(2010) 06 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8298 of 2010

Manoj Kumar Sharma (Prof.) APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Act, 1946 — Section 17, 21, 22, 29, 30
Rajasthan University Ordinances, 2009 — Ordinance 376F

Citation : (2010) 4 RLW 3363 : (2011) 1 SLR 190

Hon'ble Judges : Raghuvendra S. Rathore, V.J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvendra S. Rathore, V.J.

1. This writ petition has been filed by the Petitioner feeling aggrieved of the non-enhancement of the age of superannuation from 60 years to 65 years, despite of the recommendations having been made by the University Grants Commission as well as the Ministry of Human Resources Development, Government of India.

The primary relief sought by the Petitioner is that he may be allowed to continue and be permitted to work till he attains the age of 65 years, with all benefits of salary, pension, seniority, etc. Further, it has been prayed that the office order dated 13.7.2009 (Annexure-IA) and the order of retirement dated 21.10.2009 (Annexure 1) issued by the University may be declared illegal and be quashed and set aside. It has also been prayed that the order dated 27.10.2009 issued by Government of Rajasthan prescribing the age of superannuation of the teaching staff of the universities at par with State Government employees be declared illegal and be quashed and set aside and directions be issued to Respondent Government of Rajasthan to prescribe and treat the age of superannuation of the teaching staff in the University as 65 years. Appropriate directions are sought for implementation of the order dated 31.12.2008 issued by the Ministry of Human

Resources Development, Government of India.

2. After a long period of service in the University of Rajasthan, presently working as professor of Botany, the Petitioner was to retire on 31.10.2009, because as per his date of birth i.e. 25.10.1949, he was attaining the age of retirement on 24.10.2009. According to the Petitioner, as his superannuation was in the month of October, 2009 i.e. after 1st July, he became entitled for reemployment till 30.6.2010, in accordance to Ordinance 376F, as amended on 6.7.2009. As per the amended Ordinance, a whole time permanent University teacher employee who attains the age of 60 years on or after 1st July may be re-employed upto 30th June subject to the condition that his pay shall be the pay last drawn and he would not be promoted to the next higher post during the period of re-employment. Therefore, the Petitioner felt aggrieved of issuance of the orders of retirement dated 13.7.2009 and 21.10.2009 by the Respondent University instead of issuing order for continuing his services by way of re-employment, as per the amended Ordinance, namely Ordinance 376F. Therefore, the Petitioner filed a writ petition (No. 16194/2009) with the prayer that the University be directed to issue an order in terms of the Ordinance 376F for extending services of the Petitioner till end of Session i.e. 30.6.2010. The said writ petition came up for consideration before the High Court on 5.1.2010 and a stay order (Annexure-2) was passed, directing the University to allow the Petitioner to continue to work on the post which he was holding on the date of his retirement, in terms of the amended Ordinance 376F dated 31.7.2009, till further orders. Consequently, by virtue of the said interim order, Petitioner has worked on the post for the complete period, in accordance to the amended Ordinance, i.e. upto 30.6.2010. The aforesaid writ petition is still pending.

3. While the Petitioner was continuing on his post after date of his retirement i.e. 31.10.2009, on account of the interim order passed in the earlier writ petition, he had filed the present writ petition on 17.6.2010 with the prayer that he may be permitted to work till he attains the age of 65 years with all benefits and the order of retirement dated 21.10.2009 be declared illegal and quashed and set aside. According to the Petitioner, the Ministry of Human Resources Development, Government of India had constituted a Pay Review Committee. The Committee had considered various issues relating to teaching in the University and colleges and made recommendation for pay and allowances of teaching staff, promotion avenues, leave, retiral benefits, etc. It had further made recommendations pertaining to the aforesaid issues including age of superannuation, re-employment, etc. The Committee had recommended that age of superannuation of teachers working in the universities and colleges should be 65 years, throughout the country (Schedule A). Further, it has been averred by the Petitioner that after recommendation of the aforesaid Pay Review Committee, the Ministry or Human Resources Development, vide letter dated 23.3.2007 informed the Secretary, University Grants Commission for enhancement in the age of superannuation from 62 years to 65 years for teachers in Centrally Funded Institutions in higher and technical education. It was also communicated

that the age of superannuation of all persons should be enhanced and this will overcome shortage of teachers. Thereafter on 31.10.2008, Government of India communicated to University Grants Commission that it has decided to revise the pay scales of the teachers in Central University which shall be subject to various provisions of the scheme of revision of pay scale as contained in the letter and regulation to be framed by University Grants Commission in that behalf, in accordance to the Scheme (Annexure-4).

4. Subsequently, the Government of Rajasthan issued an order on 27.10.2009 with regard to revision of pay scale of teaching staff in various universities of the State. Accordingly, the pay scale of teachers working in the universities on various posts have been revised, as per the recommendation of the Pay Review Committee. Under Clause 4 (xiii) of the order dated 27.10.2009, it was provided that the age of superannuation of teaching staff of the University would be at per with the State Government employees. Therefore, the case of the Petitioner is that the impugned order dated 27.10.2009 passed by Government of Rajasthan is in contradiction to the recommendations made by the aforesaid Pay Review Committee as well as the letters issued by Government of India and University Grants Commission prescribing the age of superannuation as 65 years in all the universities and colleges whereas all the employees in the State of Rajasthan attain the age of superannuation at the age of 60 years. Hence, the present writ petition has been filed with the aforesaid prayers.

5. Learned Counsel for the Petitioner has submitted that while issuing the letter dated 31.12.2008, Government of India had made it clear to comply with the Scheme. Further, he has submitted that the implementation of revised pay scale was to be subject to the acceptance of all the conditions mentioned in the letter as well as the regulations to be framed by University Grants Commission, in this behalf. The Universities implementing the Scheme were to be advised by the University Grants Commission to amend their relevant statutes and ordinance in line with their regulations. Further, he has submitted that the scheme could be extended to the universities, colleges and other higher educational institution coming in the purview of State legislature. It has been submitted that the Government of Rajasthan has taken financial assistance from the Central Government for revision of pay scales of teachers to the extent of 80% of additional expenditure involved in implementation of the same. The State Government is to meet remaining 20% of additional expenditure from its own sources. Therefore, the Respondent State of Rajasthan, while issuing the impugned order dated 27.10.2009, has not kept in mind that it has taken 80% of Central assistance and has not implemented the composite Scheme which include the age of superannuation of 65 years. It has been submitted that the Petitioner was in service at the time of issuance of letter by Government of India on 31.12.2008 and as such he is entitled for the benefit of enhancement of age of superannuation to 65 years. It has also been emphasized that Government of India had again written a letter on 11.5.2010 to the State Governments reminding about the earlier letter dated 31.12.2008, according to which they are

required to implement the Scheme as a composite one, including the age of superannuation together with all the conditions specified by the University Grants Commission''s regulations and their guidelines.

6. On the other hand, learned Counsel for the Respondent University as well as the State of Rajasthan, putting in appearance as caveators, have vehemently opposed the contentions raised by the learned Counsel for the Petitioner. They have submitted that the Petitioner has no case and therefore the writ petition deserves to be dismissed. The Respondents have emphasized that the letters issued by the Department of Human Resources Development, Government of India and the letters/regulations of the University Grants Commission are by way of guidelines and recommendations to the State Government, universities and colleges within a State. It has also been submitted that the report of the Pay Review Committee on various issues of pay scale, promotions, superannuation, re-employment, etc. relating to the teaching staff of universities and colleges are all in nature of recommendations and not binding either on the State Government or universities in the State which are autonomous bodies.

While referring to the documents placed on record by the Petitioner, such as the letter issued by Government of India and University Grants Commission in March, 2007, in December, 2007, etc., the learned Counsel for the Respondents have submitted that they primarily relate to Central universities and so far as the State Government as well as the universities in the State are concerned, the said recommendations/guidelines are optional and discretionary. Therefore, it is not mandatory for the Respondents to increase the age of superannuation of the teachers of the universities/colleges from 60 years to 65 years and as such it does not create any right to the Petitioners so as to seek any writ, order or direction from this Court, in exercise of its extraordinary jurisdiction under the Constitution of India. So far as the increase in the age of superannuation by some States are concerned, it has been submitted by the learned Counsel for the Respondents that the Scheme and the letter of Central Government and University Grants Commission are in nature of recommendations/guidelines and it is not necessary for all the State Governments or universities in the State to adopt the same. Learned Counsel for the Respondents have pointed out that in the instant case, there has not been any move by the Syndicate, who is the competent authority to bring amendment in the Ordinance of universities which has the force, of law, much less to say that there is any amendment in the relevant ordinance, namely 376F of the University of Rajasthan. On the aforesaid premise, learned Counsel for the Respondents have submitted that there is no substance in the writ petition and the Petitioner is not entitled to any of the relief sought.

7. At the outset, it may be noted that the relevant provisions of law in respect of age of superannuation of teachers/officers of the university is Ordinance 376F which is as follows:

Ordinance 376-F.-A permanent whole-time employee of the University shall compulsorily retire on having attained the age of 60 years on the last day of the month in which he attains the age of 60 years. However, a whole time permanent university teacher who attains the age of 60 years on or after 1st July may be re-employed upto 30th June subject to the following conditions:

1. The pay of such teacher shall be the pay last drawn.

2. Re-employment teacher shall not be promoted to the next higher post during the period of re-employment.

It would not be out of place to mention here that under the University of Rajasthan Act, 1946, powers to frame or amend an ordinance vest with the Syndicate. u/s 17 of the Act, the Syndicate is a statutory authority of the University. It is also the executive body of the University as provided u/s 21. As per Sub-section (a) of Section 21, Syndicate has the power to make, amend and cancel ordinance. u/s 22(g), Syndicate has the authority to appoint officers and to define their duties, emoluments and conditions of service. According to Section 29, Syndicate may make ordinances consistent with the Act and the statutes, to provide for all or any of the matters mentioned therein, including emoluments and conditions of service of University teachers. It is u/s 30 of the Act that ordinances are made. Undisputedly, no amendment has either been proposed or made in the existing ordinance, in terms of Sections 29 and 30 of the Act of 1946, with regard to enhancement of age of superannuation of the teachers/officers of the University. Therefore, the aforesaid existing ordinance governs the service conditions.

8. The relevant extract of the recommendation of the Pay Review Committee, letter of the Ministry of Human Resources Development dated 23.3.2007 and its letter dated 31.12.2008, for the purpose of adjudicating the present controversy are as follows:

The pay Review Committee recommends that the age of superannuation of teachers should be 65 years throughout the country whether working in a State or Central University as also whether in a college or in a university.

In the letter of Ministry of Human Resources Development dated 23.3.2007:

Subject: Enhancement in the age of superannuation from 62 to 65 years for teaching positions in centrally funded institutions in higher and technical education.

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

(3) It is further clarified that the enhancement of retirement age as mentioned above and the provision for reemployment, will apply only to persons in teaching positions against posts sanctioned to Centrally funded higher and technical

education institutions coming under the purview of this Ministry, in order to overcome the shortage of teachers.

The letter of Ministry of Human Resources Development dated 31.12.2008:

I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay scales as contained in this letter, and Regulations to be framed by the UGC in this behalf in accordance with the Scheme given below.

8(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No. F. No. 1- 19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No. F.I-24/2006-Desk (U) dated 30.3.2007 to enhance the age of superannuation of Vice-Cencellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority. (Visitor in the case of Central Universities). 8(p)-Applicability of the Scheme:

(v) This Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions:

(p)(v)(g)-Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without and modification except in regard to the date of implementation and scales of pay mentioned herein above.

9. The question with regard to enhancement of age of superannuation of the teachers of universities/colleges, on the recommendations of the University Grants Commission has come for consideration before the courts many a time. Such recommendations had been made on the basis of various committees constituted by the Ministry of Human Resources Development, Government of

India. In the year 1986, in pursuance of Malhotra Committee''s report, a scheme was framed by the University Grants Commission providing that the age of superannuation for teachers should be 60 years. At that time, the age of superannuation of teachers was 55 years. The Ministry of Human Resources Development, Government of India had also issued a circular on 17.6.1987 to the Education Secretary of all States/UTs with regard to enhancement of age of superannuation. In the said circular, the adoption of the scheme by the States was voluntary and the only result which was to follow in not adopting the scheme by a State Government was that it may not get the benefit of the amount from the Central Government to the extent of 80% of the additional expenditure incurred in giving effect to the revision of the pay scale as recommended by the Scheme.

In respect of implementation of the said scheme, the State of Kerala had passed an order on 13.3.1990 including for revision of pay scale in relation to teachers in the universities, w.e.f. 1.01.1986. However, in so far as the age of retirement was concerned, the existing age of 55 years was to continue. The order of the State of Kerala dated 13.3.1990 came to be challenged before its High Court and various contentions, including that once the State Government accepted the Scheme of University Grants Commission, which also provided for higher age of 60 years for retirement, then all the clause of the scheme were to be made applicable. A Division Bench of the Kerala High Court (Writ Appeal No. 223/1991), after taking into consideration the scheme, recommendations of the University Grants Commission, Circular dated 17.6.1987 of the Ministry of Human Resources Development, Government of India and the contentions raised before it by the Appellants in respect of the impugned order dated 13.3.1990, passed by the State of Kerala, had passed the following orders:

Though clause 26 of the Scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvement in the revision of pay-scales and providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different Universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated 13.3.1990 is to implement the UGC Scheme including revision of scales of pay in relation to teachers in Universities including Kerala Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges and Qualified Librarians and qualified Physical Education Teachers with effect from 1.1.1986, subject however to the express condition that in so far as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the Appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a higher age of 60 years, once the State Government accepted the Scheme, all the clauses of the Scheme became applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore, the State

Government had the discretion either to accept or not to accept the scheme. In its discretion it had decided to accept the Scheme, subject to the one condition, namely in so far as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the Scheme. The State Government having thus accepted the Scheme in the modified form, the teachers can only get the benefit which flows from the Scheme to the extent to which it has been accepted by the State Government and the concerned Universities. The Appellant cannot claim that major portion of the Scheme having been accepted by the government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the Scheme. It is for the University Grants Commission to extend the benefit of the Scheme or not to extend the benefit of the Scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the Statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC''s recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years.

It is to be noted that subsequently, the said observations of the learned Division Bench of the Kerala High Court were fully approved by the Hon''ble Supreme Court in the case of T.P. George and Ors. (supra).

10. The said controversy was raised before the Hon''ble Apex Court in the case of T.P. George and Others Vs. State of Kerala and Others, wherein it was held that teachers cannot claim as a right that they are to retire only on attaining the age of 60 years, and while upholding the decision of the High Court, the following orders were passed:

We may clarify the scheme referred to UGC (University Grants commission) Scheme of 1986 framed by the Government pursuant to the Malhotra committee''s Report. We may further point out that it is clear from paragraph 4 of the circular dated 17th June, 1987, addressed by the Ministry of Human Resources Development, department of Education, to the Education Secretary of all States/UTs (Union territories) that the adoption of the scheme was voluntary, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the Scheme.

11. Later on, in the case of B. Bharat Kumar and Ors. v. Osmania University and Ors. 2007(5) SLR 267, by its judgment dated 9.5.2007, a bunch of writ petitions

were decided by the Hon''ble Apex Court. A common relief sought in the said petitions was that the age of superannuation which was hitherto 58 to 60 years, as the case may be, should be raised to 62 years. All the petitions had relied upon a communication dated 27.7.1998 issued by the Central Government. The claim made by the Petitioners was that the decision taken by Government of India was mandatory and binding, vis-a-vis all the universities/colleges. The same was emphasized upon in view of the financial assistance being provided to the States by the Central Government for implementing the scheme of revision of pay scale. The Petitioners therein had also relied on a UGC notification, on revision of pay scale, dated 24.12.1998. Pew other letters, dated 29.9.1998 and 6.11.1998, were also relied upon.

The State of Andhra Pradesh had later passed the GOMS 208 on 29.6.1999 mainly for implementation of UGC pay scale to the teachers and others covered in the letters mentioned above. The said Government had agreed to implement the scheme in so far as the salaries were concerned. The High Court of Andhra Pradesh had taken the view that the matter was squarely covered by the judgment of the Apex Court in the case of T.P. George (supra). The Hon''ble Apex Court by rejecting the contentions of the Appellants and holding that the appeals have no merit, had made following observations:

We would, therefore, first examine as to whether the two Division Benches have rightly relied upon the said judgment held against the Appellants. We have examined the judgment in extenso. This is also a case where the UGC had floated a scheme in 1986 which was framed by the Central Government pursuant to the Mehrotra Committee Report. In that scheme there was a Circular dated 17.6.1987 addressed by the Ministry of Human Resource Development, Department of Education to the Education Secretaries of all the States, UTs and it was clearly mentioned therein that the adoption of the scheme was voluntary and the only result follow from the State Government not adopting the scheme might be that the State Government may not get the benefit of the offer of reimbursement from the Central Government to the extent of 80% of the additional expenditure involved in giving effect to the revision of pay-scales as recommended by the scheme. Therefore, the factual situation was almost identical as in the present case. This Court approved specifically a paragraph in the Kerala High Court judgment which we have already quoted earlier in this judgment in para 5. In that the Kerala High Court had specifically rejected the contention that the State Government having accepted the UGC scheme and as the scheme provided for the higher age of 60 years, the clause of the scheme regarding age of retirement also would become applicable. The Kerala High Court had specifically further observed that the UGC scheme did not become applicable as it was not obligatory for the Government and the Universities to follow the same. The Kerala High Court read a discretion in the State Government to accept or not to accept the scheme.

13. The situation is no different in the present case also. The very language of

the letter dated 27.7.1998 suggests that the scheme is voluntary and not binding at all. Further it is specified in the judgment of the Kerala High Court that the teachers had no right to claim a specific age because it suggested in the scheme which scheme was itself voluntary and not binding. The Court clearly observed that "the Appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation." The Court therein observed that it is a matter between the State Government on the one hand and the University Grants Commission on the other and it would be for the University Grants Commission to extend the benefit of the scheme or not to extent the same depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the scheme. It was lastly clearly observed that as long as the State Government has not accepted the UGC''s recommendations to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years.

14. Inspite of our best efforts, we have not been able to follow as to how the judgment of the Kerala High Court, which has been approved by this Court is, in any manner, different from the factual situation that prevails here in this case. It is for that reason that we have extensively quoted not only the aforementioned letter dated 27.7.1998 but also the subsequent letters and the further policy statement. Plain reading of all these is clear enough to suggest that the scheme was voluntary and it was upto the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the scheme, it was not necessary that all the scheme as it was had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation.

12. Before this High Court, a similar question arose in the case of Dr. Dhanpat Raj Bandari and Anr. v. The Union of India and Ors. 2007 WLC 142. It was in respect of enhancement of age of superannuation from 60 to 62 years. After considering the contentions of the Petitioner with regard to the recommendations of the University Grants Commission that the implementation of the revised scale was subject to the acceptance of all the conditions mentioned in this behalf; no justification for Respondent not to accept the age of superannuation being 62 years, while implementing the scheme of 5th Pay Commission; it was incombent on the Respondents to provide the age of retirement as 62 years, etc, held that the said writ petition was not liable to be succeeded and the same was rejected with the following observations:

12. The Petitioners are teachers of the University. They may have the interest of getting their age enhanced. But this has to be done as per the law governing the University. The University prescribes that they will retire at the age of 60. So

there is no law that prescribed that an employee will retire at the age of 62. Unless there is a law authorizing teachers to serve up to the age of 62, serving up to the age of 62 is not in consonance with the principles of law. The resolution of the Syndicate has not been approved by the State Government. There is no change in the statutes and ordinances of the University to prescribe any enhanced age. Thus case of the Petitioner has no support of law governing the University.

14. The Petitioners have tried to take shelter behind Annx. 1 a letter of Central Government. In this letter two conditions are clearly mentioned that State has the option for opting or not for the Scheme. State has declined to opt for the age part of the Scheme. It is for the Union of India to take up the matter with the State whether it wants its orders to be followed or flouted. It is not for this Court to take any action in the matter.

13. Again the question of enhancement of superannuation of teachers from 60 years to 62 years was raised before a Co-ordinate Bench of this Court in the case of Prof. P.P. Bakre and Ors. v. State of Rajasthan and Ors. Writ Petition No. 7509/2006 and a bunch of six other writ petitions, decided on 22.3.2007. Being in agreement with the observations made in the case of Dr. Dhanpat Raj Bhandari (supra), it was observed as under:

...As regards controversy with respect to recommendations made by UGC and so also resolution passed by Jainarain Vyas University Jodhpur for increase in age of superannuation from 60 to 62 years has been comprehensively considered by this Court in Dhanpatraj Bhandari v. State (supra) and grievance of Petitioners therein has been finally rejected holding that when State Government is not desirous of increase in age of superannuation and has not approved the resolution of Syndicate of University- in absence whereof, there is no amendment made in existing statute or Ordinance to prescribe an increase in age of superannuation which is 62 years as per UGC norms, and yet if Petitioners are permitted to continue in service of University beyond age of superannuation they would be serving without any authority of law and as such finally concluded that no direction can be given only on the recommendations which were finally rejected by the State Government.

I do agree with observations made (supra) and thus am not inclined to further analyse the issue particularly when it stands extensively scrutinized by Co-ordinate Bench of this Court (supra).

Consequently, all the writ petitions were dismissed.

14. Further, it is seen from the circulars/letters issued by the Ministry of Human Resources Development, extracts referred to above, that apart from the fact that the enhancement of the age of superannuation was for teachers in Centrally Funded Institutions, the Scheme was optional/voluntary for the universities, colleges and other higher educational institutions, coming under the purview of the State legislatures. The Scheme was to be extended to other institutions

provided the State Governments wish to adopt and implement the same. Therefore, in view of the aforesaid circulars/orders of the Government of India and principle of law laid down by the Hon''ble Apex Court in the case (supra) in relation to similar recommendations/circulars/letters made earlier by the University Grants Commission and the Central Government, it cannot be said that it was mandatory for the Respondent State and University of Rajasthan to enhance the age of superannuation from 60 to 65 years.

In the case of B. Bharatkumar (supra), the Hon''ble Apex Court has observed in para 18 thus:

...Where the scheme itself gives the decision to the State Government and where the State Government uses that decision to accept a part of the scheme and not the whole thereof, it would be perfectly within the powers of the State Government not to accept the suggestion made by the scheme to increase the age of superannuation.

15. The matter can be looked into from yet another angle, as mentioned above, the teachers in the university are governed, in respect of their service conditions and the age of retirement, by the statute made by the university concerned. Admittedly in the instant case, no amendment was made in the relevant provisions in the statute/ordinance governing the age of superannuation, namely Ordinance 376 F. In absence of any amendment, the service conditions of the teachers of the university like the Petitioner would still be governed in the terms of existing Ordinance 376F, as quoted above, and they would retire on attaining the age of 60 years on the last day of month. However, he may be re-employed if attains the age of 60 years after 1st July, upto 30th June and the pay of such teachers shall be the one last drawn and would not be promoted to the next higher post during such period.

16. This view of the mine finds support from the observations made by the Hon''ble Supreme Court in the case of T.P. George (supra) which is as under:

We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned.

Similarly, it has been observed in the case of Dr. Dhanpat Raj Bhandari (supra) as under:

As on today, the age of superannuation prescribed for Respondent University is 60. It is so in University Statutes and Ordinances. The State in its latest communication has specified that it is not possible to alter the age of superannuation from 60. Thus, there is a clear mandate of law in this regard.

17. As regards the submissions made by the learned Counsel for the Petitioner that the Respondent could only have implemented the scheme as a whole and not only in relation to the revision of pay scale, it would be suffice to say that firstly even in the circular/letters referred to in the writ petition and also in the

letter dated 11.5.2010 which inter alia provides that the scheme may be extended to universities, colleges and other higher educational institutions coming under the purview of the State Government receiving substantial financial assistance for its management and operation from the State Governments, provided the State Government wish to adopt and implement the scheme subject to certain terms and conditions. It is to be noted that the implementation of the Scheme subject to condition that the entire scheme of revision of pay scale together with all the conditions is to be laid down by the University Grants Commission by way of regulation and other guidelines are to be implemented by the State Government and universities which is a condition, only if the State Government wish to adopt and implement the Scheme. It is to be noted that in para 9 of the letter dated 11.5.2010, it has been specifically mentioned that, it shall be necessary for the Universities and Managements of colleges to make appropriate changes in their statutes, ordinances, rules, regulations, etc. to incorporate the provisions of this Scheme and a copy each of the same may also be furnished to UGC. But in the present case, no change in the statutes, ordinances, etc. till date have been incorporated by the Respondent University and therefore so far as age of superannuation is concerned, the same is to be governed by the existing ordinance of the Respondent University.

18. In the instant case, as quoted above, para 8(p)(v) of the letter dated 31.12.2008 gives the option and discretion to universities, colleges and other higher educational institutions coming under the purview of the State legislature, who wish to adopt and implement the scheme. In case they do so, then they shall abide by terms and conditions mentioned under the said Clause including that the entire Scheme of revision of pay scale, together with all the conditions to be laid down by the University Grants Commission by way of regularation and other guidelines, shall be implemented by State Government and Universities and colleges coming under their jurisdiction as a composite scheme, without any modification accept in regard to the State of implementation and scales of pay mentioned therein.

19. As per the existing law prescribing the age of retirement under the ordinance of the University of Rajasthan, no amendment having been brought therein by the appropriate authority i.e. Syndicate and the State Government having declined to opt for enhancing the age of superannuation, then it would not be appropriate for this Court to issue directions to the Respondents to enhance the age of superannuation of the Petitioner and permit him to continue till he attains the age of 65 years because it would not be within the domain of this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India. The Hon''ble Supreme Court in the case of B. Bharatkumar (supra) had observed in para 19 as follows:

19 ...We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous are of the wisdom of the Legislation. If the State Government in its

discretion, which is permissible to it under the scheme, decides to restrict the age and not in case it to 60 years or as the case may be 62, it was perfectly justified into doing so.

Similarly in the case of Dr. Dhanpat Raj Bhandari (supra), it was observed as under:

Once the State Government takes a stand then the conditions of service as existed would be made applicable and by a writ of mandamus no direction can be given to the Respondent not to retire the Petitioners at the age of 60. If the Petitioners are permitted to continue beyond the age of 60 then they will be serving without the authority of law permitted to continue beyond the age of 60 then they will be serving without the authority of law. There being no law to make the Petitioners to serve beyond the age of 60 no direction can be given only on the basis of a recommendatory letter which is not accepted by the State Government.

20. From the aforesaid discussion and the principle of law laid down by the Hon''ble Apex Court, it is clear that the Petitioner is not entitled to be continued on the post with the Respondent University till he attains the age of 65 years. It is also clear from circulars/orders of Ministry of Human Resources Development, Government of India as well as recommendations/guidelines issued by the University Grants Commission, which has been relied upon by the Petitioner, that it is not incumbent upon the Respondent State and University of Rajasthan to enhance the age of superannuation of the teachers/officers from 60 to 65 years. It is optional/discretionary on the part of the State Government to adopt the Scheme, in so far as increase of the age of superannuation is concerned. Further, it may be noted that, as on date, the service conditions of teachers of the University like the Petitioner is still governed by the terms of the existing Ordinance 376F, according to which they would retire on attaining the age of 60 years. Undisputedly, no amendment has been made till date of the relevant ordinance governing the age of superannuation. Therefore, the relevant provision of law prescribes 60 years of age of retirement and the same is being adhered to by the Respondent University. Consequently, no rights of the Petitioner can be said to have been infringed.

In so far as the implementation of the Scheme is concerned, which is optional for the State Government, it cannot be said that whole of it is required to be implemented. It is only when the State Government/University opts to adopt the Scheme that it has to follow the terms and conditions mentioned therein, which also includes that the Scheme should be adopted as a whole. Even otherwise, in case the Respondent State does not adopt the Scheme as a whole then the only question which comes up is with regard to 80% grant by the Central Government, of the additional financial burden of the State Government on account of revision of pay scale. In such a situation, the question whether the grant is to be given by the Central Government or not, is a matter between the two governments. Above all, when there is no change/amendment in the relevant law, namely the Ordinance 376F of the Respondents University then the question of the age of superannuation is to be governed by the existing Ordinance. In such view of the matter, this Court would not issue mandamus/ direction in respect of the age superannuation which is not only a question of policy decision but also is a one of the area of the wisdom of the legislation of the State Government.

21. Consequently, the writ petition is devoid of merits and therefore, it is dismissed in limine.

