

(2011) 11 KAR CK 0029

In the Karnataka High Court

Case No : Writ Appeal No's. 5670 of 2011 and 15676, 15677, 15678, 15679, 15680, 15681, 15682, 15683, 15684, 15685, 15686, 15687, 15688, 15689, 15690, 15691, 15692, 15693, 15694, 15695, 15696, 15697, 15698, 15699, 15700, 15701, 15702, 15703, 15704, 15705, 15706, 15

State of Karnataka

APPELLANT

Vs

Dr. R. Halesha and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 73

University Grants Commission Act, 1956 — Section 12, 2, 9

Citation : (2011) 11 KAR CK 0029

Hon'ble Judges : Vikramajit Sen, Acting C.J.; A.S. Bopanna, J

Bench : Division Bench

Advocate : K.M. Nataraj, A.A.G. and Shri. B. Veerappa, for the Appellant; K.R. Bhavani Shankar and K.B. Muralidhar, Advocates for R-1, 2 and 3 in. W.A. Nos. 15692-696/2011, for P-1 to R-4 in W.A. No. 15759-763/2011, for R-1 to R-7 in W.A. No. 15681-687/2011, for R-1 and 2 in W.A. No. 15709-710/2011, for R-1 and R2 in W.A. 15764-765/2011, Shri. C.R. Gopaiaswamy, Advocate for R-1 and 2 in W.A. No. 15707-708/2011, for R-2 in W.A. 15697-698/2011, for R-1 in W.A. No. 1572/2011, for R-1 to 6 and 8 in W.A. No. 15724-731/2011, for R-1 in W.A. No. 15748-749/2011, for R.1 to R-3 in W.A. No. 15750-752/2011 and Shri. V. Lakshminarayana, Advocate for R-1 to R-5 in W.A. No. 5670/2011 and W.A. Nos. 15676-680/2011, for R-1 in W.A. No. 15795/2011, for R-1 in W.A. No. 15796/2011, for the Respondent

Judgement

Vikramajit Sen, Ag. C.J.

1. This Appeal has been preferred by the State of Karnataka against the order of learned Single Judge who has issued a prerogative writ directing that the age of retirement of all Professors/Teachers in all Colleges in the State of Karnataka regardless of whether they are serving in Central Universities or Educational Institutions directly funding by the Central Government/University Grants

Commission should be increased to 65 years.

2. A piquant situation has arisen because two conflicting judgments have been passed by two co-ordinate Single Benches of this Court. The earlier decision emanates from the Circuit Bench at Gulbarga, rejecting the prayer for passing appropriate directions to the State and its Universities and Colleges increasing the age of retirement/ superannuation of Professors and Teachers up to the date on which they attain the age of 65 years. The impugned Order which arrives at a diametrically and incompatibly opposite conclusion, has been passed by the learned Single Judge of the Principal Bench at Bangalore.

3. As is to be expected, the learned Additional Advocate General appearing for the Appellants, has contended that the later judgment is per incuriam and calls to be set aside merely on this short ground. Per contra learned Senior Counsel for the respondents before us have submitted that the proceedings were initiated earliest in point of time in the Principal Bench where arguments were heard in detail, protracted over several days, and hence it is the Circuit Bench that ought to have abjured to hear the writ petitions which came to be subsequently filed also in Gulbarga. If binding precedents even of co-ordinate strength are not followed, the roots of uncertainty of the law are bound to be nurtured, strengthened and proliferated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem "The Second Coming" authored by William Butler Yeats. The lines obviously do not advert to the principle of stare decisis but they are apposite in bringing out the wisdom of this ancient and venerable principle.

Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world.

4. We are of the opinion that the impugned judgment, in as much as it runs contrary to an earlier judgment of a coordinate Bench is liable to be set aside on this consideration alone. In paragraph 4.9 of the impugned judgment, a reference to the Circuit Bench decision finds mention. Therefore, the passing of the impugned judgment, even in the somewhat unique circumstances that the learned Single Judge found himself placed in, should have been avoided. Honouring the strong views to the contrary, the matter should have been referred to a larger Bench.

5. The situation before us has become more confounded owing to the disposal by a Division Bench of an Appeal filed against the Circuit Bench decision, the one which is anterior in time to the impugned order. The immediate question that would arise is whether we are bound to traverse the same path as our co-ordinate Bench did in its Judgment dated 06.09.2011 (W.A.nos. 10095-10096/2011). We have carefully cogitated on this conundrum and having done so it seems to us that because of the obtaining circumstances we are not bound by the pronouncement of the co-ordinate Bench. This is for the reason that the verdict is predicated on a concession recorded before the Division Bench

by the Learned Counsel for the State. As is to be expected in such a situation, our learned Brothers therefore did not consider it necessary to ponder on the myriad complexities which have manifested themselves in the present litigation. We find ourselves in agreement with the submission of the learned Additional Advocate General to the effect that the judgment of the Division Bench being sub silentio is therefore not binding on us. With the greatest respect to our esteemed and learned Brothers of the Division Bench, we are of the conviction that we are not bound by the verdict of the Division Bench because their decision is founded on the concession made on behalf of the Respondents-State before them.

6. This logically brings us to the next question as to whether there are any binding precedents on the vexed issues which have been canvassed before us or whether it is a legal nodus still to be unraveled. The Learned Counsel for the Respondents have taken us through various directions and instructions of the Central Government as well as the University Grants Commission (UGC). The preponderant portion of these communications have been considered by the Hon''ble Supreme Court in B. Bharat Kumar and Others Vs. Osmania University and Others, . We can do no better than to reproduce the relevant extracts from the said judgment, which it seems to us, puts the controversy completely to rest.

9. ... In short the main stay of the argument was that the University Education which was higher education and shall be covered by Entry 66 of List I, and therefore, the recommendations made by the UGC were binding as against the State Government and the Universities and the conflicting States statutes to that extent stood overruled. It was tried to be suggested that the Government of India's letter calling upon the State Governments in implementing the scheme is the result of the exercise of the executive powers under Article 73 of the Constitution of India with respect to Entry 66 of List. I and, therefore, such a decision of the Central Government was binding on the State Government and the Universities as the subject pertains to the Union List. It was also suggested that the State Government in GOMS 208 dated 26.6.1999 had accepted the partial implementation of the scheme and such partial implementation was not permissible in view of the categorical directions contained in paragraph 4 of the letter dated 27.7.1998. To the same effect, more or less are the written submissions by other appellants in other appeals.

10. ...

11. The judgments of the High Court in appeal undoubtedly turn firstly on the plain and simple language of the scheme and secondly on the reported decision in T.P. George's case.

12. 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 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 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.

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-à-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-à-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 & 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 into doing so.

20. When we see the writ petitions which were filed before the High Court, number of them have not even challenged the subsequent Resolution GOMS 208 dated 26.9.1999. Therefore, all the challenges were made in a haphazard manner without even bothering to put the proper challenge. Again nobody even challenged the constitutionality of the said Resolution to suggest that there was a conflict between the said GOMS and any Central legislation as covered by Entry 66 of List I. What was being examined in Yashpal's case was regarding the validity of the State Legislation particularly when it was in conflict with the Central Legislation though it was purported to have been made in Entry 25 of the Concurrent List which in effect encroaches upon legislation including the supporting legislation made by the Centre under Entry 23 of the Concurrent List to give effect to Entry 66 of the Union List. this Court had held the same to be void and inoperative.

21. Since there is no conflict in the present case whatsoever either apparent or latent, as such there is no question of invalidating the said GOMS which has been challenged only in few of the writ petitions. Even after the said GOMS came on the anvil, the petitioners who had filed the writ petitions earlier have never bothered to amend their writ petitions so as to challenge the said GOMS. However, we leave it at that particularly when we have taken the view that there has been no conflict between any of the Central Legislation or for that matter its policy and the said GOMS or the policy of the State Government displayed from the same.

22. A great stress was laid on para 33 in Yashpal's case. We have absolutely no quarrel with the proposition laid therein. In that paragraph this Court expressed that the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of the specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. There can be really no dispute with this proposition but in the first place there is nothing here to suggest that the Parliament has legislated over any such subject and that the State Government's any legislation is in conflict with any such legislation made by the Parliament.

23. Further it is clear from the letter dated 27.7.1998 that it is expressly left to the discretion of the State Government to implement or not to implement the policy. Once there is no question of any conflict we do not think that would have the effect of overruling the I.P. George's case. Further, merely because in Yashpal's case the observation are about the gamut of the University it does not necessarily mean that the State Government will not be able to decide the age of retirement particularly where it has the discretion to do so as also the legislative powers. We must hasten to add that no provision of any Act has been challenged in these writ petitions. All that the plea of the appellants in the original writ petitions was that the State Government must implement the UGC recommendations of the scheme and it was rightly found to be untenable.

7. The decision in T.P. George and Others Vs. State of Kerala and Others, has been applied by their Lordships in the subsequent decision of B. Bharat Kumar (supra) Ordinarily, in order to avoid prolixity, we would have thought it prolix and unnecessary to analyse the earlier judgment for the simple reason that this exercise has been completed by the Hon'ble Supreme Court itself. However, keeping in perspective the ubiquitous interest in the issue before us and the number of citizens who would inexorably be impacted by our decision, we consider it expedient to refer to and reproduce the relevant observations in T.P. George, which read thus -

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 has 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 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".

8. We must keep the above precedents in perspective and adhere to the enunciation of law articulated therein. That being so, we will confine ourselves to a consideration of the Notifications, Directions, etc. which have been published after the pronouncement of the above judgment. Succinctly stated what has to be appreciated is whether the Directions of the UGC, post the decision in Bharat Kumar, are mandatory on State Governments such as the appellant before us.

9. Reliance has been placed on behalf of the Respondents on the scheme formulated by the Government of India, Ministry of Human Resource Development Department of Higher Education which is contained in its letter dated 31.12.2008, addressed to the Secretary, University Grants Commission, New Delhi. The subject is- "Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission/" The salient features/contents thereof in the context of the controversies raised before us read as follows. -

Para 8(f) of HRD Ministry letter dated 31.12.2008

8. Other terms and conditions:

a) to e) xxx

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.11 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 upto 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 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.

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 thereunder 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 mentioned 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) xxx

(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) 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)

10. Responding to the said letter dated 31.12.2008, the Government of Karnataka, in terms of its Order No. ED 37 UNE 2009 (P), Bangalore, dated: 15th October 2009 passed the following Resolution:

PREAMBLE:

1) Government of India, vide its letter read above, has revised the pay scales of the teaching community of the Central Universities based on the recommendations of VI Central Pay Commission with effect from 01.01.2006. It is also decided to enhance the age of superannuation of teachers. Government of Karnataka has also examined this issue and has decided to enhance the age of superannuation from the existing 60 (sixty) to 62 (sixty two) years to the University teachers drawing UGC scales. Hence, this Government Order.

GOVERNMENT ORDER No. ED 37 JUNE 2009 (P), BANGALORE, DATED 15TH OCTOBER 2009

In the circumstances explained in the preamble, Government of Karnataka are pleased to enhance the age of superannuation of teaching community of Universities drawing UGC scales from the existing sixty years to sixty two years with immediate effect. In respect of other teaching community the age of superannuation shall continue to be 60 years only.

11. Our attention has also been drawn to the Proceedings of the Government of Karnataka held on 24.12.2009 but we are unable to appreciate its relevance with reference particularly to the Scheme for increase of age of superannuation to sixty five years of all College teachers. It has not been controverted that the Government of Karnataka has decided to comply with the UGC pay scales; it is also not in dispute that the faculty across the spectrum, has been paid the emoluments as per the notified pay scales. However, this fact does not lead to

the conclusion that the State Government had also agreed to raise the age of superannuation to sixty five years, across the board. Furthermore, the contents of the letter dated 1 1.05.2010 of the Government of India, Ministry of Human Resource Development, Department of Higher Education also does not advance/support the case of the Respondents before us. The said letter merely reiterates the commitment of the Central Government to reimburse 80% of the additional expenses of the State Governments, consequent on revision of pay-scales of the teachers in universities and colleges under the State Government, in pursuance of the mandated pay scales and the optional increase in the superannuation age spelt out in its earlier letter dated 31.12.2008. Considerable and repeated emphasis has been placed on behalf of the Respondents on the phrase "as a composite package". We are unable to be persuaded that this mandates an increase in age of superannuation applicable not only to Central universities and Institutions funded by the Central Government/UGC, but also to all other colleges under the respective State Governments. As we see it, the commitment of the Central Government is only for reimbursement of 80% of the additional financial expenses of the State Governments which come into play upon the State Governments making necessary budgetary allocation for the remaining 20%. The Scheme dated 31.12.2008 as noted in paragraph 8(p) thereof specifies that it is compulsorily "applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC." There is no dispute that these directions have been complied with by the State of Karnataka. The letter of the UGC dated 30.09.2010 addressed to the Registrar, Indian Law Institute, New Delhi has to be read in context and if so done, it would be manifestly clear that the statement that the UGC Regulations are mandatory in nature are in light of the fact that the Indian Law Institute, New Delhi is a Deemed University. Had it been a college under a University, the position would be appreciably different.

12. The power and parameters to formulate and promulgate Regulations are contained in Section 26 of the UGC Act, 1956, which is extracted for facility of reference.

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

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission u/s 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of sub-section 2;

(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.

(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;

(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under subsection (2) of section 12A;

(j) specifying the manner in which an inquiry may be conducted under subsection (4) of section 12A;

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) 2[or clause (h) or clause (j) or clause (f)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section (except clause (i) and clause (j) of subsection (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.

13. In the impugned Judgment, the learned Single Judge has adverted to the "UGC Regulation-2010 but the reproduction/extraction is piecemeal and truncated. With all due respect to our esteemed learned Single Judge the intendments of the Notification has consequently become ambiguous. It is for this reason that we think it necessary to reproduce the Regulations in its entirety.

UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION 2010

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University Grant Commission Bahadur Shah Zafar Marg New Delhi- 110002.

No. F.3-1/2009

30 June, 2010

in exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section-26 of University Grants Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M. No. F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2008-1C dated 30th August, 2008 and in terms of the MHRD Notification No. 1-32/2006-U.II/U.I. (1) issued on 31st December, 2008 and in supersession of the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000. issued by University Grants Commission vide Regulation No. F.3-1/2000 (PS) dated 4th April 2000. together with all amendments made therein from time to time, the University Grants Commission hereby frames the following Regulations, namely:-

1. Short title, application and commencement:

1.1. These Regulations may be called the 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.

1.2. They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section-3 of the said Act.

1.3. They shall come into force with immediate effect.

Provided that in the event, any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these Regulations on or after 31st December, 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations.

Provided further that notwithstanding anything contained in these Regulations, in the event any candidate became eligible for promotion under Career Advancement Scheme prior to 31st December, 2008, the promotion of such a candidate under Career Advancement Scheme shall be governed by the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000 notified vide Notification No. F.3-1/2000 (PS) dated 4th April, 2000, as amended from time to time, read with notification and guidelines issued by the University Grants Commission (UGC) from time to time, in this regard.

2. The Minimum Qualifications for appointment and other service conditions of University and College teachers. Librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards in higher education,

shall be as provided in the Annexure to these Regulations.

3. Consequences of failure of the Universities to comply with the recommendations of the Commission, as provision of Section-14 of the University Grants Commission Act, 1956:

If any University grants affiliation in respect of any course of study to any college referred to in sub-section (5) of Section 12-A in contravention of the provisions of the sub-section, or fails within a reasonable time to comply with any recommendations made by the Commission under Section-12 or Section-13, or contravenes the provisions of any rule made under clause (f) of sub-section (2) of Section 25 or any regulations made under clause (e) or clause (f) or clause (g) of Sub-Section (1) of Section-26, the Commission after taking into consideration the cause, if any, shown by the University for such failure or contraventions, may withhold from the University the grants proposed to be made out of the fund of the Commission.

Sd/- (Dr. N.A. KAZMI) Secretary.

14. The reproduction of paragraph-2.1.0 and 2.3.1 at page-151 of the impugned judgment are from the Annexure to the above Regulations which is titled as - "UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education." Regulation-2 which has been reproduced at the end of the impugned judgment refers to and is exclusively applicable to Central Universities and other Institutions maintained/or funded by the UGC, as contained in Appendix-I thereto i.e., the Scheme dated 31.12.2008, which deals with the revision of pay-scales Paragraph-8 (p) thereof clarifies that it applies only to teachers and other equivalent cadres in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. Furthermore, clause-8 (f) of the said Scheme dated 31.12.2008 also deals with "age of superannuation"; however, it is restricted once again to Central Educational Institutions. Thus, we are unable to locate the basis on which the opinion favoured by the learned Single Judge can be predicated namely, that increase of age of superannuation has been made mandatory by the UGC for teachers of all the universities and colleges.

15. With all respect, we are unable to accept the argument made on behalf of the petitioner Teachers that the observations, extracted below, in Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, concludes the debate:

The provisions of the UGC Act re not in conflict with the provisions of the Open University Act it is beyond any cavil of doubt that the UGC Act shall prevail over the Open University Act. It has, however, been argued that the Open University Act is a later Act. But we have noticed hereinbefore that the nodal Ministry knew of the provisions of both the Acts. The Regulations were framed almost at the

same time after passing of the Open University Act. The Regulations were framed at a later point of time. Indisputably, the Regulations embrace within its fold the matters covered under the Open University Act also.

The UGC has taken the stand that the subject Directions are not mandatory so far as the increase of the age of superannuation to 65 years even in respect of Teachers in Colleges in the State. This also obviates and renders superfluous the interesting and intricate interplay between entries in the Union List and the Concurrent List of the Seventh Schedule to the Constitution of India.

16. There is one other aspect of this litigation which is indeed remarkable - the UGC has not been impleaded in the writ petition. The thrust of the arguments advanced on behalf of the respondents-teachers is that the UGC had mandated the increase to sixty five years of age of superannuation. This argument could only have been dealt with after eliciting a response from the UGC. Lengthy arguments would have been curtailed. We do not intend to exhaust more time on the aspect whether the failure to implead the UGC in the array of respondents is intentional or accidental. However, we cannot ignore the reality that in a similar litigation in the High Court of Punjab & Haryana and the High Court of Andhra Pradesh, the UGC has clarified that the said increase in the age of superannuation is not a mandatory recommendation. It cannot also be overemphasized that the impugned Judgment runs counter to the decisions of the Division Benches of these courts as also of the DB of the High Court of Kerala in M.M. Mathai vs. Elizabeth Xavier pronounced on 5-4-2011. Although these are not binding on the learned Single Judge, they are most certainly of persuasive value and accordingly ought to have been discussed. In CW 9665 of 2010 titled Prof. S.S. Bindra and others vs. State of Punjab, the Division Bench of the High Court of Punjab & Haryana has concluded that "the scheme dated 31.12.2008 neither being automatically applicable to States and State Universities not having been extended to them, claim of the petitioners for a direction for revision of age of superannuation cannot be accepted". In M.M. Mathai the Division Bench has opined that the "Regulation of the UGC and package of incentives pay the Central Government are only recommendatory or advisory in nature. It is not within our powers to direct the State Government to increase the retirement age in line with the recommendation of the UGC to 65."

17. A similar conclusion was arrived at by the Division Bench of the Andhra Pradesh in Prof. B. Surya Prakash Rao and others vs. the Union of India and others pronounced on 20.01.2011. The learned members held inter alia that-"Neither the Central Government nor the UGC has mandated an age of superannuation for teachers in State Universities or University affiliated colleges or issued any other binding instruments which could be characterized as an instrument amounting to a legislative or administrative prescription referable to the legislative power of the Parliament in Entry 66 of List-I of the Seventh Schedule of the Constitution or falling within the executive power of the Union under Art. 73 of the Constitution. In this view of the matter and on this

interpretation of the legislative and executive environment we are not persuaded to hold that the orders of the State Government issued in G.O. Ms. Nos. 208 and 14 Higher Education (UE.ILI) Department dated 29.06.1999 and 20.02.2010 respectively; the provisions of Sec. 78A of the Andhra Pradesh Education Act 1982 (as amended by the AP Act XVII of 1993), the provisions of Section 3 of the Andhra Pradesh Public Employment (Regulation of the Age of Superannuation) Act, 1984; or any rule or regulation of the Universities under the State prescribing an age of superannuation for teachers In Universities, University or affiliated colleges whether aided or unaided, are invalid or unenforceable for want of legislative power in the State or for being in transgression or any instrument issued either by the Central Government or the UGC, as the case may be. On this analysis the several petitioners have not made out any case for interference or for a declaration as sought for or for any other relief. The writ petitions must therefore fail and are accordingly dismissed".

18. The Division Bench of the High Court of Judicature at Patna has in State of Bihar vs. Prof. Dr. Jagdish Prasad Sharma, 2010 (3) PLJR 318, similarly opined that the "UGC has also made it clear that there is no guideline, no notification or Regulation which relates to the age of superannuation of the University teachers other than those of the centrally funded educational institutions and, thus, to read something else into the same would not be appropriate". Since we have also arrived at the same conclusion, the result is that five Division Benches of High Courts of the same number, share a similar understanding. It seems to us that it was essential for the Central Government to clarify that in the event that any State Government were to decide to increase the age of superannuation to 65 years effective for all College Teachers, the financial burden of the faculty already in harness would be shared by the Central Government to the extent of eighty percent of the additional expenses on salaries. This is indeed an incentive of no mean dimensions and should have been readily welcomed by the State of Karnataka. Especially so keeping in perspective the recommendation of the Chadha Commission that the age increase would not adversely impact employment avenues; and that this measure would be favourable to harmonizing and improving educational standards. Even though we unreservedly share this persuasion, it is not for us to issue directions for its adherence when the State Governments possess the ultimate call. Courts must function within the parameters delineated for them by the Constitution. Courts neither legislate nor prescribe policy.

19. In this analysis, we cannot subscribe to the view taken by the learned Single Judge in the impugned Judgment, which we hereby set aside. We affirm the arguments of the learned Additional Advocate General that whilst adherence to the revised pay-scales prescribed by the University Grant Commission is mandatory on all State Governments, increase of age of superannuation was intendedly optional and only recommendatory. Therefore, whatever be the wisdom behind the reluctance of the Government of Karnataka for adherence to the suggested age of superannuation, it is beyond our province to issue a writ for

its observance. The Appeals are allowed, but we abjure from imposing costs.

20. In view of the disposal of writ appeals, Misc. W.8146/2011 and 8147/2011 do not survive for consideration.