

Jagdish Prasad Sharma Etc.Etc vs State Of Bihar & Ors on 17 July, 2013

Equivalent citations: AIRONLINE 2013 SC 138

Author: Altamas Kabir

Bench: J. Chelameswar, Altamas Kabir

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5527-5543 OF 2013
[@ SLP (C) Nos. 18766-18782/2010]

1 Jagdish Prasad Sharma etc. etc. ... Appellants

Vs.

2 State of Bihar & Ors. ... Respondents

WITH

C.A. NO.5544 OF 2013 @ SLP(C) NO.29332 OF 2010
C.A. NO.5545 OF 2013 @ SLP(C) NO.10661 OF 2011
C.A. NO.5546 OF 2013 @ SLP(C) NO.10783 OF 2011
C.A. NO.5547 OF 2013 @ SLP(C) NO.11605 OF 2011
C.A. NO.5548 OF 2013 @ SLP(C) NO.16523 OF 2011
C.A. NOS.5549-5551 OF 2013 @ SLP(C) NOS.12990-12992 OF 2011
C.A. NO.5552 OF 2013 @ SLP(C) NO.16845 OF 2011
C.A. NO.5553 OF 2013 @ SLP(C) NO.21611 OF 2011
C.A. NO.5554 OF 2013 @ SLP(C) NO.21609 OF 2011
C.A. NO.5555 OF 2013 @ SLP(C) NO.16619 OF 2011
C.A. NO.5556 OF 2013 @ SLP(C) NO.17446 OF 2011
C.A. NO.5557 OF 2013 @ SLP(C) NO.23392 OF 2011
C.A. NO.5558 OF 2013 @ SLP(C) NO.25446 OF 2011
C.A. NOS.5559-5560 OF 2013 @ SLP(C) NOS.24037-24038 OF 2011
WP (C) NO.348 OF 2011

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WP (C) NO.442 OF 2011
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C.P. (C) 57 OF 2012 IN C.A. NO.5548OF 2013 @ SLP(C) NO.16523 OF 2011
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W.P. (C) NO.61 OF 2012
C.A. NO.5583 OF 2013 @ SLP(C) NO.4020 OF 2012
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C.A. NO.5593 OF 2013 @ SLP(C) NO.8153 OF 2012
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T.C.(C) NO.27 OF 2013
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W.P(C) NO.83 OF 2013
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C.A. NO.5814 OF 2013 @ SLP(C) NO.28326 OF 2012

W.P.(C) NO.53 OF 2013

C.A. NO.5815 OF 2013 @ SLP(C) NO.8147 OF 2013

C.A. NO.5816 OF 2013 @ SLP(C) NO.22626 OF 2013 (CC 5514/2013)

C.A. NO.5817 OF 2013 @ SLP(C) NO.22627 OF 2013 (CC 5518/2013)

C.A. NO.5818 OF 2013 @ SLP(C) NO.22628 OF 2013 (8248/2013)

J U D G M E N T

ALTAMAS KABIR, CJI.

1. Leave granted in the Special Leave Petitions, which were taken up along with the Writ Petitions and Transferred Cases, as they all involve common questions of law and fact.

2. The common thread running through all these various matters is the question as to whether certain regulations framed by the University Grants Commission had a binding effect on educational institutions being run by the different States and even under State enactments.

3. The University Grants Commission Act was enacted by Parliament in 1956 inter alia with the object of making provision for the coordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission, hereinafter referred to as the “Commission”. Under the University Grants Commission Act, 1956, hereinafter referred to as the “UGC Act”, the Commission is required to take, in consultation with the Universities or other concerned bodies, all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities.

4. Section 12 of the UGC Act inter alia empowers the Commission to inquire into the financial needs of the Universities, allocate and disburse grants to Universities established or incorporated by or under a Central Act, out of the Funds of the Commission for the maintenance and development of such Universities or for any other general or specified purpose. The Commission was also empowered to allocate and disburse, out of such Funds, 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 for any other general or specified purpose. The Commission was further empowered to allocate and disburse, such grants to institutions deemed to be Universities, as it deemed necessary, for similar purposes.

5. Section 25 of the UGC Act empowers the Central Government to make Rules to carry out the purposes of the Act by notification in the Official Gazette, with regard to the formation and the functioning of the Commission. Section 26 empowers the Commission to make Regulations consistent with the provisions of the Act and the Rules made thereunder, by notification in the Official Gazette inter alia in regard to 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 or she is required to give instructions and to define the minimum standards

of instructions for the grant of any degree by any University. In keeping with their statutory character, the Rules and Regulations framed by the Central Government and the Commission are required to be placed before each House of Parliament, while it is in session, for a total period of 30 days.

6. Section 20 of the UGC Act, particularly, provides that in the discharge of its functions under the said Act, the Commission is to be guided by such directions on questions of policy relating to national purposes, as may be given to it by the Central Government.

7. On 24th December, 1998, the Commission issued a Notification on revision of pay scales, minimum qualification for appointment of teachers in Universities, colleges and other measures for the maintenance of standards. In Clause 5 of the Notification, it was specified that the Commission expected that the entire scheme of revision of pay scales, together with all conditions attached to it, would be implemented by the State Governments, as a composite scheme without any modifications, except for the date of implementation and the scales of pay, as indicated in the Government of India Notifications dated 27.7.1998, 22.9.1998, and 6.11.1998. Clause 16 of the Notification also indicated that the teachers will retire at the age of 62 years, but it would be open to a University or a college to re-employ a superannuated teacher. Subsequently, the Commission, in exercise of the powers conferred upon it under Section 26(1)(e) and (f) of the UGC Act, framed the University Grants Commission (Minimum Qualifications required for the appointment and career advancement of teachers in Universities and institutions affiliated to it) Regulation, 2000. The said Regulation does not, however, provide for the age of superannuation.

8. On 23rd March, 2007, the Government, in its Ministry of Human Resource Development, Department of Higher Education, wrote to the Secretary of the Commission on the question of enhancement of the age of superannuation from 62 years to 65 years for teaching positions in Centrally funded institutions, in higher and technical education. In the said communication, it was mentioned that at the time of revision of pay scales of teachers in Universities and colleges, following the revision of pay scales of Central Government employees, on the recommendations of the Fifth Central Pay Commission, it had been provided inter alia in the Ministry's letter dated 27th July, 1998 that the age of superannuation of teachers in University and schools would be 62 years and, thereafter, no extension in service should be given. However, the power to re-employ the superannuated teacher up to the age of 65 years would remain open to a University or a college, according to the existing guidelines, framed by the Commission. In the letter, it was also indicated that the matter had been reviewed by the Central Government, in the light of the existing shortage in teaching positions in the Centrally-funded institutions in higher and technical education under the Ministry and, in that context, it had been decided that the age of superannuation of all persons who were holding posts as on 15.3.2007, in any of the Centrally funded higher and technical education under the Ministry, would stand increased from 62 to 65 years. It was also decided that persons holding such regular teaching positions, but had superannuated prior to 15.3.2007, on attaining the age of 62 years, but had not attained the age of 65 years, could be re-employed against vacant sanctioned teaching positions, till they attained the age of 65 years, in accordance with the guidelines framed by the Commission. It was lastly indicated that the enhancement of retirement age and the provisions for re-employment would only apply to persons in teaching positions against

posts sanctioned in Centrally-funded higher and technical education institutions, in order to overcome the shortage of teachers.

9. The most important development, at the relevant time, however, was the issuance of a letter by the Central Government in its Ministry of Human Resource Development, Department of Higher Education, to the Secretary, University Grants Commission on 31st December, 2008, regarding a scheme of revision of pay of teachers and other equivalent cadres in all the Central universities and colleges and Deemed Universities, following the revision of pay scales of the Central Government employees on the recommendation of the Sixth Central Pay Commission, subject to all the conditions mentioned in the letter and the Regulations. The State Governments were given an option to adopt the scheme in its composite form.

10. While generally dealing with matters relating to appointment and promotion, it was reiterated that in order to meet the situation arising out of shortage of teachers in Universities and in other teaching institutions and the consequent vacant positions, age of superannuation of teachers in Centrally-funded institutions had already been enhanced to 65 years. It was mentioned in the said letter that after taking into consideration the recommendations made by the Commission based on the decisions taken at its meeting, held on 7th and 8th October, 2006, the Government of India had decided to revise the pay scales of teachers in the Central Universities. It was further stipulated that the revision of pay scales of teachers would be subject to various provisions of the Scheme of revision of pay scales, as contained in the said letter and Regulations to be framed by the Commission in this behalf. Paragraph 8 of the Scheme deals with other terms and conditions, apart from those already mentioned and Clause (p)(i) thereof, which deals with the applicability of the Scheme and relevant for our purpose is extracted hereinbelow:

“(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 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 Regulations within three months from the date of issue of this letter.”

11. Clause (p)(v) of the said paragraph, which is equally relevant, is also extracted hereinbelow:

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

(a) Financial 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) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 1.04.2010.

(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1.01.2006.

(f) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/ scales of pay from a date on or after 1.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).

(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.”

12. Paragraph 8(f) of the aforesaid Scheme deals with the age of superannuation, which has already been dealt with hereinbefore. In substance, it provides that in order to meet the situation arising out of shortage of teachers and also to attract people to the teaching profession, it had been decided to retain the services of teachers till the age of 65 years, as already intimated to all universities and colleges by the letter dated 23.3.2007, issued by the Department of Higher Education, in the Ministry of Human Resource Development, Government of India.

13. Following the recommendations of the Sixth Pay Commission, the Bihar Legislature passed the Bihar State Universities (Amendment) Act, substituting Section 67 of the Bihar State Universities Act, enhancing the age of superannuation to 62 years. Since the said Amendment also has a definite bearing in the appeals filed by Prof. (Dr.) Jagdish Prasad Sharma, the amended provision, namely,

Section 67(a) is extracted hereinbelow:

“(a) Notwithstanding anything to the contrary contained in any Act, Rules, Statutes, Regulation or Ordinance, 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 two years. The date of retirement of a teaching employee will be the same which would be decided by the University grants Commission.

The date of retirement of non-teaching employee (other than the inferior servants) shall be the date on which he attains the age of sixty two years:

Provided that the University shall, in no case, extend the period of service of any of the teaching or non-teaching employee after he attains the age of sixty two years as the case may be.

Provided further also that re-appointment of teachers after retirement may be made in appropriate cases up to the age of sixty five years in the manner laid down in the Statutes made in this behalf in accordance with the guidelines of the University Grants Commission.”

14. Similarly, Section 64(a) of the Patna University Act was also amended on similar basis. Since the decision of the Ministry of Human Resource Development, as conveyed in its letter of 23.3.2007, was not being implemented, Writ Petitions, being CWJC Nos. 4823 and 5390 of 2008, were filed by some teachers seeking enhancement of the age of superannuation from 62 to 65 years, based upon the aforesaid decision of the Ministry of Human Resource Development. Both the Writ Petitions were dismissed by the High Court on the ground that there was no conscious decision taken by UGC with regard to teachers working in State Universities since the enhancement was confined to Centrally-funded Universities.

15. On 3.10.2008, the Pay Review Committee set up by the Commission submitted its Report to the Commission relating to the revision of pay scales of teachers, qualification for appointment, service and working conditions and promotional avenues of teachers in Universities and colleges, and at clause 5.4.2, it recommended that the age of superannuation throughout the country should be 65 years, whether in a State or Central University, as also in a college or in a University. In its 452nd meeting, the Commission took a conscious decision and recommended the Report of the Pay Review Committee for acceptance by the Central Government. Pursuant to the said decision and recommendation of the Commission, the Ministry of Human Resource Development published a Scheme on 31.12.2008, which has already been referred to hereinbefore.

16. As no action was taken even thereafter, the Appellants filed Writ Petition, being CWJC No. 2330 of 2009, before the Patna High Court. The said matter was heard along with several other similar Writ Petitions, wherein claims were made by the Petitioners under the amended provisions of the Patna University Act and Bihar State Universities Act.

17. On 6.10.2009, the learned Single Judge allowed the Writ Petitions and held that the State Government had no discretion as they were statutorily bound by the decision of the Commission to enhance the age of superannuation. Letters Patent Appeal No. 117 of 2010 and other connected LPAs were filed by the State of Bihar challenging the aforesaid judgment of the learned Single Judge. On 18.5.2010, a Division Bench of the Patna High Court allowed LPA No. 117 of 2010, filed by the State of Bihar. It is against the said judgment of the Division Bench that SLP(C) Nos. 18766-18782 were filed by the Appellants herein in June, 2010. On 30.6.2010, the Commission framed the Regulations of 2010.

18. This brings us to the substantial challenge, in these appeals and connected Writ Petitions and Transferred Cases, as has been set out in paragraph 2 of the impugned judgment of the Division Bench of the Patna High Court, which is, whether in view of the decision contained in the letter dated 31.12.2008 issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India, in the context of Section 64(a) of the Patna University Act, 1976 and Section 67(a) of the Bihar State Universities Act, the age of superannuation of teachers working in different Universities and colleges of Bihar would automatically be enhanced to 65 years. The focus is, therefore, on whether in view of the Scheme mentioned in the aforesaid letter of 31.12.2008, not only the Central Universities and colleges, which were bound by the UGC Regulations, but the different States and institutions situated therein would be bound to accept the Scheme, as set out in the said letter of 31.12.2008. As has been mentioned hereinbefore, the Scheme envisaged in 31.12.2008, in no uncertain terms, indicates that in case the State Governments opted to revise the pay scales of teachers and other equivalent cadres covered under the Scheme, financial assistance from the Central Government to such State Governments would be to the extent of 80% of the additional expenditure involved in the implementation of the revision. The Scheme also indicates that the State Government which opted for revision of pay scales would have to meet the remaining 20% of the additional expenditure from its own sources. The third consideration is that such financial assistance would be provided for the period from 1.1.2006 to 31.3.2010, and that, thereafter, the entire liability on account of revision of pay scales of the University and college teachers would have to be taken over by the State Government with effect from 1.4.2010. The fourth and the most important condition stipulated by the Commission was that payment of Central assistance for implementing the Scheme was subject to the conditions 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, would have to be implemented by the State Government and Universities and Colleges coming under their jurisdiction, as a composite scheme, emphasis supplied, without any modification except in regard to the date of implementation and scales of pay mentioned hereinabove. This entailed and included the enhancement of age of such teachers to 65 years. In other words, along with the enhancement of pay, of which 80% would be borne by the Commission, the other condition of the Commission was that the age of the teachers would be enhanced to 65 years, and that the balance 20% of the expenditure would have to be borne by the State from its own resources till 31.3.2010, and, thereafter, the entire burden of expenditure would have to be borne by the State.

19. It appears that the States of West Bengal, Uttar Pradesh, Haryana, Punjab and Madhya Pradesh implemented the Scheme without waiting for the UGC Regulations, which were framed only on

30.6.2010, whereas the said Scheme was implemented by the aforesaid States long before the said date. It is when the reimbursement of 80% of the expenses was sought for from the Central Government, that the problems arose, since in keeping with the composite scheme, the concerned States had not enhanced the age of superannuation simultaneously. The Central Government took the stand that since the Scheme in its composite form had not been given effect to by the States concerned, the question of reimbursement of 80% of the expenses did not arise. This is one of the core issues, which has arisen in these cases for decision.

20. The ripple effect of the stand taken by the Central Government was felt all over the country and, accordingly, matters were moved before different High Courts which have ultimately come up to this Court for hearing on such common issues.

21. The lead case, however, is that of Prof. (Dr.) Jagdish Prasad Sharma, who has moved against the judgment of the Division Bench of the Patna High Court on several grounds, including the grounds indicated hereinabove. One of the other grounds taken as far as the Patna cases are concerned, is in regard to the interpretation of Section 64(a) of the Patna University Act, 1976, introduced by the Amendment Act of 2006, and Section 67(a) of the Bihar State Universities Act, 1976, introduced by the Bihar State Universities (Amendment) Act, 2006, which has been reproduced hereinabove. Learned counsel for the Appellants has claimed that although in the first part of the two amended provisions, it has been indicated that the date of retirement of a teaching employee of the University or college would be the date on which he attains the age of 62 years, the said condition was purportedly watered down by the addition of the further condition that the date of retirement of a teaching employee would be the same, which would be decided by the University Grants Commission in future. It has been contended that on a construction of the aforesaid provision, it is amply clear that though when the amendment was effected it was the intention of the Legislature that the age of superannuation should be 62 years, no finality was attached to the same, since the final decision regarding superannuation lay with any decision that might be taken by the University Grants Commission in future. It has been contended that since a decision had been taken by the Ministry of Human Resource Development as far back on 23.3.2007 to enhance the age of superannuation from 62 to 65 years, which was also subsequently recommended by the Commission in its 452nd meeting, where a conscious decision was taken to implement the Report of the Pay Review Committee recommending the age of superannuation to 65 years throughout the country whether in a State or central University or whether in a college or in a University, it was incumbent on the State Government to implement the said recommendation of the University Grants Commission, subsequently endorsed by the Department of Higher Education, Ministry of Human Resource Development, Government of India.

22. Appearing for the Appellants, Mr. Ajit Kumar Sinha, learned Senior Advocate, submitted that Section 11 of the UGC Act provides that all orders and decisions of the Commission are to be authenticated by the signature of the Chairman. It was submitted that Section 12 of the UGC Act made further provision that it would be the general duty of the Commission to take, in consultation with the University or other concerned bodies, all such steps as it thought necessary for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in the Universities. Mr. Sinha submitted that it

would thus be apparent that the Commission could take decisions which were independent of its power to frame Regulations under Section 26 or to issue Notifications under Section 3 of the Act. Mr. Sinha submitted that the State of Bihar was, therefore, bound to acknowledge the age of superannuation as 65 years with effect from 31.12.2010 for the Appellants.

23. Mr. Ranjit Kumar, learned Senior Advocate, who appeared in some of the matters, reiterated the submissions made by Mr. Sinha and re-emphasized the fact that on 7.2.2011, the Government of Bihar had accepted the enhancement of age from 62 to 65 years for those who were in service on 30.6.2010. Mr. Ranjit Kumar submitted that the judgment of the Division Bench impugned in these proceedings does not suffer from any infirmity and, therefore, did not warrant any interference.

24. The next set of cases related to the State of Kerala with Mr. K.K. Venugopal, learned Senior Advocate, appearing for the Appellants in Civil Appeals arising out of SLP(C) Nos. 12990-12992 of 2011. Mr. Venugopal's stand was different from those of Mr. Ajit Kumar Sinha and Mr. Ranjit Kumar, learned Senior Advocates, and supported the action of the Commission. Mr. Venugopal submitted that the Kerala University Act, 1974, and the Mahatma Gandhi University Statutes, 1997, inter alia provided for the age of superannuation at 60 years. In the affiliated colleges, the age of superannuation was fixed at 55 years. Mr. Venugopal submitted that the stand taken by the State of Kerala was a little different from the stand taken by the other States, since there were a large number of qualified and eligible persons who were unemployed and were waiting for employment, who would ultimately fall prey to frustration if the services of those who had superannuated at the age of 62 years were to be continued, thereby depriving eligible candidates waiting to be employed. In such circumstances, the State of Kerala was not interested in increasing the age of superannuation from 62 years to 65 years. Referring to the letter of the Ministry of Human Resource Development, Government of India, dated 31.12.2008, Mr. Venugopal contended that in all Centrally-funded institutions a general direction had been given that the age of superannuation would be 65 years in place of 62 years.

25. Mr. Venugopal further urged that the Regulations made by the Commission were applicable to Centrally-funded institutions and also included by reference the entirety of the Scheme of 31.12.2008, as part of the Regulations and made it applicable to State institutions. Mr. Venugopal urged that the UGC Regulations being Central legislation under Entry 66 List I of the Seventh Schedule to the Constitution, they would have primacy over the executive and State laws and the Government Order dated 10.12.2010 was liable to be struck down.

26. While referring to the scope of Entry 66, List I of the Seventh Schedule to the Constitution, Mr. Venugopal referred to the decision of this Court in the University of Delhi Vs. Raj Singh [(1994) Suppl 3 SCC 516], wherein it was held that the Regulations of the Commission in the said case would not be binding on the University of Delhi being recommendatory and did not impinge upon the University's power to select its teachers. However, if the University chose not to accept the UGC Regulations, it would lose its grant from the UGC.

27. During the course of his submissions, Mr. Venugopal referred to the order issued by the Government of Kerala in the Higher Education (C) Department on 10.12.2010 for implementation of

the UGC Regulations 2010 on minimum qualifications for appointment of teachers, other academic staff in Universities and colleges and measures for the maintenance of standards in higher education. The Government Order further provided that the matter had been examined in detail and the Government was, therefore, pleased to approve and to implement the Regulations as such. The Regulations, therefore, were to come into force from 18.9.2010 on the date of their publication in the Government of India Gazette. All the Universities were directed to incorporate the UGC Regulations in their Statutes and Regulations, within one month from the date of the Order. Mr. Venugopal joined issue with the contents of paragraph 6 of the said Order, which provides that where there were any provisions in the Regulations inconsistent with the provisions in the Government Order, read as the first paper, the said Government Order would override the provisions in the Regulations to the extent of such inconsistency. Mr. Venugopal submitted that executive directions cannot override the statutory provisions and it was the statutory provisions which would prevail over such executive directions. Consequently, the UGC Regulations would, in these cases, prevail over the Orders of the Executive government. In this connection, Mr. Venugopal referred to the decision of this Court in *Paluru Ramkrishnaiah Vs. Union of India* [(1989) 2 SCC 541], wherein relying on two earlier decisions of this Court in *B.N. Nagarajan Vs. State of Mysore* [(1966) 3 SCR 682] and *Sant Ram Sharma Vs. State of Rajasthan* [(1968) 1 SCR 111], a Constitution Bench of this Court in *Ramachandra Shankar Deodhar Vs. State of Maharashtra* [(1974) 1 SCC 317], held that in the absence of legislative Rules it was competent for the State Government to take a decision in the exercise of its executive power under Article 162 of the Constitution. Therefore, an executive instruction could make provision only for a matter which was not covered by the Rules and such executive instructions could not override any of the provisions of the Rules. Accordingly, the learned counsel submitted that the Government Order dated 10.12.2010 was liable to be struck down.

28. Mr. Venugopal also referred to the decision of this Court in the case of the Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar [1963 Suppl 1 SCR 112], wherein it was *inter alia* observed as follows:

“The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the co-ordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is to ensure maintenance or improvement of standards. The fact that the Union has not

legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid." Mr. Venugopal, therefore, contended that the UGC Regulations would have an overriding effect over the Government Order dated 10.12.2010 and, in any event, the U.G.C. could not abdicate its authority regarding higher education to the States.

29. Learned counsel appearing for the Appellants in Civil Appeals arising out of SLP (C) Nos. 10765-69 of 2011 and learned counsel appearing on behalf of other Appellants, in relation to the matters relating to the State of Kerala, adopted Mr. Venugopal's submissions and it was pointed out by Mrs. V.P. Seemanthini that there was a marked difference between the 2000 Regulations framed by the Commission and the subsequent Regulations of 2010. It was submitted by her that while the 2000 Regulations did not provide for any age of superannuation, in the 2010 Regulations, there is a mandate to the State Government to follow the same.

30. However, appearing for the Appellants in Civil Appeal arising out of SLP(C) No. 23275 of 2010, Dr. K.P. Kylasanatha Pillay, learned Senior Advocate, took a different stand from that of Mr. Venugopal. He pointed out that the Appellants were all Selection Grade Lecturers and Readers of Sree Narayana College, Kollam, an aided institution situated in the State of Kerala. Referring to the Scheme formulated by the Central Government, which also included the question relating to age of superannuation, Dr. Pillay reiterated that in order to meet a situation arising out of shortage of teachers in Universities and other teaching institutions, the age of superannuation for teachers in Central educational institutions had already been enhanced to 65 years. Dr. Pillay urged that the benefits of the package scheme which was implemented with effect from 1.1.2006, relating to enhancement of age of superannuation to 65 years, should also be made available to the Appellants. Dr. Pillay submitted that so long as the Appellants had been excluded from the Pay Revision of the State Government, as governed by the UGC Scheme, they had been placed in a disadvantageous position.

31. Appearing for the State of Kerala, Ms. Bina Madhavan, learned Advocate, contended that under Article 309 of the Constitution, the State Government is empowered to frame its own Rules and Regulations in regard to service conditions of its employees. Furthermore, Section 2 of the Kerala Public Service Commission Act, 1968, empowers the State Government to make Rules either prospectively or retrospectively to regulate the recruitment and conditions of service for persons appointed to the Public Services and posts in connection with the affairs of the State of Kerala. Ms. Madhavan submitted that under the Kerala Service Rules, 1958, enacted by the State Government under the proviso to Article 309 of the Constitution, the age of retirement of teachers in colleges has been fixed to be 55 years. Subsequently, however, by G.O.P. No.170/12/Fin. dated 22.3.2012, the age of compulsory retirement was enhanced to 56 years and the age of superannuation has been enhanced to 60 years. Ms. Madhavan urged that having regard to the UGC Regulations dated 30.6.2010, a decision was taken to revise the scales of pay and other service conditions, including the age of superannuation in Central Universities and other institutions maintained and funded by the University Grants Commission, strictly in accordance with the decision of the Central Government. However, the revised scales of pay and age of superannuation, as provided under paragraph 2.1.10 and under paragraph 2.3.1, will 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 as contemplated in the Regulations.

32. Ms. Madhavan contended that the State Governments were not under any compulsion to adopt the UGC Scheme, but could do so if they wanted to. Ms. Madhavan emphasized that neither the pay scales nor the age of superannuation stood revived automatically, without the Scheme being accepted by the State Government. Ms. Madhavan also urged that Section 26 of the University Grants Commission Act, 1956, which empowers the Commission to make Regulations, does not authorize the Commission to make Regulations in regard to service conditions of teaching staff in the Universities, including the age of retirement. According to learned counsel, the role of the UGC is only to prescribe academic standards, qualifications required for the teaching staff, facilities required in a higher education institutions, etc. Hence, it can in no circumstances be contended that the rule making power of the Commission empowered it to prescribe conditions of service in relation to State Government employees, which is the prerogative of the State Government.

33. Ms. Madhavan also urged that in its affidavit filed in SLP (C) No.10783 of 2011, the Commission had clearly stated that it would be open to the State Government or other competent authority to adopt the decision or to take any decision as it considered appropriate in respect of the superannuation of the teachers in higher and technical education institutions under their purview, with the approval of the appropriate competent authority. As a result, there was no repugnancy between the Regulations framed by the Commission and the Rules framed by the State Government. Referring to Section 20 of the UGC Act, Ms. Madhavan contended that the same provided that the Commission, in discharge of its functions under the Act, shall be guided by such directions on questions of policy relating to national services, as may be given to it by the Central Government and if any dispute arose between the Central Government and the Commission as to whether a question is or not a question of policy relating to national policy, the decision of the Central Government shall be final. Ms. Madhavan also urged that the Central Government had by its letter dated 14th August,

2012, clarified the position and had made it clear that the question of enhancement of the age of retirement is exclusively within the domain of the policy-making powers of the State Governments and that the condition of enhancement of the age of superannuation to 65 years, as mentioned in the Ministry's letter dated 31.12.2008, may be treated as withdrawn for the purpose of seeking reimbursement of the Central share of arrears to be paid to the State University and College teachers. According to Ms. Madhavan, the Central Government had itself clarified that the Scheme is not a composite one and the word 'composite' is with regard to financial assistance provided by the Central Government and was not connected with the age of superannuation which was incidental to the Scheme.

34. The other learned counsel appearing for the different Universities and educational institutions generally adopted Mr. Venugopal's submissions, but while doing so, added one or two points of their own.

35. Mr. S.R. Singh, learned Senior Advocate, who appeared for the Appellants in Civil Appeal arising out of SLP (C) No.16523 of 2011, reiterated Mr. Venugopal's submissions relating to Entry 66 List I and Entry 25 in List III and urged that the powers under Entry 66 List I were vested in the Central Government and could not be sub-delegated to the States under Entry 25 in List III, which, in any event, was not permissible in law. Mr. Singh contended that the same would be evident on a reading of Section 12(j) and Section 27 of the UGC Act, 1956, which made the Commission the repository of powers for advancing the cause of higher education in India.

36. Mr. S. Chandra Shekhar, learned Advocate, who appeared for the University in Civil Appeal arising out of SLP(C) No.16523 of 2011 and other batch matters, urged that the University Statutes provided 62 years as the age of superannuation and there was no right available to the Appellants which could be enforced by a writ of mandamus. Mr. Chandra Shekhar also submitted that the Commission had no power to enhance the age of superannuation as a condition of service.

37. Mr. P.S. Patwalia, learned Senior Advocate, who appeared in SLP(C) Nos.9198-9221/2011 and other matters relating to the State of Punjab and the Union Territory of Chandigarh, while adopting Mr. Venugopal's submissions regarding the binding nature of the UGC Regulations, relied upon the Constitution Bench decision of this Court in the case of Dr. Preeti Srivastava Vs. State of M.P. [(1999) 7 SCC 120], wherein it was observed that when there was an existing Central legislation, the same would be binding in the absence of any other legislation by the States. Mr. Patwalia also urged that the Scheme was a composite scheme and ought to have been accepted in its totality and despite the fact that the State Government had accepted the grant of 80% of the expenses, which was part of the composite scheme, it ought to have also accepted the other part of the Scheme relating to enhancement of the age of teachers in the different Universities in Punjab, from 62 to 65 years. By not doing so, the State had caused severe prejudice to the teachers who would have otherwise been entitled to retire at the age of 65 years and not 62 years. Mr. Patwalia submitted a copy of the Report of the Task Force on Faculty Shortage and Design of Performance Appraisal System published by the Ministry of Human Resource Development, Government of India, in July, 2011, and pointed out that generally across the country on an average about 35% of the posts of teachers in the different Universities and Colleges were lying vacant, which was one of the reasons for the deterioration of

standards of education across the board. Mr. Patwalia urged that the aforesaid vacancies would indicate that there was an urgent need for appointment of teachers in the different schools and colleges across the country, including the State of Punjab.

38. The same sentiments were expressed by Dr. Aman Hingorani, learned Advocate appearing in Civil Appeal arising out of SLP(C) No.7392 of 2011. Dr. Hingorani reiterated Mr. Patwalia's submissions that the composite scheme as offered by the University Grants Commission could not be split in two by the States, and independent of the control of the Central Government, the College in question has to abide by the UGC Regulations as the same was funded by the Commission. Dr. Hingorani also urged that the Appellant, Susan Anand, was made to retire at the age of 60 while the UGC Notification provided that the age of superannuation would be 62 years. Dr. Hingorani urged that as was held by this Court in Pavai Ammal Vaiyapuri Education Trust Vs. Government of Tamil Nadu [(1994) 6 SCC 259], since the institution accepted the UGC Regulations, it came under its discipline, which fact had not been taken into consideration in B. Bharat Kumar & Ors. Vs Osmania University & Ors. [(2007) 11 SCC 58]. Dr. Hingorani also urged that though the Appellant's SLP was dismissed and the Appellant had attained the age of superannuation, under the orders of the High Court, she was allowed to rejoin her duties in the college. It was submitted that her case was required to be treated separately from the others on account of the special facts involved and that having continued in service by virtue of the Court's orders, she was entitled to the benefits of any order that may be passed in favour of enhancement of the age of superannuation from 62 to 65 years.

39. Appearing for the State of Haryana, Dr. Monika Gosain, learned Advocate, restated what had been stated by the other learned counsel that the State of Haryana was not bound by the UGC scheme as it had not accepted the "composite scheme" of the Commission. Supplementing Dr. Gosain's submissions, Mr. P.S. Patwalia, learned Senior Advocate, appearing for the State of Punjab, submitted that the letter from the Government of India to all the States made it clear that unless the composite scheme as offered by the UGC was accepted, the payment of money under the Scheme would not be forthcoming. It was, however, submitted that in some cases, the Government of Haryana had voluntarily enhanced the age of superannuation to 65 years and notified to the colleges recognized under Section 2(f).

40. As far as the Civil Appeal arising out of SLP(C)No.1631 of 2012 and four connected matters are concerned, Mr. C.S.N. Mohan Rao, learned Advocate, appearing for the Appellants, adopted the submissions made by Mr. K.K. Venugopal and reiterated the position that despite having accepted the composite package, the State had not accepted the enhancement of age from 62 to 65 years, causing severe prejudice to the Appellants and others similarly situated.

41. Similarly, Ms. Aishwarya Bhati, learned Advocate, appearing for the Appellants in Civil Appeals arising out of SLP(C) Nos.6915-6923 of 2012, adopted Mr. Venugopal's submissions and also relied on the decision in the case of B. Bharat Kumar (supra). Ms. Bhati submitted that on behalf of the State of Rajasthan a letter had been written to the Registrar of all the Universities in the State of Rajasthan, indicating that considering the huge problem of unemployment of youth in the State, the State had decided not to increase the age of superannuation of teachers beyond 60 years. Ms. Bhati

referred to the Report of the Chaddha Committee, wherein the aforesaid stand had been refuted and the said Committee recommended that the age of superannuation of teachers should be 65 years on a uniform basis throughout the country, whether working in a State or Central University or College. Learned counsel urged that the benefits which had been conferred by the UGC Regulations, could not be taken away by a subsequent legislation. In the other cases relating to the State of Rajasthan, the Petitioner adopted not only Mr. Venugopal's submissions, but also those made by Ms. Bhati.

42. Learned counsel appearing in Civil Appeals arising out of SLP(C) Nos.18218-18226 of 2012 and 21396 of 2012 from Odisha, also adopted the submissions made by Mr. K.K. Venugopal and submitted that the UGC scheme having been conceived under Entry 66, List I of the Seventh Schedule to the Constitution, would have an overriding effect over the State legislation.

43. Mr. Dinesh Dwivedi, learned Senior Advocate, who appeared for the State of Uttarakhand, submitted that the conditions of service in State universities could not be controlled by the University Grants Commission and even on receipt of 80% of the expenses to be incurred by the Colleges the State's powers under the statutes were not taken away. Mr. Dinesh Dwivedi submitted in detail with regard to the ramifications of Entry 66 List I as also Entry 11 of List II prior to the 42nd Amendment and its substitution by way of Entry 25 in List III. The ultimate result of Mr. Dwivedi's submission is that the statute does not use two different words to denote the same thing. Besides the language in the Constitution has to be understood in a common sense way and in common parlance, as was observed in the case of Synthetic and Chemicals Ltd. & Ors. Vs. State of U.P. & Ors. [(1990) 1 SCC 109]. Learned counsel also submitted that in the present case, when the dominant Legislature has legislated, any incidental encroachment has to give way. Moreover, no incidental or ancillary powers could be read into Entry 66 as Entry 32 was already occupying the field. Mr. Dwivedi submitted that the 2000 Regulations framed by the UGC were not applicable to the Pant Nagar University, since being an agricultural institution, the standards and norms of the Indian Council of Agricultural Research would apply. Mr. Dwivedi lastly contended that in regard to the provisions of Sections 12, 14, 25 and 26 of the UGC Act, the said provisions could not be read so widely as to enable the Commission to ride rough shod over the State laws. Mr. Dwivedi submitted that the regulations, in so far as they seek to prescribe conditions of service, including age of retirement, are illegal and beyond the legislative powers of the Union or the Commission, in the event they relate to the teachers and staff of the State university and institutions. The 2010 Regulations as framed by the UGC could not, therefore, be enforced on unwilling States in view of the federal structure of our Constitution.

44. Mr. R. Venkataramani, learned Senior Counsel who appeared for the Babajan Badesab Nandyal and others, the Appellants in Civil Appeals arising out of SLP(C) Nos.32748-762 of 2011, submitted that the impugned order was contrary to the law as laid down by this Court in the case of Annamalai University Vs. Secretary to Govt. Information and Tourism Department & Ors. [(2009) 4 SCC 590] and the University of Delhi Vs. Raj Singh [1994 Supp. 3 SCC 516], in which this Court had held that the provisions of the UGC Act were binding on all the Universities and the Regulations framed by the UGC in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 which were of wide amplitude and were mandatory in nature. He also urged that the Division Bench of the High Court had failed to notice that the Government of India letter dated 31.12.2008 had been

included as 'Appendix-I' to the UGC Regulations, 2010, which made the Scheme provided therein as statutory and binding. It was also urged that the High Court had not really considered the provisions of Section 26(g) of the above Act which empowered the Commission to regulate the maintenance of standards and the coordination of work or facilities in Universities. Learned counsel submitted that all factors relevant for the purpose of nourishing, sustaining and enhancing the quality of human resource have been duly taken note of by the Commission. Mr. Venkataramani submitted that the question of fixing the date of retirement of a teacher were restricted within the framework of University legislation, since the age of retirement was intrinsically related to establishment and realization of higher standard and quality of imparting education and could not be confined to parochial aspirations. Mr. Venkataramani submitted that the UGC Regulations, 2010, are binding on the State Governments and the Universities to enhance the age of superannuation of teachers to 65 years. Relying on the decision of this Court in the Annamalai University case (supra), Mr. Venkataramani urged that the provisions of the UGC Act were binding on all Universities, whether conventional or open. Its powers are very broad and the Regulations framed by it under Section 26 were of wide amplitude and even as subordinate legislation they became part of the UGC Act having been validly made. Learned counsel also referred to the decision of this Court in Prem Chand Jain Vs. R.K. Chhabra [(1984) 2 SCC 302], wherein this Court held that it was well settled that entries incorporated in the Lists covered by Schedule Seven are not powers of legislation, but "field" of legislation.

45. In Civil Appeal arising out of SLP(C) No.36126 of 2011, Mr. Jagjit Singh Chhabra, learned Advocate appearing for the State of Punjab, referred to the letter dated 23.3.2007 written on behalf of the Government of India to the Commission regarding enhancement of the age of the teachers from 62 to 65 years and urged that the said Scheme was voluntary and not binding on the State and that when a sufficient number of teachers were available, it would be counterproductive to insist that the State should be compelled to accept the UGC's option in its totality when the same has been left to the discretion of the State by the Regulations themselves. Mr. Chhabra urged that the conditions of service of teachers in a State were completely within the jurisdiction of the State and such jurisdiction could not be overridden by the UGC Regulations, without the consent of the State.

46. In reply to the submissions made on behalf of the Petitioners and the Appellants in these cases, Mr. Rakesh Dwivedi, learned Senior Advocate, appearing for the UGC, submitted that after the letter written by the Central Government on 27.7.1998, informing the States regarding the revision of pay scales and the provision of financial assistance to the extent of 80% of the additional expenditure for the period 1.1.1996 to 31.3.2000, whereafter the entire liability would have to be taken over by the State Governments, it was upto the State Governments to take recourse to the scheme as framed. By another letter dated 27.7.1998, the UGC was informed that the Central Government had revised the pay scales of teachers in the Central Universities on the recommendations of UGC that the scheme was of a composite nature and all the conditions of the scheme would have to be fulfilled if the States were to avail of the offer of financial assistance to the extent of 80% of the additional expenditure for the period indicated hereinabove. However, although, the State of Kerala had issued an order dated 21.12.1999, accepting the revised pay scales, it continued to adopt the existing Rules of the State Government, wherein the age of retirement remained 55 years. Mr. Dwivedi reiterated that following the recommendations of the 5th Central Pay Commission, the Central Government

had, by its order dated 23.3.2007, revised the age of superannuation of teachers to 65 years and even reemployment was permitted upto the age of 70 years. The only catch was that such change would apply to centrally-funded higher and technical educational institutions coming under the purview of the Ministry of Human Resource Development and the Notification would be issued by the Commission.

47. While reiterating the submissions made on behalf of the Petitioners relating to the UGC Regulations, 2010 and Clause 2.1 of the Annexures thereto, Mr. Dwivedi urged that the provisions of the UGC Act, particularly Section 12 thereof, are not confined to coordination and determination of standards in institutions for higher education and research but that the powers vested in the Commission contemplated a larger role in regard to the promotion of university education. It was further urged that the Commission was empowered to give grants, as it might deem necessary or appropriate, for the development of Universities and could also recommend measures necessary for their improvement. Mr. Dwivedi contended that the UGC Act is not entirely confined to Entry 66, List I, but it was also entitled to act under Entry 25 of the Concurrent List of the Seventh Schedule to the Constitution. Mr. Dwivedi urged that since Parliament was competent to legislate both in terms of Entry 66, List I and Entry 25, List III, it could invoke both the fields of legislation. Mr. Dwivedi submitted that a competent legislature could draw sustenance from more than one entry while legislating. However, the aforesaid question was not required to be gone into since the Commission had made an offer in the Scheme, which was left to the State to adopt or not to adopt. Mr. Dwivedi further submitted that with regard to the Concurrent field, there was no compulsion either on the Parliament or the authority created under Central Statutes to exhaustively legislate or to exercise the enabling power with regard to the Concurrent field. It would be open to the Parliament or the Commission either to enforce a particular scheme in the State or leave it open for them to adopt the scheme through their laws and executive orders. In such cases, the State Governments and State Legislatures exercise plenary powers to decide whether the Scheme was to be adopted or not. Mr. Dwivedi submitted that it is also settled law that unless the enabling power is completely expanded, the legislative field in the Concurrent List remains available to the States.

48. Mr. Dwivedi further urged that different legislations by different States are inherent in a federal exercise of power. The differences arising as a result of federal distribution of power by the Constitution and exercise of such power by States, cannot be a ground to allege discrimination. As was held in *S.R. Bommai Vs. Union of India* [(1994) 3 SCC 1], federalism is a basic feature of the Constitution. In the present case, the UGC Act and the Regulations of 2010 and the Scheme of the Central Government have been made applicable to all the States uniformly. In fact, no age of retirement has also been fixed by the Commission. Even for Central Universities, the pay scales have been revised by the Central Government and the age of superannuation has been revised to 65 years by the said Government. The Scheme was also finalized by the Central Government and it was also the decision of the Central Government that the State should take their own decisions as to whether the Scheme prepared by it should be adopted. Mr. Dwivedi reiterated that the UGC Regulations of 2010 have notified the Scheme of the Central Government and it has been left to the discretion of the State Governments to adopt or not to adopt the same for its Universities, colleges and other institutions. The only challenge which had occurred is the order of the Central Government, vide its letter dated 14.8.2012, in its Ministry of Human Resource Development, which delinked the

financial assistance from the requirement to adopt the Central Scheme. The Central Government took a decision that the discretion of the State Government should not be fettered by the extension of the financial incentive. Accordingly, any difference which might arise on account of any decision of the State Government would be on account of the federal scheme of the Constitution and not on account of any decision either of the Central Government or the Commission.

49. Mr. Dwivedi submitted that the cases relied upon by the Petitioners and Appellants were all based on geographical discrimination, which had no bearing with the facts of these cases and neither the UGC Act nor the Regulations of 2010, nor the Scheme of the Central Government, suffers from any such infirmity. In this regard, Mr. Dwivedi also placed reliance on the decision of this Court in *T.P. George Vs State of Kerala* [1992 Supp (3) SCC 191] and in the *All India Sainik Schools Employees' Association Vs. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi* [1989 Supp 1 SCC 205]. Learned counsel submitted that each State has its own sovereign plenary power with respect to its territory and the laws of one State could not be held to be discriminatory with reference to laws of another State. In this regard, Mr. Dwivedi referred to and relied upon the decision of this Court in *Javed Vs. State of Haryana* [(2003) 8 SCC 369], where the said principle was considered and the application of Article 14 of the Constitution was negated.

50. Mr. Dwivedi concluded on the note that the age of retirement has varied from State to State in respect of public employment in State services and this Court has always upheld the power of the State to fix the age of superannuation in the light of conditions prevalent in the States and the provision of jobs to youth has been upheld to be a valid consideration, as in the State of Kerala.

51. On behalf of Govind Ballabh Pant University in SLP(C) No.8153 of 2012, Mr. Vijay Hansaria, learned Senior Advocate, submitted that Section 28(r) of the UGC Act permits the University to frame Rules with regard to service conditions of its staff, including the Rules for retirement. Apart from the above, it was also pointed out that the grants which are received by the University are not from the UGC, but from the Indian Council of Agricultural Research (ICAR).

52. Lastly, coming to the submissions made on behalf of the State of Rajasthan and the State of U.P., on behalf of both the States it was sought to be urged that the UGC Regulations could not control the power of the State Governments and/or the service conditions of its employees as the same are to be exclusively decided by the Union or the State, as provided in Article 309 of the Constitution. It was submitted that it had also been held in the *Osmania University* case (*supra*) that the fixation of the age of superannuation by the State Government is well within its jurisdiction and neither the Scheme of the Central Government nor the UGC Regulations have any binding effect.

53. Though, at first blush, the scope of the appeals seemed to be limited and confined to the question as to whether the Regulations framed by the University Grants Commission under Section 26 of the University Grants Commission Act, 1956, were binding on the States and State-funded and other Universities and colleges being run therein, as the hearing progressed, several other ancillary issues also came to be raised.

54. As has been indicated hereinbefore, the Central Government enacted the UGC Act in 1956 to coordinate and determine standards in universities and towards that end, to establish a University Grants Commission for taking all steps, as it thought fit, for the promotion of university education and for determination and maintenance of standards of teaching and research in universities. On 24th December, 1998, the Commission issued a Notification relating to revision of pay scales and other service conditions. Thereafter, after the expressions of a series of views regarding the enhancement of the age of superannuation from 60 to 62 and from 62 to 65 years, the Central Government in its Department of Higher Education, wrote to the Secretary, UGC, on 31st December, 2008, with regard to a scheme for revision of pay-scales of teachers and other equivalent cadres in all the Central universities and Colleges and Deemed Universities, following the revision of pay scales of the Central Government employees on the recommendation of the Sixth Central Pay Commission.

55. One of the common submissions made on behalf of the Respondents was whether the aforesaid scheme would automatically apply to centrally-funded institutions, to State universities and educational institutions and also private institutions at the State level, on account of the stipulation that the scheme would have to be accepted in its totality. As indicated hereinbefore in this judgment, the purport of the scheme was to enhance the pay of the teachers and other connected staff in the State universities and educational institutions and also to increase their age of superannuation from 62 to 65 years. The scheme provides that if it was accepted by the concerned State, the UGC would bear 80% of the expenses on account of such enhancement in the pay structure and the remaining 20% would have to be borne by the State. This would be for the period commencing from 1st January, 2006, till 31st March, 2010, after which the entire liability on account of revision of pay-scales would have to be taken over by the State Government. Furthermore, financial assistance from the Central Government would be restricted to revision of pay-scales in respect of only those posts which were in existence and had been filled up as on 1st January, 2006. While most of the States were willing to adopt the scheme, for the purpose of receiving 80% of the salary of the teachers and other staff from the UGC which would reduce their liability to 20% only, they were unwilling to accept the scheme in its composite form which not only entailed acceptance of the increase in the retirement age from 62 to 65 years, but also shifted the total liability in regard to the increase in the pay- scales to the States, after 1st April, 2010.

56. Another anxiety which is special to certain States, such as the State of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplus-age and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there was a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.

57. To some extent there is an air of redundancy in the prayers made on behalf of the Respondents in the submissions made regarding the applicability of the scheme to the State and its universities,

colleges and other educational institutions. The elaborate arguments advanced in regard to the powers of the UGC to frame such Regulations and/or to direct the increase in the age of teachers from 62 to 65 years as a condition precedent for receiving aid from the UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame Regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be denied. The question that assumes importance is whether in the process of framing such Regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions. The authority of the Commission to frame Regulations with regard to the service conditions of teachers in the centrally- funded educational institutions is equally well established. As has been very rightly done in the instant case, the acceptance of the scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that the UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by the UGC relate to Entry 66 List I of the Constitution in the Seventh Schedule to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation.

58. However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, the acceptance of the scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the scheme. The problem lies in the desire of the State and its Authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the scheme with its financial implications from 1st April, 2010.

59. As far as the States of Kerala and U.P. are concerned, they have their own problems which are localised and stand on a different footing from the other States, none of whom who appear to have the same problem. Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by the UGC. It is only natural that if they wish to adopt the Regulations framed by the Commission under Section 26 of the UGC Act, 1956, the States will have to abide by the conditions as laid down by the Commission.

60. That leaves us with the question which is special to the State of Bihar, i.e., the effect of Section 67(a) introduced into the Bihar State Universities Act, 1976, by the Bihar State Universities (Amendment) Act, 2006, and the corresponding amendments made in the Patna University Act, 1976. Section 67(a) has been extracted hereinbefore in Paragraph 13. While, on the one hand, it has been mentioned that notwithstanding anything to the contrary contained in any Act, Rules, Statutes, Regulation or Ordinance, 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 62 years, the confusion is created by the next

sentence which further provides that the date of retirement of a teaching employee would be the same which would be decided by the UGC. It has been urged that the said provision clearly contemplates that in the event of an alteration resulting in an upward revision of the age of superannuation, the same would automatically apply to all such teachers and staff, without any further decision of the State and its authorities in that regard. In other words, what has been sought to be urged is that when in regard to Centrally-funded universities, colleges and educational institutions, the age of superannuation has been increased to 65 years by the University Grants Commission, the same has to uniformly apply to all universities and colleges throughout the country, without any discrimination. The same did not necessitate any separate decision to be taken by the State and its authorities regarding the applicability of the decision taken by the University Grants Commission.

61. The said submission, in our view, is not acceptable on account of the fact that in the first paragraph of the said Section it has been categorically stated that the age of superannuation would be 62 years. The second paragraph of the said section makes it even more clearer, since it reiterates that the date of retirement of non-teaching employees, other than the inferior servants, shall be the date on which he attains the age of 62 years. The first proviso also indicates that the university shall, in no case, extend the period of service of any of the teaching or non- teaching employee after he attains the age of 62 years. The second proviso, however, states that even after retirement, teachers may be reappointed in appropriate cases up to the age of 65 years in the manner laid down in the Statutes made in this behalf in accordance with the guidelines of the Commission.

62. As against the above, certain writ petitions have been filed in the Patna High Court which rejected the contention of the Petitioners and dismissed the writ petitions on the ground that the Commission had not taken any conscious decision with regard to teachers and staff, except for those which were Centrally-funded. Subsequently, however, since in its 452nd meeting the Commission took a conscious decision and recommended that the Report of the Pay Review Committee recommending the enhancement of age of superannuation from 62 to 65 years be made applicable throughout the country, fresh writ petitions were filed in the Patna High Court, including CWJC No.2330 of 2009, filed by the Appellants herein. The learned Single Judge allowed the writ petitions upon holding that once the Commission had recommended that the age of superannuation be accepted as 65 years, the State Governments had no discretion but to enhance the age of superannuation in line with the recommendations made by the Commission. The Division Bench subsequently reversed the finding of the learned Single Judge, resulting in these Special Leave Petitions (now Appeals).

63. Learned Standing Counsel for the State of Bihar, Mr. Gopal Singh, had in his submissions reiterated the views of the High Court, i.e., that on mere communication, the revision of the pay of teachers and increase in the age of superannuation would not automatically become effective and that, in any event, the right to alter the terms and conditions of service of the State universities and colleges were within the domain of the State Government and till such time as it decided to adopt the same, the same would have no application to the teachers and staff of the different educational institutions in the State.

64. We are inclined to agree with such submission mainly because of the fact that in the amended provisions of Section 67(a) it has been categorically stated that the age of superannuation of non-teaching employees would be 62 years and, in no case, should the period of service of such non-teaching employees be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame Regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under Entry 25 of List III. So long as the State legislation did not encroach upon the jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central Government under Entry 25 List III, both would have to be treated on a par with each other. In the absence of any such legislation by the Central Government under Entry 25 List III, the Regulation framed by way of delegated legislation has to yield to the plenary jurisdiction of the State Government under Entry 25 of List III.

65. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those Petitioners who have claimed that they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail.

66. However, within this class of institutions there is a separate group where the State Governments themselves have taken a decision to adopt the scheme. In such cases, the consequences envisaged in the scheme itself would automatically follow.

67. We, therefore, see no reason to interfere with the impugned judgment and order of the Division Bench of the High Court in all these matters in the light of the various submissions made on behalf of the respective parties. The several Appeals, Writ Petitions and the Transferred Case, which involve the same questions as considered in this batch of cases, are all dismissed. However, the Appeals filed by the State of Uttarakhand and Civil Appeals arising out of SLP(C) Nos. 6724, 13747 and 14676 of 2012 are allowed. As far as the Transfer Petition Nos. 1062-1068 OF 2012 are concerned, the same are allowed and the Transferred Cases are dismissed. The Contempt Petitions are disposed of by virtue of this judgment. However, persons who have continued to work on the basis of the interim orders passed by this Court or any other Court, shall not be denied the benefit of service during the said period. The Appeals and Petitions having been dismissed, both the State Authorities and the Central Authorities will be at liberty to work out their remedies in accordance

with law.

68. Having regard to the nature of the facts involved in these case, parties shall bear their own costs.

.....CJI.

(ALTAMAS KABIR)J. (SURINDER SINGH NIJJAR)J. (J. CHELAMESWAR) New Delhi Dated: July 17, 2013.