D. on the basis of theses prepared under their supervision, adds force to the submission of the petitioners that a principal has to be considered a teacher.

79. It has also rightly been contended on behalf of the petitioner that the opening words "in the Act, unless there is anything repugnant in the subject or context" shows the intent of the Legislature not to exclude the post of principal from the definition of 'teacher' by the 2012 Amendment Act and to save the same from being rendered unworkable which is reflected from the fact that the statutory scheme of the Act including the statutes framed thereunder still in force post the 2012 Amendment Act, clearly reveals that Principals were appointed on sanctioned posts which was either in the Professor grade or teacher grade as per Section 57 of the Act. Section 57A of the Act provides for constitution of Selection Committee for appointment for the post of Teacher and Officer of the University for which a Selection Committee of affiliated colleges not maintained by the State Government and the latter including the Principal of the

College as member of the Selection Committee would show that the Principals themselves are also under the category of teachers as there cannot be valid justification or rational for inclusion of a non-teaching person as member of such Selection Committee. In this connection, it would be relevant to note that the Selection Committee is to include three experts, who are required to be in the rank of University Professor and of whom, at least one shall be a Vice-Chancellor/ Former Vice-Chancellor/Director/Principal of a constituent college.

80. Section 14(1) of the Act, is also noted, which provides that the "Dean of Students' Welfare shall be appointed by the Vice-Chancellor for a period of two years from amongst the University Professors, Readers or Principals". Section 14(3) of the Act provides that "the teacher appointed as the Dean, Students' Welfare under sub-section (1) shall hold lien on his original post, and he shall be eligible for all the benefits which would have otherwise accrued to him...". Section 26(5)(i)(a) provides for "Dean of Faculty", who has to be "appointed by the Vice-Chancellor from amongst the University Professors and the Principals of the rank of the University Professors...", while sub-section (b) thereof mandates that for appointment as Dean of Faculty, "it shall be necessary for the person concerned to be a teacher in the Faculty". Ergo, a conjoint reading of the afore-referred provisions would also lead to the inescapable conclusion that the post of principal would come under the definition of 'teacher'.

81. The matter is capable of being examined from another lens too. If the contentions of the State and the intervenors are accepted, it would certainly result in a clearly anomalous situation where persons eligible for appointment as principals, being teachers, would be expected to give up 3 years of service with all benefits etc. to be so appointed. In other words, the post of Principal would, thus, remain unfilled as the persons, who are eligible, if it was not to be considered as a teacher post would not willingly forego three years of service only to hold the post of Principal, which otherwise carries the same pay-scale as that of Professor/Reader. Learned counsel for the petitioner has given specific instances where the office of the Hon'ble Chancellor had issued directions, pursuant to which the Vice-Chancellor, Magadh University under letter 176/GIA dated 08.05.2013 had directed Principals of all the colleges to provide their details in prescribed format for determination of their seniority for appointment as Dean of Faculty and in this connection, the petitioner no. 3 in CWJC No. 14428 of 2017 had submitted his details on 24.05.2013. While posted as Principal, College of Commerce, Patna, he was appointed Dean, Faculty of Law, Magadh University, under Memo No. 31/98-389/G1A dated 15.09.2014.

82. There is yet another angle to the matter. The Court finds that the 2017 Amendment Act, vide Section 4 thereof viz. the Savings clause, specifically mandates that notwithstanding the amendment, "anything done or decision or action taken prior to it shall be deemed to have been validly done or taken and shall not be questioned on the ground of amendment." Admittedly, the 2017 Amendment Act came into effect on 18.05.2017. This Court finds that the

impugned actions of the State have occurred much after the said date. In other words, Section 4 of the 2017 Amendment Act only protects actions taken prior to 18.05.2017, and not after it. This also militates against the State respondents herein, as their actions are all much after 18.05.2017. Having permitted the petitioners to continue, the respondents cannot now be permitted to unsettle things.

83. In the Court's opinion, reliance has rightly been placed by the petitioners on the communication to the UGC, New Delhi, by the Director, Ministry of Human Resources Development, Government of India, dated 26.08.2010, wherein it has been stated that on the recommendation of the 6th Pay Commission, pay of Principal has been revised akin to that of a Teacher. Similarly, in the Budget, which has been brought on record by the Magadh University for the year 2016-2017, the post of Principal has been shown in the sanctioned post of Teacher and the budgetary allocation for Principal has been made under the head of Teacher and in terms thereof, the budget was approved and released vide Memo No. 274 dated 26.02.2017 by the Director, Higher Education, Government of Bihar, in favour of the principals. Thus, even the State accepted that the principals would also come under the category of 'teacher' even after the 2012 Amendment Act. In this connection, it has also not been controverted by the other side that while holding the post of Principals, the petitioners have also actually taken classes in their colleges pursuant to a Resolution dated 08.09.2010 of all Principals of the constituent colleges of the Magadh University. This has continued even after the 2012 Amendment Act, and such position is not disputed.

84. The learned Advocate General advanced that there cannot be any ambiguity in the Legislature's intention, which in its wisdom, has taken a conscious decision to bring out from the definition of 'teacher', both 'principal' and 'demonstrator'. This submission appears attractive at first blush, however, does not factor in that though 'principal' was removed, a much broader term "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" was simultaneously inserted. It is apt to note that the Hon'ble Supreme Court held way back, in *Poppatlal Shah v State of Madras*, 1953 SCR 677, that "It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself." Moreover, paragraph no. 10 of *Malik Zarid Khalid* (supra), relied upon by the State, on closer scrutiny, supports the petitioners:

"10. We are unable to accept the appellant's contention. The interpretation placed by the Full Bench of the High Court on Section 3(o) equates the position under the statute after the amendment of 1976 to the position both as it stood prior to the 1976 amendment and also as it stood after the 1983 Ordinance. Such an approach fails to give any effect at all to the change in language deliberately introduced by the 1976 amendment. No doubt, prior to the

amendment, only buildings of which the government was owner or landlord were excluded from the Act. But the legislature clearly intended a departure from the earlier position. If the intention was merely to extend the benefit to premises owned or let out by public corporations, it could have been achieved by simply adding a reference to such corporations in Section 2(1)(a) and (b) as they stood earlier. Reading Section 2(1)(a) and (b) as they stood before amendment and the definition in Section 3(o) side by side, the departure in language is so wide and clear that it is impossible to ignore the same and hold that the new definition was just a re-enactment of the old exemption. The exclusion was earlier restricted to buildings owned by the government and buildings taken on lease or requisitioned by government and granted by it by creating a tenancy in favour of someone. The amendment significantly omitted the crucial words present in the earlier legislation which had the effect of restricting the exclusion to tenancies created by the government, either as owner or as landlord. Full effect must be given to the new definition in Section 3(o) and to the conscious departure in language in reframing the exclusion."

(emphasis supplied)

85. Evidently, the instant case is where a term is taken outside a definition clause, but as reasoned by this Court, the said term is implicit in the phrase added by the very same amendment. Plainly stated, the conscious choice to omit 'principal' from within the pale of 'teacher' is not easily deducible, as vehemently contended by the State and intervenors. As such, even applying the principles, inter alia, enumerated in *Hansoli Devi (supra)*, this Court still reaches the same conclusion. Apropos the Act and the 2012 Amendment Act, when the language thereof, is literally construed, finding the language to be clear and unambiguous, would also not lead this Court down a different path, while bearing in mind the dicta in *Lt. Col. Prithi Pal Singh Bedi v Union of India*, (1982) 3 SCC 140; *Raghunath Rai Bareja v Punjab National Bank*, (2007) 2 SCC 230; *B. Premanand v Mohan Koikal*, (2011) 4 SCC 266, and; *Union of India v Pfizer Limited*, (2018) 2 SCC 39.

86. The learned Advocate General submitted that the vires of the 2012 Amendment Act had been upheld till the Hon'ble Supreme Court, but this simpliciter does not aid his case. As evident from the narration hereinbefore, the only class adversely affected was demonstrators, and not principals. Further, even the State, all along, did not interpret the 2012 Amendment Act in the way in which it has now sought to do so. As such, there was no cause for the present petitioners to assail the 2012 Amendment Act. Even now, the question is one of pure interpretation of a statute and, as noticeable in this judgement, did not require an examination into the constitutional validity of the enactment(s) in question. This is another reason why a Single Bench is perfectly competent to decide this batch of cases.

87. In similar vein, contention of the learned counsel for the intervenors that the 2010 UGC Regulations recognize only three categories of teachers in the

University viz. the Assistant Professor, Associate Professor and Professor and the post of Principal being included under the category 'Other Academic Staff of the University and Colleges' is also not appropriate as the eligibility for being appointed as Principal is that the person hold an appropriate post of teacher, whereas, the other academic staff i.e., Registrar, Laboratory and Physical Education personnel etc. cannot be clubbed with the Principal as the eligibility in their case is not that of holding a teaching post. Even as per the own contention of learned counsel for the intervenors, in the challenge to the 2012 Amendment Act, a Division Bench in Akhauri Bijay Prakash Sinha (supra), observed with regard to only the categories of Professor/Reader/Lecturer being in the cadre of teachers. This cannot be taken to mean that the Court held that Principal would be considered as a non-teaching post since the Court was never considering such issue. More significantly, the import, purport and effect of the phrase "such sanctioned posts in the teacher's grade on the basis of regulations issued by the U.G.C. from time to time" did not arise before the Division Bench.

88. The Court takes note of the submissions of the intervenors that it must strive to give effect to the words used in the statute and not adopt hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act, relying upon the decisions in Hansoli Devi (supra), Dr. Ganga Prasad Verma (supra) and Nathi Devi (supra).

89. There is no quarrel with the propositions laid down by the Hon'ble Supreme Court. However, and especially so, in Nathi Devi (supra), it was held that the interpretive function of the Court is to discover the true legislative intent. Thus, the decisions cited above actually further the cause of the petitioners and not the intervenors as "and such sanctioned posts in the teacher's grade on the basis of the regulations issued by the U.G.C. from time to time" has to be duly considered. It is no longer *res integra* that for the purpose of interpreting a statute, the same is to be read in its entirety and all efforts must be directed towards giving effect to the statutory scheme. Reference in this regard may gainfully be made to *High Court of Gujarat v Gujarat Kisan Mazdoor Panchayat*, (2003) 4 SCC 712; *State of West Bengal v Sujit Kumar Rana*, (2004) 4 SCC 129 and *Deepal Girishbhai Soni v United India Insurance Co. Ltd.*, (2004) 5 SCC 385.

90. In *Lalit Mohan Pandey v Pooran Singh*, (2004) 6 SCC 626, the Hon'ble Supreme Court opined that "A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent."

91. Thus, upon reading the Act and the its scheme in entirety, it is interpreted that the post of Principal remained under the category of 'teacher'. The fact that the 2017 Amendment Act included the term 'principal' expressly in the definition of 'teacher' also shows that without any requirement, the same was only by way clarification or to remove any confusion/ambiguity and further, that the Principal always was a 'teacher' for if the Principal would not have been a teacher from

2012 to 2017, then without there being any justification or basis either in law or by the pronouncements of the Court or under the UGC regulations, the same could not have been re-introduced by the State dehors a cogent reason.

92. There is merit in the petitioners' contention that if a Reader/Professor cannot be appointed as a Principal of the College if the subject he/she teaches is not taught in such college also indicates that the Principal has to be a teacher of the subject, which is taught in the concerned college, otherwise, such stipulation would become arbitrary and unreasonable having no nexus with such appointment. In this regard, the decision in Dr. (Mrs.) Annapurna Devi (supra), albeit pre-dating the 2012 Amendment Act, has enunciated the role and position of a Principal, based both on academic qualification and entitlement to such appointment, including relating to the subject taught as a teacher. Moreover, the Court held that a Principal is a teacher entitled to teach and having been acting as guides for students pursuing M. Phil./Ph.D., and the degrees having been awarded to such students, should also lead this Court to the conclusion that principals were always within the ambit of 'teacher'.

93. This Court has borne in mind that it cannot add or read words into a statute nor can it legislate, for which guidance is forthcoming from the decisions in Premanand (supra); Mukund Dewangan v Oriental Insurance Co. Ltd., (2017) 14 SCC 663, and; Delhi Development Authority v Virender Lal Bahri, 2019 SCC OnLine SC 279.

94. Amidst the backdrop of the discussions hereinabove, it is held that the 2012 Amendment Act, though deleting the term 'principal' in the definition of 'teacher' in the Act would not render the post of Principal to be a non-teaching post and would be covered under the term "and such sanctioned posts in the teacher's grade on the basis of the regulations issued by the U.G.C. from time to time".

95. Accordingly, CWJC No. 7701 of 2017, CWJC No. 14428 of 2017, CWJC No. 14478 of 2017, CWJC No. 14493 of 2017, CWJC No. 14508 of 2017, CWJC No. 14539 of 2017, CWJC No. 14562 of 2017, CWJC No. 14688 of 2017, CWJC No. 14743 of 2017, CWJC No. 14744 of 2017, CWJC No. 14748 of 2017, CWJC No. 14917 of 2017, CWJC No. 15644 of 2017 and CWJC No. 15800 of 2017 stand allowed to the extent indicated, whereas CWJC No. 2250 of 2017 stands dismissed.

96. Consequently, the order(s), letter(s), communication(s) or notice(s), impugned in the succeeding writ petitions, stand quashed and set aside.

97. Pending Interlocutory Applications, if any, stand disposed of.

98. As a sequel to the above, the petitioners made to retire in terms of the State's understanding of the 2017 Amendment Act shall be deemed to have continued on the posts of Principal till they attained the age of 65 years and shall be entitled to all consequential benefits, including pay and emoluments as well as continuity in service. It had been submitted at the Bar that recoveries have been

made from certain persons. It is directed that the same be returned forthwith.

99. The aforesaid be done within 16 weeks from the date of production of a copy of this judgement before the Vice-Chancellors and Registrars concerned.

100. The Court places on record its appreciation for the assistance rendered by learned senior advocates and advocates representing the various parties.

101. Before concluding, the following is noted. In Annamalai University (supra), it was held:

"42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section(1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of in-structions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subor-dinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

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44. It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act (sic the Regulations) are applicable and binding on all concerned. ..."

102. However, in Kalyani Mathivanan v K V Jeyaraj, (2015) 6 SCC 363, it was laid down that the 2010 UGC Regulations are mandatory qua Central Universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by the UGC, but for institutions of this nature under the purview of State legislation, the State Governments had been left with the choice of adopting and implementing them.

103. This Court had an occasion to consider the applicability of UGC Regulations in Simpi Kumari v State of Bihar, MANU/BH/0235/2021 [alternately 2021 (2) BLJ 620 | 2021 (2) PLJR 430]:

"10. The mere publishing or circulation of model regulations by the University Grants Commission would not ipso facto lead to a situation where all regulations issued by the University Grants Commission could be said to be binding on the universities concerned, except when duly adopted/promulgated, when such university happens to be a State University. Hence, the new/later regulation would become effective only when adopted/promulgated by the university

concerned, when such university happens to be a State University. In the present case, the University has been operating under the Bihar State Universities Act, 1976. Support for this reasoning can be drawn from the Hon'ble Supreme Court's decision in Kalyani Mathivanan vs. K V Jeyaraj, MANU/SC/0241/2015: (2015) 6 SCC 363, the relevant paragraphs being:--

'20. We have heard the learned counsel for the parties and the issues that arise for our consideration are:

- (i) whether the UGC Regulations, 2010 are mandatory in nature; and
- (ii) whether in the event of conflict between the University Act, the regulations framed thereunder and the UGC Regulations, 2010, the provisions of the UGC Regulations, 2010 would prevail or not; and
- (iii) whether the post of Vice-Chancellor of a university is to be considered as part of the teaching staff.

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31. The Annexure to the UGC Regulations, 2010 prescribes the minimum qualifications for appointment and other service conditions of university and college teachers, librarians, Directors of Physical Education and Sports.

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56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p)(v) of Appendix I dated 31-12-2008 and Regulation 7.4.0 of the UGC Regulations, 2010.

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62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.'

(emphasis supplied)"

(underlining per original)

104. This divergence has been noticed for the sake of completeness, and, does not affect the cases at hand, in any manner, as the applicability of the relevant

UGC Regulations to the Universities concerned has been consciously engrafted into the Acts by the Legislature.