
(2011) 03 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 9665 of 2010 and connected petitions being CWP No. 1392 of 2009, CWP No's. 1268, 1297, 1324, 1932, 2661, 3803, 4583 to 4585, 4607, 4617, 7176, 7321, 8823, 9465, 9773, 10616, 11076, 11972, 12603, 12604, 12736, 12882, 13117, 14265, 14277, 14604, 14

Prof. S.S. Bindra and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 2
Constitution of India, 1950 — Article 309, 73
University Grants Commission Act, 1956 — Section 26

Citation : (2011) 03 P&H CK 0136

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of a bunch of 100 petitions mentioned above. According to learned Counsel for the Petitioners, all the writ petitions involve common question relating to claim of the writ Petitioners for revision of age of retirement to 65 years. The said claim is based on letter dated 31.12.2008 of the Government of India addressed to the University Grants Commission (UGC) followed by letter of the Government of India dated 11.5.2010 to the Education Secretaries of all State Governments and notification of University Grants Commission (Minimum Qualifications for Appointment of teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of standards in Higher Education) Regulations, 2010.

2. A bunch of petitions came up for hearing before learned Single Judge who vide order dated 4.10.2010 referred the matter to the Division Bench as follows:

...3. Since the final outcome of these cases is likely to have far reaching

repercussions including some impact on other State services also, it appears inter-alia, that the following important questions of law need to be adjudicated by a larger bench:

a) Whether the service conditions including the age of retirement prescribed in the statutory service rules framed under proviso to Article 309 of the Constitution or under a statute can be deemed to have been amended by virtue of the Circular/Scheme dated 31.12.2008 issued by the Government of India?

b) Whether the Government of India is competent to command the State Governments/Universities to increase the age of retirement of a section of the State/University employees?

c) Whether the "States" have any lawful authority to barge into the field of "Education" when the subject matter is directly referable to Entry 66 of List I "Union List" or Entry 25 of the List III "Concurrent List" only?

d) What will be the impact of the Government of India Scheme or the UGC Regulations in the case of teachers working in the inter state Universities, like Panjab University, Chandigarh?

e) What is the scope of Statutory powers of UGC and whether such powers would include the authority to lay down/prescribe the conditions of service including the age of retirement?

4. Admitted to D.B. Let the records of these cases be placed before Hon"ble the Chief Justice for enlisting them before an appropriate Bench on 15.11.2010.

xx xxxxxx xxxxx"

Accordingly, the matters have been placed before this Bench. Several other writ petitions filed after the order of reference have also been listed for hearing.

3. CWP No. 9665 of 2010 has been treated to be the main petition on suggestion of learned Counsel for the parties and pleadings are being referred to from the said petition. Case of the Petitioners is that they are teaching in different departments of Guru Nanak Dev University (GNDU). Their superannuation age is 60 years as per applicable rules. The Government of India appointed Sixth Pay Commission on 5.10.2006 to consider the demand of the Central Government employees for increase in salary and improvement of other service conditions. The said Commission gave its report on 24.3.2008 which was approved by the Union Cabinet on 14.8.2008. The UGC appointed an expert committee to consider the claim of the teachers in Universities and colleges for revision of pay scales and other allied issues headed by Prof.G.K. Chadha. The Committee gave its report recommending revision of pay scales and enhancement of age of superannuation to meet the situation arising out of shortage of teachers and to attract eligible scholars to the teaching profession to improve the standard of quality of higher education. The said Committee also recommended re-engagement of retired teachers up to the age of 70 years.

4. Based on consideration of the said report, the Government of India vide letters dated 23.3.2007 conveyed its decision to revise age of superannuation of all persons holding teaching position as on 15.3.2007 to 65 years and also provided for re-employment of such teachers up to the age of 70 years. The said age was applicable to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers." Thereafter, vide letter dated 31.12.2008, Annexure P.3, scheme for revision of pay scales was conveyed by the Ministry of HRD to the UGC. Therein, issue of age of superannuation also figured in para 8(f). The said para alongwith sub para (p) of para 8 are reproduced below:

8. Other terms and conditions: a) to e). xxxx XX XX XX 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 institution 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 DO letter No. F.1-24/2006 Desk (U) dated 30.3.2007 to enhance the age of superannuation of Vice chancellors of Central Universities from 65 years to 70 years subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

ii) subject to availability of vacant positions and fitness teachers shall also be re employed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however be done selectively for a limited period of three years in the first instance and then for another further period of two years purely on the basis of merit, experience area of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

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

xx xx xx xxx xxx

p) Applicability of the Scheme:

i) This scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and colleges there under and the institutions deemed to be universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions motioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

ii) to iv) xx xx xx xx v) This scheme may be extended to universities, colleges and other higher educational institutions coming under the purview of State Legislature, provided State Governments wish to adopt and implement the scheme subject to the following terms and conditions.

a) Finance assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

b) The state Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

c) to f) xx xx xxx xxx xxx 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 any modification except in regard to the date of implementation and scales of pay mentioned herein above."

(emphasis supplied)

5. The UGC vide letter dated 28.2.2009, Annexure P.4 addressed to Education Secretaries of all the State Governments suggested that the State Governments may initiate immediate action for implementation of scheme of revision of pay in a time bound manner. The letter also referred to the issue of enhancement of retirement age. The State of Punjab vide notification dated 2.9.2009 revised the pay scales of teachers and equivalent cadres in the universities and colleges of the State w.e.f 1.1.2006 (Annexure P.5) as per letter dated 31.12.2008, Annexure P.3 and also stated that the scheme will be applicable subject to acceptance of conditions mentioned in the said letter.

6. CWP No. 16370 of 2009, Jagir Singh Kahlon and Ors. v. State of Punjab and another CWP No. 16370 of 2009 was filed in this Court seeking a direction for revision of age of retirement as per notification dated 31.12.2008 and this Court vide order dated 6.4.2010 directed the State Government to take a conscious

policy decision. Thereafter, vide letter dated 11.5.2010, Annexure P.7, the Ministry of HRD wrote to the State Governments about the issue of revision of pay scale. Referring to letter dated 31.12.2008, it was mentioned that the scheme could be extended to institutions under the State Governments "provided State Governments wish to adopt and implement the Scheme". It was further mentioned that as per the said letter, the State Governments are required "to implement the scheme as a composite one including the age of superannuation (mentioned in para 8(f) of this Ministry's letter dated 31.12.2008), together with all the conditions specified or to be specified by University Grants Commission (UGC) by regulations and other guidelines."

7. Thereafter, University Grants Commission (Minimum Qualifications for Appointment of teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of standards in Higher Education) Regulations, 2010 were notified vide notification dated 30.6.2010 published in Gazette of India dated 18.9.2010. The said regulations have been framed by UGC u/s 26 of the UGC Act, 1956 and are applicable to Central as well as State Universities and affiliated colleges. Para 2 provides that qualifications for maintenance of standards in higher education shall be as provided in the Annexure. The Annexure contains, inter-alia, following provisions:

2.1.0 The revised scales of pay and other service conditions including age of superannuation in Central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in Appendix-I."

2.3.1. The revised scales of pay and age of superannuation as provided in Clause 2.1.0 above, may also be extended to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and in the MHRD letter No. F.1-7/2010-U II dated 11 May, 2010 with all conditions specified by the UGC in these Regulations and other Guidelines.

Appendix I is letter dated 31.12.2008. Though, the Baba Farid University of Sciences, Faridkot revised the age of superannuation to 65 years, inspite of direction of the Central Government that assistance to the State Government will be applicable only if the pay scales were revised as per scheme which was "composite one" including the age of superannuation, the State Government and the State Universities failed to revise the age of superannuation to 65 years. Accordingly, case is made out for issuance of direction to comply with the mandate of the UGC by revising the age of superannuation to 65 years.

8. In the reply filed by the State of Punjab, the stand taken is that the matter of revision of age of superannuation was referred to a Committee. The said

Committee in its meeting held on 29.6.2010 observed that there was no shortage of qualified teachers in the State and there was no need to enhance the existing age of retirement. Accordingly, the State Government applied for relaxation of instructions of the Central Government dated 11.5.2010 vide letter dated 10.8.2010. Letter of the Government of India only related to conditions for grant of financial assistance which is a matter between the State Government and the Central Government. Since the enhancement of age has serious financial implications, the State Government has not adopted the revision of age. The Central Government has not given any assistance after 1.4.2010. Letter dated 31.12.2008 is based on letter dated 23.3.2007 which was applicable to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers" and though as per letter dated 28.2.2009 followed by letter dated 11.5.2010, the same could be extended to the States and State universities, reimbursement was to be applicable only if the State Governments implemented the scheme "as a composite package provided State Governments wish to adopt and implement the scheme". The consequence was not of automatic revision of age. The Regulations adopting letter dated 31.12.2008 were also accordingly limited in their applicability and the revised age was not automatically applicable unless specifically extended to the State Governments and State universities. Thus, the petition was liable to be dismissed.

9. Stand of the University is that as per service rules adopted by the University, age of retirement was 60 and the said rules have not been challenged and thus prayer in the petition could not be accepted.

10. Stand of the UGC is that the revision of age was applicable only to Centrally funded higher and technical education institutions under the purview of HRD and not to any employee of a college which is not funded and maintained by the UGC. However, the State Government could adopt the decision for revising the age of superannuation.

11. We have heard learned Counsel for the parties and perused the record.

12. Learned Counsel for the Petitioners submitted that though revision of age as per letter dated 23.3.2007 was initially applicable to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers", the effect of letter dated 31.12.2008, para 8(p)(v) was to extend the same to all State universities and colleges also. The State Governments having taken financial assistance of the Central Government and having opted to the revised pay scales, could not reject revision of age of superannuation as the State governments had to implement the scheme contained in letter dated 31.12.2008 as a composite scheme without any modification. In support of the said submission, reliance has been placed on judgment of learned Single Judge of Patna High Court dated 20.8.2010 in CWP No. 11348 of 2010 Dr. Sunity Pandey and Ors. v. the State of Bihar and others CWP No. 11348 of 2010 and judgment of learned Single Judge of Jharkhand High

Court dated 10.1.2011 in WP (C) No. 363 of 2010, Dr. Maheshwar Tiwary and Ors. v. The State of Jharkhand and others. WP (C) No. 363 of 2010 In the context of Panjab University, it was submitted that though the University was established under the State Act i.e. Panjab University Act, 1947, it became "inter state body corporate" under the Punjab Reorganization Act, 1966. Maintenance and grants are to be shared and paid by concerned States as per directive of the Central Government. The Vice Chancellor of the University in the meeting held on 29.6.2010 informed that the University has been considered to be a Centrally funded institute u/s 2(d)(iv) of the Central Educational Institutions (Reservation in Admission) Act, 2006 (CEI, 2006 Act). Reference has also been made to the opinion of the Attorney General dated 26.10.2010 as under:

It cannot be forgotten that the Punjab University is one of the oldest Universities in the country being established in 1882 at Lahore as East Punjab University. After partition, the University was re-established in India on 1st October, 1947 and after working at different places, finally moved to Chandigarh in 1956. The Ministry of HRD is rightly concerned in seeing that this institution is not starved of funds.

A letter from Additional Secretary to Chairman UGC dated 1.11.2010 has also been referred to the following effect:

2. The matter has since been revisited. The Central Government has obtained the opinion of learned Attorney General for India (copy enclosed) who has held that the earlier view of the Central Government, based on which the Central Government had indeed filed certain affidavits before courts of law in matters concerning Punjab University, was erroneous. This opinion of the Attorney general for India paves the way to not only fund Punjab University for the purpose of expansion required for implementing the CEI Act 2006, but also enabling UGC to start meeting the financial needs of Punjab University.

Accordingly, it was submitted that though earlier, the Panjab University was held not to be Central or Centrally funded university in the judgment of this Court in Dr. A.C. Julka and Ors. v. Punjab University and others, (2008) 7 SLR 198, the situation has now changed.

13. It was pointed out that the Central government in an affidavit filed before Madhya Pradesh High Court in similar writ petitions has taken a stand that the scheme dated 31.12.2008 was automatically applicable to the States and State Universities for being eligible for appropriate Central assistance. Affidavit of the Central Government has been filed as Annexure P.4 in CWP No. 16357 of 2010.

14. Learned Counsel for the State and the State universities other than Panjab University opposed the submission. It was stated that the decision of the Central Government dated 23.3.2007 to revise the age of superannuation to 65 years was applicable only to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers." Letter dated 31.12.2008 provided that the scheme could

be extended to States "provided State Governments wish to adopt and implement the scheme". Thus, till the States/State universities wished to adopt the scheme of revision of age of superannuation, there was no automatic revision of age of superannuation. Letter dated 31.12.2008 was only addressed to UGC. Subsequent letter dated 20.2.2009 from the UGC to the State Governments was on the subject of reimbursement of finances involved. Similar is the position with regard to letter dated 11.5.2010. The 2010 Regulations also did not automatically revise the age of superannuation except in relation to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers." In such a situation, it was for the State Governments and the State Universities to take a decision to revise the age of superannuation in absence of which, the age of superannuation was as prescribed in the applicable rules. View taken in the judgments of Jharkhand and Patna High Courts could not be followed in view of judgment of the Hon"ble Supreme Court in B. Bharat Kumar and Others Vs. Osmania University and Others, which has been followed by Division Bench of this Court in Dr. A.C. Julka. This being the position, in absence of conflict in the UGC Regulation and decision of the State, contention of Regulation being covered under Entry 66 of List I and thus, overriding the State legislation, did not arise as held in similar situation by Hon"ble the Supreme Court in B. Bharat Kumar and by this Court in Dr. A.C. Julka. Distinction pointed out that when the issue was considered in B. Bharat Kumar and Dr. A.C. Julka, the decision was only executive decision and now the same has been formalized as a statutory provision by way of Regulation u/s 26 of the UGC Act, is not significant. The Regulation itself limits the applicability of the revised age to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers", leaving the issue of extension to other institutions as per letter dated 11.5.2010 (Regulation 2.3.1).

15. Learned Counsel for the Panjab University submitted that the Panjab University was not a Central university as earlier held by this Court in Dr. A.C. Julka and the revised age of superannuation was not automatically applicable. However, on account of certain developments, the issue whether it was Centrally funded was a debatable issue and matter in this regard was pending with the Central Government and the said university will abide by such decision as may be taken by the Central Government. At this stage, the Panjab University did not wish to take any particular stand whether it was centrally funded or not as the said issue is still to be decided by the Central Government.

16. Learned Counsel for the Central Government stated that he has no instructions in the matter.

17. In view of rival contentions noticed above, we proceed to deal with the questions referred for our adjudication.

Re: (a) Deemed amendment to the statutory rules by virtue of scheme dated 31.12.2008.

18. The scheme dated 31.12.2008 refers to revision of age of superannuation vide letter dated 23.3.2007, which applies to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers." As per sub para (p) of para 8, the scheme may be extended to other institutions who wish to adopt the same. Clause (g) of sub para (p) (v) provides that central assistance was subject to the scheme being implemented as composite scheme. Thus, the said scheme does not envisage automatic revision of age to all institutions unless the State Governments wish to adopt the same. If they do not wish to adopt the same, it may have ramification on central assistance being provided as mentioned therein. Adoption of the said scheme in regulation does not change its character as the regulation also provides that the scheme does not automatically extend to all the institutions unless extended as per para 2.3.1. The matter was considered by the Hon"ble Supreme Court with regard to similar scheme dated 27.7.1998 and the scheme was held to be voluntary. The contention that the scheme must be implemented as a composite one, was rejected. Contention with regard to applicability of Entry 66 of List I was also rejected. We may quote below the relevant part of letter dated 27.7.1998 interpreted by the Hon"ble Supreme Court and relevant part of letter dated 31.12.1998 which we have to interpret for comparison.

Letter dated 27.7.1998 Letter dated 31.12.1998

"4. The payment of Central assistance for implementation of the 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 in this regard by UGC by way of regulations, is implemented by the State Governments as a composite scheme without any modification except to the date of implementation and scales of pay as indicated above."

"8(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 any modification except in regard to the date of implementation and scales of pay mentioned herein above.?"

Relevant observations are:

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 extend 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. In spite 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 up to 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.

15. Once we take this view on the plain reading of the scheme, it would be necessary for us to take stock of the subsequent arguments of Mr. Rao regarding Entry 66 in the List I vis-a-vis Entry 25 in List III. In our opinion, the communications even if they could be heightened to the pedestal of a legislation or as the case may be, a policy-decision under Article 73 of the Constitution, they would have to be read as they appear and a plain reading is good enough to show that the Central Government or as the case may be UGC also did not introduce the element of compulsion vis-a-vis the State Government and the Universities. We, therefore, do not find any justification in going to the Entries and in examining as to whether the scheme was binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary.

16. Much debate was centered around the interpretation of the words "wish" and "gamut". In our opinion it is wholly unnecessary and we have merely mentioned the arguments for being rejected. Once the scheme suggested that it was left to the "wish" of the State Government, there will be no point in trying to assign the unnatural meaning to the word "wish". Similarly, there would be no point in going into the interpretation of the word "gamut" and to hold that once the State Government accepted a part of the scheme, the whole scheme had to be accepted by the same as such would, in our opinion, be an unnecessary exercise.

17. In view of the plain and ambiguous language of the scheme, there would be no necessity on our part to attempt any interpretation. For the same reasons we need not consider the arguments based on the decisions in O.P. Singla, Maniklal Majudar, Chandrika Prasad Yadav and Dove Investments as they all pertained to principles of interpretation which exercise would have been necessary for us only if the language was ambiguous. It is also not necessary for us to extensively consider Dove Investment's case as from the plain language of the scheme itself we find that it is not a mandatory scheme in the sense being binding against the State Governments.

18. For the similar reasons we do not see as to why the judgment in T.P. George's case is not applicable to the present case. A very serious argument was raised by the learned Counsel that the judgment stood overruled by Yashpal's case. We do not think so. Yashpal's case was on entirely different issue. There the controversy was relating to a legislation creating number of Universities. The question there was as to whether the State Government could create so many Universities and whether the legislation creating such Universities was a valid legislation, particularly in view of the fact that the subject of higher education was covered under Entry 66 of List I. Such is not the subject in the present case. Here is a case where there is no legislation. Even if we take the scheme to the higher pedestal of policy statement under Article 73 of the Constitution, the scheme itself suggests to be voluntary and not binding and the scheme itself gives a discretion to the State Government to accept it or not to accept it. If such is the case, we do not see the relevance of the Yashpal's case in the present matter. Once this argument fails, the reference to the other cases which we have referred to earlier also becomes unnecessary. In our considered opinion all those cases relate to the legislative powers on the subject of education on the part of the State Government and the Central Government. In the present case we do not have any such legislation for being considered. Where the scheme itself gives the discretion to the State Government and where the State Government uses that discretion 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.

19. Learned Counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62 as the case may be. 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 area 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 increase it to 60 or as the case may be 62, it was perfectly justified in doing so.

(emphasis supplied)

19. As observed in the above judgment, the scheme itself having given discretion for its acceptance even if the same was statutory, there was no conflict in the scheme and the decision of the State Government. In view of judgment of the

Hon"ble Supreme Court, we respectfully dissent from the view taken by the Jharkhand and Patna High Courts as the same is contrary to the judgment of the Hon"ble Supreme Court. The judgment of the Hon"ble Supreme Court could not be distinguished on the ground that earlier the scheme was non statutory while now it was statutory. The Hon"ble Supreme Court clearly observed that even if the same was taken to be statutory, the same being voluntary and gave discretion to the State Governments to accept it or not, there was no question of conflict so as to invoke Entry 66 of List I and to hold primacy of the scheme over the decision of the State Government. Giving of reimbursement was a different matter between the UGC and the State Government and condition referred to in para 8(p)(v) (g) did not have the effect of revision of age of superannuation by itself. Affidavit before the Madhya Pradesh High Court does not state that age of superannuation in all institutions stands revised automatically.

20. Accordingly, the question has to be decided in the negative to the effect that the service conditions regarding age of retirement prescribed in statutory service rules under Proviso to Article 309 of the Constitution or under a statute cannot be deemed to have been amended by virtue of scheme dated 31.12.2008 except with regard to "Centrally funded higher and technical education institutions coming under the purview of this ministry in order to overcome the shortage of teachers."

Re: (b) & (c): Jurisdiction of Government of India to direct State Governments to increase the age of retirement and jurisdiction of the states on subject matters covered by Entry 66 of List I and Entry 25 of List III.

21. In view of our answer to Question (a), the said questions have become academic there being no conflict in the scheme framed by the Central Government and adopted by the UGC and the decision of the State on the issue of revision of age of superannuation, the said questions need not be answered. The matter is covered by judgment of the Hon"ble Supreme Court in B. Bharat Kumar and of this Court in Dr. A.C. Jhulka. It is well settled that if matter is covered by Entry 66 and the field is occupied by a Central legislation, the State legislation to the extent of repugnancy is void by virtue of Article 254. Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, and Dr Preeti Srivastava and Another Vs. State of M.P. and Others, . We do not express any final opinion on the said questions.

Re: (d): Impact of the scheme and the regulations on teachers working in inter state university like Panjab University.

22. The Punjab University is not a Central university as already held by this Court in Dr. A.C. Jhulka. It is also not a centrally funded university under any law, though it has been stated that certain developments have taken place and the matter is yet to be decided by the Central Government. As per statutory provisions of the Punjab University Act, 1947 and the Punjab Reorganization Act,

1966, the University cannot be treated as a Central university or the centrally funded university. If the Central Government accepts the Punjab University to be centrally funded, the scheme for revision of age of superannuation may become applicable. Till such a decision is taken, the scheme cannot be held to have become applicable. The Panjab University will, thus, stand on the same footing as other State universities. The questions is answered accordingly.

Re(e): Scope of statutory power of UGC to lay down service conditions regarding age of retirement.

23. Since neither any cause of action has arisen in this regard nor any argument has been addressed by either party and it is not necessary to go into this question for decision of the writ petitions, we do not express any opinion on the said question.

24. As a result of above, the scheme dated 31.12.2008 neither being automatically applicable to States and States universities not having been extended to them, claim of the writ Petitioners for a direction for revision of age of superannuation cannot be accepted.

25. The writ petitions are dismissed. Interim orders, wherever granted, stand vacated. It is made clear that this order will not debar the revision of age by the State Government/State Universities or the Punjab University.