

(2000) 06 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 11536 of 1998

Prof. Ranjit Singh Gandhi and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 26-06-2000

Acts Referred:

Bihar State Universities Act, 1976 — Section 64, 67, 76
Constitution of India, 1950 — Article 246, 254
Patna University Act, 1976 — Section 64
University Grants Commission Act, 1956 — Section 12, 13, 14, 2, 25

Citation : (2000) 3 PLJR 501

Hon'ble Judges : Nagendra Rai, J; D.P.S. Choudhary, J

Bench : Division Bench

Advocate : Sadanand Jha, Asim Jha, Indu Bhushan Singh, in C.W.J.C. Nos. 11536 of 1998 and 634 of 1999, Ram Shankar Pradha, in C.W.J.C. 751 of 1999 and Rajiv, in C.W.J.C. 2249 of 1999, for the Appellant; Sheema Ali Khan, for Patna University and Azfar Hassan, for State, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The common question of law is involved in all the cases and as such they have been heard together and are being disposed of by this common judgment.

2. All the Petitioners have filed the present writ applications for a direction to the State of Bihar and the Universities to fix the retirement age of the Petitioners as 62 years instead of 60 years as contained in the statutory provisions, namely, Patna University Act, 1976 and Bihar State Universities Act, 1976, in terms of the decision/direction of the University Grant Commission (hereinafter referred to as the Commission) constituted under the University Grants Commission Act, 1956 (hereinafter referred to as the Act.)

3. The facts necessary for disposal of the present writ applications are that the Petitioners of CWJC No. 11536 of 1998 are teachers of Patna University and they

are governed by the provisions of the Patna University Act, 1976 and the Petitioners of other three writ petitions are the teachers of Magadh University and its constituent colleges and they are governed by the provisions of the Bihar State Universities Act, 1976. Section 64 of the Patna University Act and Section 76 of the Bihar State Universities Act, which are similar, contain a provision with regard to age of retirement from service of a teaching and non-teaching employee of the University or of a college. The age of retirement of a teaching and non-teaching employee was 60 years, but in case of those who had not opted the pay scales revised with effect from 1st of January, 1973 the date of retirement was 62 years. In 1986, two ordinances, namely, the Patna University (Second Amendment) Ordinance, 1986 (Bihar Ordinance 34 of 1986) and Bihar Ordinance (35 of 1986) were promulgated which amended the provisions of Section 64 of the Patna University Act and 76 of the Bihar State Universities Act respectively and the date of retirement age of teaching and non-teaching employee of the University or college was enhanced from 60 to 62 years. Thereafter Section 64 of the Patna University Act stood amended by successive Ordinances extending the benefit of age of retirement from 60 to 62 years. In case of other Universities, Section 67 of the Bihar State Universities Act, stood amended by promulgation of ordinances from 1986 to 1990 and thereafter Bihar Act 3 of 1990 was enacted raising the age of retirement of teachers from 60 to 62 years. On 9.2.1993, the Patna University (Amendment) Ordinance, 1993 (Bihar Ordinance 5 of 1993) was promulgated and on the same day Bihar State Universities (Amendment) Ordinance, 1993 (Bihar Ordinance 6 of 1993) was promulgated by which Clause (a) of Section 64 of the Patna University Act and Clause (a) of Section 67 of the Bihar State University Act were substituted and it provided inter alia that notwithstanding anything to the contrary contained in this Act or any other Act, Ordinance, Rules, or any judgment or decree of a Court, the date of retirement of a teaching employee of the University or of a college shall be the date on which he attains the age of sixty years. In other words, the age of retirement of the teaching staff in cases of college governed by both the Acts was fixed as 60 years. Thereafter successive amendments were issued and later on they were replaced by the Patna University (Third Amendment) Ordinance, 1993 and the Bihar State Universities (Third Amendment) Ordinance, 1993. The aforesaid ordinances reducing the age of retirement from 62 to 60 years and the replaced Act were challenged by the teachers of the Patna University and other Universities in CWJC No. 13131 of 1992 and others which is reported in 1996 (1) PLJR 39 Ranjit Prasad Shrivastava and Ors. v. State of Bihar and Ors. and this Court held that the amendments reducing the age from 62 to 60 were valid and the same were done by the Government in order to comply with one of the conditions laid down by UGC for grant. The State Government was competent to reduce the age of its employees.

4. According to the Petitioners, in the aforesaid case, this Court upheld the reduction of age from 62 to 60 years in view of the stand taken by the State Government in the counter affidavit to the effect that it became necessary to

reduce the age of retirement of teachers with a view to derive the benefit of U.G.C. package. One of the conditions for receiving the U.G.C. package was to reduce the age of retirement. Now the Ministry of Human Resources Development (Department of Education), Govt. of India revised the pay scales of teachers in Central Universities following the revision of pay scales of Central Government employees on the recommendation of the Fifth Central pay Commission which provided inter alia that the age of superannuation of the University and college teachers would be 62 years and thereafter no extension in service will be given. A copy of the same was also sent to the Secretary, U.G.C. which has been annexed as Annexure-5 to CWJC No. 11536 of 1998. The Ministry of Human Resources Development (Department of Education), Govt. of India also sent the letter to the Education Secretaries of all States/Union Territories on the same date i.e. on 27th July, 1998, informing them that the Central Government has decided to continue to provide financial assistance to the State Government who wish to adopt and implement the aforesaid scheme of revision of pay scales to the Govt. of India subject to the terms and conditions mentioned therein. The Central Government agreed to pay 80% of the additional expenditure involved in the implementation of the revision of pay scales to the State Government which would be available for a period of four years i.e. from 1.1.1996 to 31.3.2000. The Central Government also gave power to the State Government to modify scales of pay different from those mentioned in the Scheme. However in such cases, the same should be furnished to the Government of India for its approval and subject to the approval being accorded to the modifications, the central assistance on the same terms and conditions as indicated above will be available to the State Government for implementation provided that the modified scales of pay are not higher than those approved under the scheme.

5. After various correspondences between the Govt. of India, Ministry of Human Resource Development (Department of Education) and the UGC, the UGC framed a scheme for revision of pay scales, minimum qualifications for appointment, other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Registrars of Universities as a measure for the maintenance of standards in higher education. The same scheme was contained in U.G.C. scheme 1998 and the same was sent by the UGC to the Vice-Chancellors of all the Universities, Education Secretaries of all the States/Union Territories. Along with the said notification, a letter of the UGC was also appended wherein it was mentioned that the UGC notification 1998 will be notified as Regulations shortly. It shall apply to all the Universities and the institutions defined under the Act and it will come into force with immediate effect. In paragraph 3.1 it is stated that no person shall be appointed to a teaching post in the University if he does not fulfil the minimum qualifications and other conditions of service as indicated in the notification. However in paragraph 3.2 the UGC provided relaxation that it can only be made by a University in regard to posts under it, or any of the institutions including

constituent or affiliated colleges recognised under Clause (f) of Section 2 of the aforesaid Act, or by an institution deemed to be a University u/s 3 of the Act with the prior approval of the UGC. Paragraph 4 contains a provision with regard to consequences of failure of the Universities to comply with the recommendation of the Commission as per provision of Section 14 of the Act. Paragraph 5 provides that the UGC expects that the entire scheme of revision of pay scales, together with all the conditions attached to it would be implemented by the State Governments as a composite scheme without any modifications, except the date of implementation and other details as mentioned in the said paragraph. Paragraph 16 of the notification contains a provision with regard to superannuation and re-employment of teachers and paragraph 16.1.0 provides that the retiring age of the teachers will be 62 years. However, it will be open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.

6. The learned Counsel for the Petitioners relying upon the aforesaid notification of U.G.C. dated 24th December, 1998 which lays down the minimum qualifications for the appointment of teachers in universities and colleges, and measures for the maintenance of standards which include fixation of date of superannuation have submitted that the said notification is binding on the State Government in view of the facts that the U.G.C. has been constituted under the Act by the Central Government under Entry No. 66 of List I of Schedule VII of the Constitution and contrary law with regard to superannuation contained in Section 64 of the Patna University Act and 67 of the Bihar State Universities Act would be invalid. In support of the aforesaid submissions, they have relied upon the judgment of the Supreme Court reported in *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, *University of Delhi Vs. Raj Singh and others*, *Dr. Preeti Srivastava and Anr. v. The State of Madhya Pradesh and Ors.* and *Bhagalpur University Research Scholars Association and Others Vs. The State of Bihar and Others*

7. Counsel appearing for the State on the other hand submitted that it is within the legislative competence of the State legislature to fix the age of retirement of the teachers of the University or of a College and in exercise of that power the competent authority has fixed the age of retirement as 60 years as contained in Section 64 of the Patna university Act and Section 67 of the Bihar State Universities Act. The UGC constituted under the Act has no power to fix the age of superannuation of teachers of the University or of a College and in that view of the matter the provisions contained in the Patna University Act and Bihar State Universities Act with regard to fixation of the age of superannuation cannot be termed invalid in view of the provisions contained in the notification issued by the UGC in 1998. It was alternatively submitted that even if it is assumed that the UGC direction or recommendation as contained in Notification 1998 with regard to date of superannuation is within the competence of the UGC, the non-observance of the aforesaid direction only entails the consequences as envisaged u/s 14 of the Act and the UGC may withhold the grants to the Universities.

Counsel appearing for the State in support of its submissions relied upon division Bench judgments of this Court reported in 1996 (1) PLJR 39 *Ranjit Prasad Shrivastava and Ors. v. The State of Bihar and Ors.* and CWJC No. 1168 of 1999 disposed of on 20.5.1999 *Santosh Kumar and Ors. v. State of Bihar and Ors.*

8. Counsel appearing for the both Universities adopted the same submissions as advanced on behalf of the Petitioners.

9. These matters were placed before a learned Single Judge of this Court and by order dated 21.2.2000 he referred the same before a Division Bench as according to him, there appears to be contrary decisions given by the two Division Bench, one in the case of *Bhagalpur University (supra)* and other in the case of *Ranjit Prasad Shrivastava (supra)*. Before this Court also the parties reiterated the submissions advanced before the learned Single Judge.

10. Before advertng to the submissions advanced by the parties, it will be apt to mention relevant statutory provisions having bearing on the controversy. Education was a State subject under entry 11 in List II. By the 42nd Amendment Act, 1976, entry 11 of List II was deleted and it was transferred and combined with entry 25 of List III (concurrent list). Entry 11 of List II empowered the State legislature to make law regarding education including universities subject to entry 63 to 66 of List I and entry 25 of List III. Entry 25 of List III relating to education including technical education, medical education and Universities has been made subject to the power of Parliament to legislate under entries 63 to 66 of List I. Entry 66, List I deals with the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions and gives power to Union to see that a required standard of higher education in the country is maintained. In other words, in terms of the aforesaid entry 66 of List I it is the responsibility of the Union to co-ordinate and determine the standards for higher education. The Parliament has power to legislate with regard to matters included in List I. The State legislature has no power to make law with regard to said matter. If any law is made with regard to subject covered by List I by the State Legislature then to that extent that will be void and inoperative. If any law is made by the State legislature under entry 25 of List III, the same would be invalid to the extent of its inconsistency with the law made by the Parliament in exercise of power under Entry 63 to 66 of List I.

11. In the case of *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, the Apex Court considered the scope of entry 66 of List I and entry 11 of List II and held as follows:

Item 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , this Court in considering the import

of the expression "subject to" used in an entry in List II, in relation to an entry of List I observed that to the extent of the restriction imposed by the use of the expression "subject to" in any entry in List II, the power is taken away from the State Legislature. Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must lie with the Parliament.

12. Again in the case of Osmania University Teachers Association (*supra*), which has been relied by the counsel for the Petitioners, the Apex Court was considering the validity of Andhra Pradesh Commissionerate of Higher Education Act, 1986 (Act No. 26 of 1986). The vires was challenged on the ground that the State Legislature has no power to legislate the said Act as the field had already covered by a law made by the Parliament in exercise of power under entry 66 of List I. The Apex Court having noticed the judgment of the Supreme Court in the case of Gujarat University (*supra*) held that as the U.G.C. Act falls under entry 66 of List I, the State legislature is not competent to legislate with regard to the same law by enacting act. The same amounts to encroachment upon entry 66 of List I and as such the Act was beyond the legislative competence of the State legislature and accordingly, it was declared void and inoperative.

13. The same view has been reiterated by the Apex Court in the case of University of Delhi (*supra*).

14. Recently Constitution Bench has considered the said matter in the case of Dr. Preeti Srivastava (*supra*) and held that the State has no power to make law with regard to matters covered by entry 66 of List I even with regard to matter covered by entry 25 of List III if a law on the said subject is already made by the Parliament. In other words, a law made by the State legislature even with regard to matters covered by entry 25 of List III is void to the extent of its inconsistency or repugnancy to the law made by the Parliament in exercise of power under the said entry 25 of List III of concurrent list. It is apt to quote paragraph 36 of the said judgment;

The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the States an exclusive power to legislate on "Education including Universities" subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III. Entry-11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3.1.1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

Entry 25, List III: Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I:

vocational and technical training of labour.

Entry 26 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

Entry 66 List I: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by an Union Legislation. Secondly the State cannot while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977 education including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

15. Thus it is settled law that with regard to matters which are covered by entry 66 List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as well as coordination of such standards, the Parliament is alone competent to make the law and State has no power to legislate with regard to same matter. The power to legislate is not to be interpreted in a narrow or restricted sense. The power to make (sic-law?) on the particular subject should also include the power to make law on ancillary or subsidiary matter which can be fairly or reasonably in that subject. Prior to 42nd amendment the State Legislature was competent to make law with regard to education by virtue of power under entry 11 of List II except with regard to matters as mentioned under entry 63 to 66 of List I. If a law has been made after 42nd amendment of the Constitution by the State Legislature in exercise of power under entry 25 of List III dealing with education as mentioned in the said entry, the same would be valid provided if it is not inconsistent or repugnant to the law made by the Parliament either in exercise of power conferred upon it under entry 66 of List I or even entry 25 of List III of the concurrent list. As education is now in concurrent list, both the Union as well as the State have power to legislate on education including medical education subject inter alia to entry 66 of List I. If the Union has made a law, the State has no power to legislate in the said field except provided under Article 254 of the

Constitution.

16. U.G.C. Act has been enacted by the Parliament by virtue of power under Entry 66 of List I. The said Act has been enacted to make provision for the co-ordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. Section 5 of the Act speaks of a composition of the Commission and Section 12 of the Act describes the functions of the Commission which runs as follows:

12. Functions of the Commission. -It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co- ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

(a) enquire into the financial needs of Universities;

(b) allocate and disburse, out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such Universities or for any other general or specified purposes;

(c) allocate and disburse, out of the Fund of the Commission, such grants to other Universities as it may deem [necessary or appropriate for the development of such Universities or for the maintenance, or development or both of any specified activities of such University] or specified purposes:

Provided that in making any grant to any such University, the Commission shall, give due consideration to the development of the University concerned, its financial needs, the standard attained by it and the national purposes which it may serve;

[(cc) allocate and disburse out of the Fund of the Commission, such grants to institutions deemed to be Universities in pursuance of a declaration made by the Central Government u/s 3, as it may deem necessary, for one or more of the following purposes, namely:

(i) for maintenance in special cases,

(ii) for development,

(iii) for any other general or specified purposes;]

[(ccc) establish, in accordance with the regulations made under this Act, institutions for providing common facilities, services and programmes for a group of Universities or for the Universities in general and maintain such institutions or provide for their maintenance by allocating and disbursing out of the Fund of the Commission such grants as the Commission may deem necessary;]

(d) recommend to any University the measures necessary for the improvement

of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) advise the Central Government or any State Government on the allocation of any grant to Universities for any general or specified purposes out of the Consolidated Fund of India or the Consolidated Fund of the State as the case may be;

(f) advise any authority, if such advice is asked for, on the establishment of a new University or on proposals connected with the expansion of the activities of any University;

(g) advise the Central Government or any State Government or University on any question which may be referred to the Commission by the Central Government or the State Government or the University as the case may be;

(h) collect information on all such matters relating to University education in India and other countries as it thinks fit and make the same available to any University;

(i) require a University to furnish it with such information as may be needed relating to the financial position of the University of the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;

(j) perform such functions as may be prescribed or as may be deemed necessary for the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

Section 25 of the Act vests power in the Central Government to make rules. Section 26 vests power in the Commission to make regulations. Relevant portion of Section 26 for the purpose of this case runs as follows.

26. Power to make regulations.- (1) The Commission [may, by notification in the Official Gazette, make regulation] consistent with this Act and the rules made thereunder.

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(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities;

Section 14 of the Act contains a provision with regard to consequences of failure

of Universities to comply with recommendations of the Commission, which provides inter alia that in case of failure to comply with any recommendation made by the Commission u/s 12 or Section 13 or the provision of any rule made under Clause (f) or Clause (g) of Sub-section (2) of Section 25 or of any regulation made under Clause (e) or Clause (f) or Clause (g) of Section 26, the Commission may withhold from the University the grants proposed to be made out of the Fund of the Commission.

17. From reading of the aforesaid provision, it is clear that the primal function of the UGC has been stated in the beginning of Section 12 of the Act which provides that it shall be the general duty of the Commission to take all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities and for the purpose of performing the aforesaid function, the Commission has been empowered to issue directions and perform functions as enumerated therein.

18. As stated above the Commission framed a scheme as contained in Notification dated 24th December, 1998 which is to be converted in to a Regulation shortly, one of the terms of the scheme is that the age of superannuation of the teaching staff will be 62 years. According to the letter appended with the said notification, 1998 in case of failure to comply with the terms of the scheme as contained in the notification, the consequences u/s 14 of the Act will follow.

19. Now two questions are relevant for the decision of this case, the first is as to whether the UGC has power under the Act to make a provision with regard to age of superannuation of the teaching and non-teaching employees of the University and secondly even if the UGC has any such power and in exercise of that notification of 1998 has been issued, the same is mandatory in the sense that to is binding on the State Government and Universities.

20. The UGC has been conferred power u/s 12 of the Act for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities and to perform the aforesaid function, it has also been given power with a view to issue direction or discharge other function. According to Section 12(j), it may perform such functions as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above function. The question whether the word "co-ordination or determination" of standards in Universities will also include fixation of age of superannuation as that is also to be treated as measures necessary for the improvement of University education The Apex Court in the case of Gujarat University (supra) considered the meaning and scope of the aforesaid words in paragraphs 25 and 26 of the judgment. It was held that co-ordination does not mean only evaluation. Co-ordination in its normal connotation means harmonising or bringing into proper relation in which all the things co-ordinated

participate in a common pattern of action. The power to co-ordinate, therefore is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. There is nothing in the entry which indicates that the power to legislate on co-ordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. It was also held that it is a power to co-ordinate, and of necessity, implied therein is the power to prevent what would make co-ordination impossible or difficult. The word "determination" means fixation or direction or direction to a certain end.

21. Thus the Commission has power to issue directions to achieve co-ordination and to prevent disparities in the higher education. The Commission has also power to issue directions with regard to ancillary or subsidiary matters which are comprehended within the aforesaid power.

22. Section 64 of the Patna University Act and 67 of the Bihar State Universities Act contain a provision with regard to age of retirement from service and it provides that the retiring age of a teaching employee of the University or of a college will be 60 years and its validity has also been upheld by a division Bench of this Court in the case of Ranjit Prasad Shrivastava (*supra*). The State Government has power to legislate with regard to education and as such it has power to provide mode of selection, appointment and retirement of a teaching staff. Unless it is held that the provision with regard to retirement from service in the said Act is covered by the law made by the Parliament, the said provisions cannot be held to be void or inoperative. The Parliament has not made any law making the provision fixing the age of retirement of the teachers. They have only made the aforesaid Act to issue direction with regard to the aforesaid matters. The U.G.C., as stated above, has power to make law with regard to aforesaid matters, but in my view, the same will not include power to determine the age of superannuation of a teacher of University who has to be appointed under the said scheme in the manner provided therein. Maintenance, co-ordination and determination of higher education even interpreted in the widest sense, in my view, does not empower the UGC to provide the age of superannuation of a teaching and non- teaching staff of the University and as such the said provision in the scheme of the UGC is beyond the legislative competence and the State is not bound to act in accordance with the provisions of the Scheme regarding determination of the age of superannuation.

23. Even if it is assumed for the sake of argument that the UGC has power to issue a direction or to make a scheme even with regard to age of retirement of a teaching or non-teaching staff of a University or of a college by treating the same for the maintenance of standard, the question is as to what would happen in case of non-observance of the said scheme by the State Government and the Universities. A similar question came for consideration in the case of University of Delhi (*supra*). In that case, the UGC framed a regulation known as the University Grants Commission (Qualifications required of a person to be appointed to the

teaching staff of a University and institutions affiliated to it) Regulation (1991), notified on 19th September, 1991. The aforesaid regulation provided inter alia for eligibility or entrance test for appointment to the post of lecturer. Aggrieved candidate who was Respondent before the Supreme Court had applied for the post of lecturer in Commerce but was not called for interview. Thereafter he filed a writ application before the Delhi High Court asserting that the advertisement did not lay down that candidates should have passed the test prescribed by the said Regulations and that candidates who had not passed the said test would not be called for interview. The Delhi University contested the claim of the Petitioner stating that the Regulations were beyond the legislative competence of the UGC. The Delhi High Court negated the claim of the University by holding that the Regulations are valid and mandatory. The same was challenged before the Apex Court by the University. Clause 2 of the said Regulations contained a provision relating to qualification and provided that no person shall be appointed to a teaching post in the University or in any of institutions as mentioned therein if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1. Schedule 1 with regard to appointments of lecturer inter alia, provided that the candidates for appointment to the post of lecturer should have to clear the eligibility test conducted by UGC or similar test accorded by the UGC apart from fulfilling the other qualifications. Clause 3 provided consequences of failure of Universities to comply with the recommendations of the Commission as per provisions of Section 14 of the Act. The Apex Court held that the provisions of Clause 2 with regard to qualifications which are recommendatory in character; it will be open to the University to comply with the aforesaid direction. It will be open for the University, in specific cases, to seek the prior approval of the UGC regarding relaxation of the requirement. It would also be open to the University not to comply with the provisions of Clause 2, in which case the consequences u/s 14 of the Act shall follow. It will be apt to quote paragraph 21 of the judgment in the aforesaid case:

We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the UGC in consultation with the University concerned, and every institution deemed be a University. The said Regulations are thus intended to have the widest possible application, as indeed they must have if they are to serve the purpose intended, namely, to ensure that all applicants for the post of lecturer, from whichever University they may have procured the minimum qualificatory degree, must establish that they possess the proficiency required for lecturers in all Universities in the country. This is what Clause 2 of the said Regulations mandates, thus: "no persons shall be appointed to a teaching post in University ... in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in the Schedule I". The first proviso to CI.2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. This is because the said

Regulations, made under the provisions of Section 26(1)(e), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso to Clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in Clause 2 in the same terms as are set out in Section 14 of the U.G.C. Act. The provisions of Clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of Clause 2 by employing as lecturers only such persons as fulfil the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek the prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of Clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.

24. In the present cases also, as appears from perusal of the Notification of 1998, and the letter appended to the same, annexure-13 to CWJC No. 11536 of 1998, wherein it is clearly mentioned in paragraph 3.1, that no person shall be appointed to a teaching post in the university or in any institution unless it fulfils the minimum qualification and other conditions as mentioned in the notification which includes condition with regard to age of superannuation. Paragraph 3.2 still provides for relaxation of the prescribed qualification with the prior approval of the UGC and paragraph 4 provides for the consequence of the failure of a University to comply with the recommendations as enumerated in Section 14 of the Act. Thus the Clause 16.0.0 of UGC Notification, 1998 providing for the superannuation of the teaching staff is recommendatory in character. It will be open for the University to comply with the same and in case of its failure to comply with the same, the consequences as provided u/s 14 of the Act shall follow. In case the State Government and the University do not carry out the provision or provisions of the scheme, it is for the UGC to act in accordance with the power conferred u/s 14 of the Act.

25. At this stage, I would like to mention that view taken by this Court in the case of Bhagalpur University (*supra*) that Regulations, 1991 framed by the UGC was mandatory, is no longer good law in view of the judgment of the Supreme Court in the case of University of Delhi (*supra*) holding that the said Regulations are recommendatory in character.

26. In the case of Ranjit Prasad Shrivastava (*supra*) this Court upheld the

provision of Section 64 of the Patna University Act and 67 of the Bihar State Universities Act reducing the age of retirement of employees of the University or of a College from 62 to 60 years on the ground that the State Government is competent to do the same. In that case, it was never held that the State Government was bound to comply with the direction of the UGC regarding the determination of the age of superannuation of the employees of the Universities. This Court only observed that the State Government was competent to reduce the age of superannuation and while dealing with the same, it was held that it was necessitated with a view to comply with one of the conditions of the U.G.C. package for getting UGC grant.

27. So far as the judgment of a Division Bench given by this Court in CWJC No. 1168 of 1999 disposed of on 20th May, 1999 is concerned, in that case similar prayer as has been made in these cases, was made and the same was rejected on the ground that the State has power to fix the age of superannuation and it is not bound to follow the scheme framed by the UGC with regard to determination of age of superannuation.

28. Thus considering the question from different angles, I am of the considered view that no direction can be given to the State Government to amend the provision of Section 64 of the Patna University Act and 67 of the Bihar State Universities Act with a view to extend or enhance the age of retirement of the Petitioners and others similarly situated persons from 60 to 62 years.

29. In the result, there is no merit in these writ applications and the same are, accordingly dismissed.

D.P.S. Choudhary, J.

30. I agree.