

CWP No. 11988 of 2014 and other connected matters -1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 11988 of 2014
Date of Decision: August 16, 2016**

Dr. Bhura Singh Ghuman

..... Petitioner

Vs.

**Panjab University, Chandigarh and others
and connected 68 petitions**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Puneet Jindal, Senior Advocate with
 Mr. Siddhant Kant, Advocate
 (in CWP No.617 of 2015)

 Mr. Salil Sagar, Senior Advocate, with
 Mr. Samarth Sagar, Advocate,

 Mr. Sameer Sachdeva, Advocate
 (in CWP No.11988 of 2014 and other 35 connected petitions)

 Mr. Animesh Sharma, Advocate
 (in CWP Nos.23716 and 15353 of 2014, 19188, 3779,
 4253, 7075, 9944, 8667, 4392, 19391, 6395 of 2015 and CWP
 Nos. 1022 and 8972 of 2016.)

 Mr. Abhilaksh Grover, Advocate,
 (in CWP Nos. 2395, 2472, 22320, 10573 and 16783 of 2015)

 Ms. Divya Sharma, Advocate
 (in CWP No.3788 of 2015, 3117 and 9669 of 2016)

 Mr. Arshdeep Bhullar, Advocate
 (in CWP No.24231 of 2015)

 Mr. Shashi Kulbhushan Sharma, in-person
 (in CWP No.3730 of 2015)

 Mr. Chanderdeep Singh, Advocate
 (in CWP No.17204 of 2015)

 Mr. Yogesh Jain, Advocate
 (in CWP No.2794 of 2015)
 for the petitioner(s).

 Mr. Anupam Gupta, Senior Advocate, with
 Mr. Gautam Pathania, Advocate
 for the respondent–Panjab University.

Mr.Rajiv Atma Ram, Senior Advocate, with
Mr.Arjun Partap Atma Ram, Advocate
for respondent No.4 (in CWP 19921 of 2014)

Mr. Chetan Mittal, Assistant Solicitor General of India
with Mr.Vivek Singla, Sr.Panel Counsel
for respondent -UOI
(in CWP Nos.9947, 8667 and 7075 of 2015)

Mr. Amit Singh Sethi, Additional Advocate General, Punjab.

Mr.Vivek Singla, Senior Panel Counsel
for respondent -UOI
(in CWP Nos.9947, 8667 and 7075 of 2015)

Mr. I.P.S. Doabia, Advocate,
for the respondent-U.T. Chandigarh (in CWP No.22537, 22901,
15353, 19921, 24667 of 2014, 2794, 3779, 3788, 4253, 4392, 16783,
9944, 15966, 17204, 19391 and 19188 of 2015).

Ms. Alka Chatrath, Advocate,
for the UT in CWP Nos.8667 and 10573 of 2015

Mr. Gagneshwar Walia, Advocate,
for respondent No.3 (in CWP No.15353 of 2014, 3779,
4253, 7075 and 17204 of 2015) and
for respondent No.5 in CWP No.22901 of 2014

Mr. Rajdeep Singh Cheema, Advocate
for respondent No.3 (in CWP No.19391 of 2015)
for respondent No.4 (in CWP No.22901, 24667 of 2014
and CWP No.15966 of 2015)
for respondent No.8 (in CWP No.22320, 24321, 2395,
2472 and 10573 of 2015).

Mr.Aman Chaudhary, Advocate,
for DAV College (in CWP No.3788, 4392, 8667 and
10755 of 2015)

Mr. Nimarpreet Sidhu, Advocate,
for the UOI in CWP Nos.9947, 8667 and 7075 of 2015

Mr.Rohit Dheer, Advocate,
for respondent No.4.
in CWP Nos.19921 of 2014 and CWP No.2794 of 2015

Mr. Salil Sabhlok, Advocate, for the UGC

Mr.N.R.Dahia, Advocate,
for the UGC in CWP No.23716 of 2014

Mr.A.K.Goyal, Advocate, for UGC
in CWP Nos.19342, 19188, 22320, 19391 and 24321 of 2015

AMOL RATTAN SINGH, J.

These are 68 petitions in which the petitioners are either working as teachers in the Panjab University Campus (including its outstation campuses), or are teaching in colleges in Chandigarh, run by different private managements/bodies and are getting grant-in-aid from the Chandigarh Administration. The designation of the petitioners varies from being Professors in the University to Associate/Assistant Professors in the colleges and other designations as come between these two posts.

They are all seeking writs of mandamus directing the respondent-Panjab University (hereinafter referred to as 'the University') and the Central Government, to raise their age of superannuation from service to 65 years, from 60 years, as at present. In most of the cases of the University teachers, the State of Punjab has also been impleaded as a respondent, whereas in most of the cases of the college teachers, the Union Territory of Chandigarh has been so impleaded. In most of the writ petitions, the University Grants Commission (hereinafter referred to as the UGC or the Commission), has also been impleaded as a respondent, since the claim of the petitioners is essentially based on the Regulations issued by the Commission in the year 2010, which have been duly notified and published in the Gazette of India on September 18, 2010.

It will be appropriate to notice at the outset itself, that the final authority to take a decision on any amendment in the Regulations of the Panjab University, in which the age of superannuation is stipulated, is the Central Govt., as per Section 2 (b) of the Panjab University Act, 1947 (hereinafter referred to as the Act of 1947), read with Section 31 thereof.

However, the State of Punjab, being a 'stakeholder' in the University, to which it also makes some financial contribution, in the annual deficit/maintenance grant of the University, and is also represented in the Senate/Syndicate of the University, through its functionaries, has been impleaded, considering it to be a necessary party.

Similarly, since 95 per cent of the budget deficit of each privately managed college situated in the Union Territory of Chandigarh, is funded by the Administration of the Union Territory, the U.T. has also been considered a necessary party and has been impleaded as such.

2. The facts are essentially being taken from CWP No. 11988 of 2014, as it was the first petition that was filed, which first came up for hearing on 12.06.2014. However, where necessary, the pleadings in the other petitions would

also be referred to, especially in view of the fact that different affidavits have been filed from time to time, during the course of hearing, in a different writ petition, by the parties.

The petitioner in CWP No.11988 of 2014, who is a Professor in the Department of Public Administration, in the University, at Chandigarh, is stated to have joined as a Lecturer in the said department in the year 1981, was promoted to the post of Reader on 23.11.1988 and thereafter to the post of Professor on 28.07.1998. His date of birth being 15.06.1954, he was sought to be relieved on 30.06.2014 upon having completed the age of 60 years, leading to his filing the petition, which came up for hearing for the first time on 12.06.2014 and while issuing notice of motion, notice re: stay was also issued and it was ordered that if the retirement of the petitioner takes place in the meantime, it would be subject to the final disposal of the writ petition.

When the matter came up on the next date, i.e. 30.06.2014, the State of Punjab, which had not been impleaded as a respondent, was so impleaded and while issuing notice issued to the State Government, it was further ordered that the petitioner would be allowed to continue in service, till the next date of hearing, but the continued service would be subject to the final decision in the writ petition.

After CWP No. 11988 of 2014, other writ petitions came to be filed from time to time, usually as and when the petitioners in those cases were on the verge of attaining the age of superannuation; and in such cases, interim orders were passed on the same terms as in the first petition, which were continued thereafter.

3. It is contended in the first petition, that the University, *sui generis*, is an inter-State University and is:-

- (i) Centrally incorporated;
- (ii) Centrally controlled/run;
- (iii) Centrally funded on the norms of central universities, through the University Grants Commission.

4. The petitioner has relied upon various statutory and some constitutional provisions, to substantiate his claim, seeking that the respondents be directed to incorporate in the Regulations, the age of 65 years, as the age of superannuation, instead of the age of 60 years.

The first statutory provisions relied on are Section 2 (b) of the Panjab University Act, 1947 and Section 72 of the Punjab Re-Organization Act, 1966 (hereinafter referred to as the Act of 1966), Section 2(d) of the Central Educational Institutions (Reservation in Admission) Act, 2006 (hereinafter referred to as the

Act of 2006), Article 248 of the Constitution of India, read with Entry 97 (the 'residuary entry') in List I of the Seventh Schedule thereto, and Article 254 of the Constitution, read with Clause 2.1.0 of the UGC Regulations 2010.

The constitutional and statutory provisions aforesaid, are reproduced hereinunder, at this stage itself.

“Article 248 (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.”

“Entry 97, List I Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.”

“Article 254 (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

Section 2 (b) & Section 31 of the Panjab University Act, 1947

“2. Interpretation:- In this act, unless there is anything repugnant in the subject or context;

xxxxxxx

xxxxxxx

xxxxxxx

b) “the Government” means the Central Government”

XXXXXXX

XXXXXXX

XXXXXXX

“31. *Regulations:*

(1) The Senate, with the sanction of the Government may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University.”

Section 72 of the Punjab Re-organisation Act, 1966.

“72 (1) Save as otherwise expressly provided by the foregoing provision of this Part where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II, become an Inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may, from time to time, be issued by the Central Government, until other provision is made by law in respect of the said body corporate.

(2) Any direction issued by the Central Government under Sub-Section (1) in respect of any body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.

(3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Panjab University constituted under the Panjab University Act, 1947, the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961, and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925.

(4) For the purpose of giving effect to the provision of this section in so far as it relates to the Panjab University and the Punjab Agricultural University referred to in Sub-Section (3) the successor States shall make such grants as the Central Government may, from time to time, by order, determine.”

(Emphasis applied by this Court).

4-A. Thus, it is to be noticed at the outset, that Section 2(b) of the Act of 1947, as amended upon reorganization of the State of Punjab on 01.11.1966, defines the Government to be the Central Government (prior thereto it being the

State Government).

5. It is also pleaded in the petition that as per Section 9 of the University Act of 1947, the Chancellor is to be appointed by the Central Government by notification in the Gazette of India.

It is further pleaded that under Section 2(b) of the Act of 2006, a Central Educational Institution means a University established or incorporated by or under a Central Act, or an institution of national importance set up by an Act of Parliament, a deemed University declared as such (under Section 3 of the UGC Act, 1956, as is maintained by or is receiving aid from the Central Government), or an institution maintained by or receiving aid from the Central Government directly or indirectly and affiliated to either of the above three categories of institutions.

6. However, the basis of the petitioners' claim to a higher age of superannuation, is what is contained in Regulation 2.1.0 of the UGC Regulations of 2010, and a letter dated 23.03.2007, addressed by the Deputy Secretary to the Government of India, to the Secretary, University Grants Commission, New Delhi.

The said letter is reproduced hereinunder:-

“
F.No.1-19/2006-U.II
Government of India
Ministry of Human Resource Development
Department of Higher Education
New Delhi, the 23rd March, 2007.

To

The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi.

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

Sir,

I am directed to say 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 was provided, inter alia, in this Ministry's letter No.1-22/97-U.I dated 27th July, 1998 that “the age of superannuation of university and college teachers would be 62 years and thereafter no extension in service should be given. However, it will be open to a university or college

to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years”.

2. The matter has 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 this Ministry, and in the context of Government's decision to expand the capacities of such Institutions for increasing access to higher education and for implementing the policy of reservations for the weaker sections without affecting the number of seats in the unreserved category available through general merit. Accordingly, it has been decided that-

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

(ii) Persons holding such regular teaching positions who have superannuated prior to 15.3.2007 on attaining the age of 62 years but have not attained the age of 65 years may be re-employed against vacant sanctioned teaching positions till they attain the age of 65 years, in accordance with the guidelines framed by the University Grants Commission.

(iii) All persons holding teaching positions against sanctioned posts may also be considered for re-employment beyond 65 years and up to the age of 70 years, against sanctioned vacant posts, if such posts are not filled up by regular candidates. However, such re-employment beyond the age of 65 years shall be done only after screening at the age of 65 years, under the extant guidelines of the University Grants Commission.

3. It is further clarified that the enhancement of retirement age as mentioned above and the provision for re-employment, will apply only to persons in teaching positions against posts sanctioned to Centrally funded higher and technical education institutions coming under the purview of this Ministry, in order to overcome the shortage of teachers.

4. Necessary Notification in this regard may be issued by the

University Grants Commission.

Yours faithfully,

(R.Chakravarty)

Deputy Secretary to the Government of India”

(Emphasis applied by this Court).

Clause 2.1.0 of the **UGC Regulations, 2010** reads as below:-

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

Thus, in clause 2.1.0. of the 2010 UGC Regulations, it has been stated that the revised scales of pay and other service conditions of teachers, including the age of superannuation, in Central Universities and other institutions maintained or funded by the UGC, would be governed strictly in accordance with the decision of the Central Government in the Ministry of Human Resource Development, Department of Higher Education (hereinafter referred to as MHRD), as contained in Appendix-I appended to the said Regulations.

The contention of the petitioners is that in sub-clause (f) of Clause 8 of the said Appendix-I, (wherein other terms and conditions of service of University teachers have been laid down), the enhancement of the age of superannuation for teachers, has been given to be 65 years and as such, the Panjab University, being funded by the MHRD, through the UGC, would also be governed by Clause 2.1.0, *per se*, and the age of superannuation of its teachers, also stands raised to 65 years.

Clause 8 (f) (i) of Appendix-I is reproduced hereunder:-

“(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those

involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. Letter No.F.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).”

(Emphasis applied by this Court)

7. That, in fact, is the crux of the matter, that the Panjab University, as per the petitioners, being a Central University/Central Educational Institution/Centrally Funded Institution, is *per se* governed by Clause 2.1.0 of the UGC Regulations of 2010, read with Clause 8(f) (i) of Appendix-I thereto, which includes therein, what is contained in the letter dated 23.03.2007.

Learned counsel for the petitioners, of course, referred to various other statutory and constitutional provisions also, to support their contention aforesaid, also by relying upon some other documents and letters etc., issued by the MHRD, and the recommendations made by an Inter-Ministerial Consultative Committee formed by the MHRD, at the initiative of the Prime Ministers' Office. Those would referred to later in this judgment.

8. It is further contended in the petition, (after reference to Article 254, extracts of the letters/meetings/orders of the Government of India dated 23.03.2007, 03.11.2011, 14.11.2011 and 26.04.2012), that with the Central Government undisputedly being the appropriate Government in the case of the Panjab University, which is an inter-State body corporate, funded by the Central Government on the same norms as Central universities, the UGC Regulations 2010 (hereinafter referred to as the “2010 Regulations”), are wholly applicable to the Panjab University, as they are to Central Universities, and the University has, in fact, ceased to be a State University, being centrally run and controlled, as also very largely funded, by the Central Government. As such, the same norms, as are stipulated in the regulations and as are applicable to Central universities, would *ipso facto* apply to the University.

It is further contended that vide the letter dated 23.03.2007 (Annexure P-2), the Central Government having raised the age of superannuation

of teachers working in centrally funded educational institutions to 65 years, consequently, now after the changed funding pattern to the University, in any case even simply by virtue of the said letter, the age of teachers in the Panjab University would also stand revised to 65 years, it being a centrally funded educational institution.

9. The aforesaid letter was followed up by a letter (in fact a detailed policy document), dated 31.12.2008 (Annexure P-3), circulated to all universities and State Governments, informing them of the revised scheme of pay, including service conditions of College teachers.

Another letter dated 11.05.2010 (Annexure P-4), was addressed by the MHRD to the Education Secretaries of all State Governments. This letter, in fact, reiterates the essence of the earlier letter of 2008, also giving therein that all State Governments opting to implement the pay scales of teachers, as per the recommendations of the Sixth Pay Commission, would be eligible for the grant of 80 per cent assistance from the Central Government, as regards the increased financial burden on the State Government (subject to the terms and conditions of the scheme of such assistance).

10. The writ petition then refers to earlier rounds of litigation on the same issue, which culminated in a decision of a Division Bench of this Court, on 04.03.2011, in the case of **Prof S.S. Bindra and others vs. The State of Punjab and others (2011) 3 SCT 291**, in which it was held that the Panjab University is not a Central University, as was already held earlier by another Division bench in the case of **Dr. A.C. Julka and others vs. Panjab University and others (2009) 1 SCT 64.** It was also held not to be a Centrally Funded University under any law. However, it is contended that it was also observed in *Bindras'* case, that certain developments had taken place, with a decision yet to be taken by the Central Government and that if the Central Government “accepts the Panjab University to be centrally funded, then the scheme for revision of age of superannuation may become applicable.” Even so, it was also held that till such a decision is taken, the scheme cannot be held to have become applicable and that till then, the Panjab University would stand on the same footing as other State universities.

[The aforesaid decision was carried to the hon'ble Supreme Court by way of challenge in Civil Appeal No. 5665 of 2013, which was dismissed, along with a bunch of appeals filed from other parts of the country, holding that though the authority of the Commission (UGC) to frame regulations with regard to service conditions of teachers in centrally funded educational institutions is well established, with respect to the State run institutions, the discretion lies with the

State to either adopt or not to adopt the scheme. (**Jagdish Prasad Sharma etc. Vs. State of Bihar etc.**, Civil Appeal No.5527 of 2013, decided on 17.07.2013; (2013) 8 SCC 633).]

11. It is further pleaded in the petition that the position 'now emerging' is that the Panjab University is an inter-State University and not a State University and is also a centrally funded University, in view of the fact that after the decision in **Bindras' case** (supra), the University is now funded by the Central Government to the extent of 92 per cent of the deficit funding, and the fluctuating expenditure is also borne by the Central Government, on the same pattern, “from the same funds” as are applicable to Central universities.

12. It is also stated in the petition that upon information given, vide an order dated 03.11.2011 (Annexure P-9), by the MHRD, on an application made by Sh. Shashi Kulbhushan Sharma (petitioner in CWP No. 3730 of 2015), that no criteria/guidelines for declaring an institution or a University to be a centrally funded institution, have been laid down.

Hence, it is contended that it is not necessary that a centrally funded institution must be funded to the extent of a 100 per cent funding by the Government of India. Therefore, with annual funding of the University being, to the extent of 92 per cent (effectively), from the Central Government, on the same norms as such finding is made to central universities, the Panjab University, *per se*, is to be conferred the status of a centrally funded educational institution, entitled to the benefit of Regulation 2.1.0 of the 2010 Regulations, thereby increasing the age of the teaching faculty to 65 years.

[It may be stated here that Clause 17.3 of Chapter VI (A) of the Regulations of the University, contained in its Calendar, framed in terms of Section 31 of the Act of 1947, lays down that whole time members of the teaching staff (of the University) shall retire on attaining the age of 60 years and that no extension in service shall be granted.

Similarly, Clause 7 of Chapter VII (B) of the said Regulations, stipulates the same age of retirement for teachers in non-Government colleges affiliated to the University].

13. A letter of the MHRD dated 14.11.2011 (Annexure P-7), is also referred to in the petition, contending that with the changed pattern of funding, the University being now a centrally funded institution, cannot be doubted. The relevant extract of the said letter is as follows:-

“5. At the initiative of the PMO, MHRD had constituted a Consultative Committee to re-examine the issue of sharing of funds

between Government of India and Government of Punjab as well as to determine the optimum route for funding of Panjab University, Chandigarh. As per the recommendations of the Inter-Ministerial Consultative Committee, the funding of Panjab University henceforth will be done by the Ministry of HRD through the UGC on an annual basis instead of UT Division of the MHA. MHA which was releasing funds to the Panjab University through the UT Chandigarh will need to discontinue operation of the head of account for financing the Panjab University and instead the budget allocation will be through the Ministry of HRD to UGC who will release the funds to Panjab University on an annual basis. The Panjab University will be required to comply with guidelines of UGC.”

14. Yet further, it is pleaded that vide its letter dated **26.04.2012**, **Annexure P-10**, (written by an officer in the MHRD, to a person addressed as Shumsher, in reference to the appointment of the Vice-Chancellor of the University), it was stated very categorically that the UGC Act, 1956, being a piece of Central Legislation, with the Panjab University Act, 1947, being a State Act, the Central Legislation would prevail, in view of the fact that co-ordination and determination of standards in institutions for higher education, are governed by Entry 66 of List I to the Seventh Schedule and legislation made by the State under Entry 25 (of List III), would have to yield to the central legislation. Hence, the UGC Regulations-2010 would, as per the said letter, prevail over any State legislation.

Reference has also been made in this regard to the judgment of the Hon'ble Apex Court in **Prof Yashpal and another vs. State of Chhattisgarh and others** AIR 2005 SC 2026, wherein it was held to the above effect, that where there is a conflict between a legislation purported to have been made under Entry 25 of List III and legislation made under entry 66 of List I, the latter would prevail over the former.

Hence, it is contended in the writ petition, that the UGC Regulations of 2010, stipulating that the age of superannuation age would be 65 years (for central institutions/Universities), would override the Panjab University Regulations, by which the age of retirement is stipulated to be 60 years.

In this regard the judgment of the Supreme Court in **Jagdish Prasad Sharmas'** case (supra) has also been cited, wherein also it was held that the authority of the Commission to frame regulations with regard to the service

conditions of teachers in centrally funded educational institutions, is well established.

15. Hence, it is pleaded that the claim of the petitioners is well founded, the University now being centrally controlled and run, with funding also being as per the norms applicable to central universities. Thus, the letter dated 23.03.2007 (Annexure P-2) would now *ipso facto* become applicable, when read with the observation made in para 22 of *Bindras'* case (supra), that if the Central Government accepts the University to be centrally funded, the revision of age of superannuation, as per the scheme (2010 Regulations), may become applicable.

16. It is yet further contended that the Senate of the University has resolved to enhance the age of superannuation of teachers to 65 years, in terms of a recommendation made by the Regulation Committee and the Syndicate of the University on 20.12.2011 (Annexure P-12). However, it is stated that the said decision is not being implemented as the matter has been sent to the Central Government for approval, which, according to the petitioner, is not necessary, as the 'recommendation' made by the Central Government, is already contained in the UGC Regulations, (thereby making the necessary change in the University Regulations mandatory).

17. Further, according to the petitioner, even if the Punjab Government is to be treated as a 'fractional stakeholder' in funding the University, to the extent of 8 to 10 percent (of the deficit in the annual budget), it is the Central Government which is the appropriate Government in the case of the Panjab University and further more, the Punjab Government has also already adopted the composite scheme incorporating the retirement age of 65 years, (as contended in the petition), in terms of paragraph 19 of *Jagdish Prasads'* case (SCC citation).

(Note:- It needs mention that para 19 of the judgment actually only refers to the controversy and does not, at that stage, adjudicate upon it).

The said case is further referred to, contending that it was held therein that where the State Governments themselves have taken a decision to adopt the scheme, the consequences envisaged in the scheme itself, would automatically follow and that the State and Central authorities would be at liberty to work out their remedies in accordance with law.

18. Therefore, it is contended that a vested right having accrued in the petitioner, implementation thereof cannot be delayed by the University or the authorities.

Hence, a prayer has been made, for the issuance of a writ of mandamus to the respondents, to allow the petitioner to continue in service uptill

the age of 65 years, and to amend the University Calendar/Regulations accordingly.

19. In a connected petition (CWP No. 617 of 2015, titled as **Dr. Amrik Singh Ahluwalia and another vs. Panjab University and others**), a further direction has been prayed for, to direct the Central Government to declare the Panjab University to be a centrally funded institution, thereby making the UGC Regulations of 2010 “automatically applicable to the University”.

A communication (letter) issued on 04.12.2015 by the Director, Department of Higher Education, MHRD, to the Assistant Solicitor General of India, has also been challenged in CWP No.617 of 2015.

In that letter, it is stated that in view of the fact that the State of Punjab is also a stakeholder in the University, the University being an inter-State body corporate, the decision of the Punjab Government not to enhance the age of superannuation of its teachers, is supported by the MHRD with regard to enhancement of age of superannuation of teachers of the University.

(This letter, dated 04.12.2015, is annexed as Annexure P-18 with the amended writ petition).

It needs to be noticed that this writ petition (CWP No. 617 of 2015) was allowed to be amended by this Court, vide an order dated 03.02.2016, after the aforesaid communication had been placed on record by the learned Assistant Solicitor General.

In fact, thereafter, arguments were addressed on the basis of the amended writ petition. However, the facts have still been taken from CWP No. 11988 of 2014, that being the first petition and the pleadings being essentially still the same in both the petitions, with the additional challenge to the specific stand taken by the Central Government, in the aforesaid letter, which was referred to (in response to a direction given by this Court earlier on 02.09.2015, to the learned counsel for the Union of India).

20. Coming then to the replies filed by the respondents, to CWP No.11988 of 2014. The first reply is that of the Officiating Registrar of the Panjab University, in the form of a short reply rather than a detailed written statement.

It has been stated therein that the Panjab University was established by an Act of the State (legislature) of Punjab, by the Panjab University Act, 1947, and at that time, the 'area of jurisdiction' of the University covered the undivided State of Punjab. In the year 1966, i.e. upon the reorganization of the State of Punjab, the said jurisdiction of the University was also extended to the new States created out of the undivided Punjab. Consequently, the University was declared to

be an inter-State body corporate, vide Section 72 (3) of the Punjab Reorganisation Act, 1966, which is a piece of Central Legislation. Sub-Section 4 of Section 72 empowers the Central Government to determine, by order, from time to time, as to the amount of grant which the successor States shall make to the University. In pursuance to this, the Central Government fixed the ratio of funds to be released by such successor States.

It is further stated that till the early 1970s, the successor States of Punjab, Haryana and Himachal Pradesh had been contributing funds as directed by the Central Government, till Haryana and Himachal Pradesh withdrew their contribution.

It is given in the reply that the territorial jurisdiction of the University now extends to the Union Territory of Chandigarh and six districts of Punjab, as also one tehsil of District Nawanshahr. It has 185 colleges affiliated to it, of which 26 are situated in the Union Territory and 159 in the State of Punjab. A meeting held on 13.02.1976, has been referred to in the reply (Annexure R-1/1). It was held in the Chairmanship of a Secretary to the Government of India, in which there were participants from the States of Punjab and Haryana, as also from the University, the University Grants Commission and from the Ministries of Finance and Home Affairs, Government of India. The meeting is stated to be that of the 'Constituted Committee' for the Panjab University, wherein, after the withdrawal of the States of Haryana and Himachal Pradesh, the ratio of funding between the Central Government and the Punjab Government was fixed as 60:40. The share of the Government of India was being released by the Ministry of Home Affairs, through the Administration of the UT of Chandigarh.

Hence, it is contended in the reply, that substantial grants from the Central Government is “not a new thing”.

Thereafter, a cap was put on the State of Punjab and the UT Chandigarh, with regard to release of financial assistance, from the year 2000-01 in the case of the State, and 2005-06 in the case of the U.T.

The Panjab University thereafter approached the Central Government, to issue necessary orders under Section 72 (4) of the Act of 1966, for release of an appropriate grant, and realizing the financial problems faced by the University, the Central Government, thereafter, started releasing an enhanced grant through the UGC, instead of through the Ministry of Home Affairs and the U.T., Chandigarh. This was done, as per the reply, pursuant to a letter of the MHRD dated 07.05.2013 (Annexure R-1/2), to the Secretary of the UGC. As an interim measure, the Central Government released a special grant of Rs.150 crores in the

year 2010-11 and Rs. 146 crores in the year 2011-12, both through the UGC.

However, it is stated that no specific percentage or ratio for the distribution of grants between the Centre and the State, was fixed. The grant to meet the requirement of the University, (by the Central Government), is to be released to the University after excluding the internal revenue generated by the University itself, and the grant released by the Government of Punjab.

Consequently, in the the year 2013-14, a grant of Rs. 160 crores was received from the Central Government and, as stated in the reply, a sum of Rs.166 crores was accepted for the financial year 2014-15. The Punjab Government contributed Rs. 18.33 crores in the year 2013-14. (A perusal of the table annexed as R-1/4 shows that the percentage of grant by the Punjab Government fell from 32.99% in the year 2006-07, to 10.11% in the year 2013-14, with some fluctuations in between).

It is therefore contended, in the reply of the University, that except for the procedure of release of funds and the quantum of the grant released by the Central Government, the character of the University has remained unchanged.

21. Specific to the issue of enhancement of the age of retirement for teachers, it has been stated that the matter was examined by MHRD, even after the change in the pattern of funding, and the decision taken was conveyed to the University, vide a letter dated 21.10.2011, to the following effect:-

“..... despite the fact that as of now a substantial grant for the Panjab University is given by the Central Government, it does not alter the character of the Panjab University as an interstate Body Corporate. If the provisions of Central Educational Institutions (Reservation in Admission) Act, 2006 have to be followed by the Panjab University, it would necessitate an amendment in the above Act since as of now the Panjab University does not fall in any of the categories of definitions defined in Section 2 (d) of this Act. Since the Panjab University is not a central educational institution, instructions issued by this Department in its O.M. Dated 23.03.2007 extending the age of retirement of Faculty from 60 to 65 years can also not be ipso facto applied to Panjab University since these instructions were meant only for the central educational institutions and not for other institutions.”

22. Another letter dated 06.01.2009 received from the MHRD (Annexure

R-1/5), has also been referred to, clarifying that the Panjab University does not fall in the category of a Central University/Centrally Funded Institution/Central Educational Institution, as per the decision taken in a meeting dated 24.10.2008. It is stated that that decision was also conveyed to this Court, at the time of hearing of the earlier lis on the same issue, in **Dr. A.C. Julkas' case** (supra), with the letter specifically referred to in that judgment of the Division Bench, dated 31.10.2008.

Still further, it is stated in the reply, that the University submitted a proposal for amendment of its Regulations governing the age of retirement of teachers of the University, as also of its affiliated colleges, on 26.12.2011, with a reminder sent on 02.04.2014 (Annexure R-1/7 colly), but the Government of India had still not approved the proposed amendment and as such, the enhancement of age could only be implemented if and when the amendment was approved by the Central Government, and that too only prospectively.

Further, it has been stated that since the University is an inter-State body corporate and the State of Punjab is also contributing to the maintenance grant, the composite scheme of the UGC cannot be applied *ipso facto* to the University, and if at all enhancement in age is to be made, it would only be prospectively, after an amendment in the Regulations.

Sections 31 (b) and 2 (b) of the Act of 1947 have also been referred to in the reply, to plead that Regulations can be made by the University Senate, with the sanction of the Government, (meaning the Central Government). Julkas' case has been referred to again, to state that for an amendment of a Regulation, the Central Governments' sanction is necessary and that no mandamus in that regard can be issued by this Court.

23. Next, the judgment of the Supreme Court in **Jagdish Prasad Sharmas'** case has been referred to, to state that no change has taken place in the character and status of the University thereafter also.

Lastly, a judgment of this Court, in Review Application No. M-119 of 2014 (in CWP No. 6179 of 2012, **Krishan Sharma vs. Panjab University and others**), has been referred to, wherein it was held that a mere resolution by the University Senate/Syndicate, would not have the effect of superseding Regulation 17.3 of the University Regulations (equally Regulation 7 of Chapter VI (A) of the said Regulations).

Thus, the stand of the University, in its reply to this petition, is that unless an amendment approved by the Central Government is made in the Regulations, allowing an upward change of age, the character of the University not having changed even after the judgments in **Julkas', Bindras' and Jagdish**

Prashad Sharma's cases (supra), the petitioners have no right to seek continuance in service till the age of 65 years instead of 60 years.

24. No reply has been filed in this petition, (CWP No. 11988 of 2014), by the other respondents impleaded therein, i.e. the Union of India and the State of Punjab.

Therefore, reverting to the amended writ petition, i.e. Dr. Amrik Singh Ahluwalia and another vs. Panjab University and others (CWP No. 617 of 2015), a short reply by way of an affidavit of the Joint Secretary, Ministry of Human Resource Development, Department of Higher Education, has been filed, on behalf of the Union of India (after this Court allowed the petitioner to amend the writ petition). However, before referring to that, it is necessary to refer to some other affidavits filed on behalf of the Union of India, (prior to filing of the reply to the amended writ petition).

In the same CWP No.617 of 2015, an affidavit was first filed by Shri Harpreet Singh, Director, (U.II), in the MHRD, which is not seen to carry a date on it, but carries the signatures of the counsel through whom it was filed, dated 03.04.2015.

An undated affidavit would otherwise not be acceptable, but having been filed, it is being referred to. The said affidavit first, very briefly gives the history of the University, then refers to the judgment in *Julkas'* case and then states that there is no provision in the Punjab Re-organisation Act, 1966, by which the University should be treated as a central educational institution, for the purposes of admission, reservation, service rules etc.

It is further stated that despite the fact that a substantial grant is given by the Central Government, the University still retains the character of an inter-State body corporate.

Still further, it states that since Punjab is a successor State for the University, the reservation policy applicable in that State, also applies to the University.

Next, it is stated that in none of the sub-clauses of Section 31 of the Panjab University Act 1947, has a specific power been given to the Senate to decide its reservation policy and, in fact, the aforesaid provision only provides that the Senate, with the sanction of the Central Government, can make Regulations consistent with the provisions of the Act and as such, it is for the Senate to make a resolution and take approval of the Government, for implementation of OBC reservation, for the faculty and admission of students. As such, as per record, it had been decided by the Senate to accept the OBC reservation in principle, but the

percentage of such reservation had still to be adopted.

Further specifically, in this regard, it is stated that the policy of reservation provided in the Central Educational Institutions (Reservation in Admission) Act 2006, is only applicable to the CEIs but it would be open to educational institutions to adopt that policy. Hence, if any such resolution was sent by the Senate to the Central Government for approval, it would take a decision in that regard, in consultation with the State Government of Punjab.

25. As regards the issue at hand, i.e. raising the age of the superannuation, it is stated in the affidavit as follows:-

“7. That the Central government is not in a position to give any specific direction/clarification. Panjab University is to take the decision on the points of Reservation Policy, service rules of Teachers, retirement age from 62 to 65 years.”

Obviously, the thrust of the contentions made in this affidavit, is with regard to the issue of reservation in the University, on the basis of the Act of 2006 and the issue of a higher age of superannuation is only dealt with in the last paragraph. A perusal of the order sheet in the main two writ petitions, i.e. CWP No.11988 of 2014 and 617 of 2015, prior to 06.04.2015, does not show that any direction was given to clarify on the issue of reservation, but obviously there seems to have been same communication in that regard by the counsel for the Union to the Ministry (MHRD), on perhaps some oral observation made by the Bench, in respect to an argument that the University is a central educational institution and reservations also need to be accordingly made.

Be that as it may, it does not alter the fact that as regards the issue at hand, the last paragraph of the aforesaid affidavit actually states that the University is to take a decision on the point of the reservation policy, as also raising the age of retirement.

26. Thereafter, in the same writ petition, an affidavit was filed by the same officer, on 10.05.2015, stating as follows:-

“That though the Punjab University is a centrally funded university but it is humbly submitted that state of Punjab is also a stakeholder and contributes in the total funds which are being utilized by the Panjab University.”

Thereafter, some contents of the previous affidavit are repeated and further, it is stated that with regard to raising the age of superannuation to 65 years,

a letter had been addressed to the Principal Secretary, Department of Higher Education, Government of Punjab, on 23.08.2013 and the same had also been forwarded to the UGC on 30.04.2015, seeking its comments, “with regard to the approval of the decision of the Senate for enhancing the age from 60 to 65 years”.

The response of the UGC had been forwarded to the Vice-Chancellor, Panjab University, seeking some additional information and that once the reply of the UGC was received, the issue would be further examined in consultation with the UGC, and that the concurrence of the Punjab Government would also be required, “as the state of Punjab remains the successor State as per the provisions of Punjab reorganization Act”.

Thereafter, the affidavit refers to the details of funds allocated by the Central Government and the State Government to the University for the last five years, and lastly, it again states as follows:-

“6. That it is further clarified that though Panjab University is a centrally funded university, the age of employees cannot be enhanced from 60 to 65 years as prescribed by the University Grants Commission until and unless the matter is fully examined and the state of Punjab and the University Grants Commission are brought on board and to accept the decision of senate of Panjab University.”

Hence, by this affidavit, the MHRD accepted the University to be a centrally funded institution but, in effect, further stated that despite this, the age of superannuation could not be raised, *ipso- facto* (as in the case of other centrally funded institutions), in the case of the Panjab University.

27. Yet another affidavit was thereafter filed on 22.05.2015, by Ms. Ishita Roy, Joint Secretary, MHRD, on behalf of the Union of India, also in continuation of the earlier affidavit. It further stated that though the Panjab University is substantially funded by the MHRD through the UGC, the State of Punjab also continues to be a stakeholder, which contributed to the total funds utilized by the University and it remained an inter-State body corporate.

In this affidavit, it was stated that the meaning and scope of Centrally Funded Institutions pertains to those institutions which are exclusively funded by the Central Government through the MHRD or University Grants Commission. As far as the MHRD is concerned, centrally funded institutions are institutions such as Central Universities, IITs, IIMs, NITs, IISERs etc., for the purpose of the circular dated 23.03.2007.

Finally, it is stated in the affidavit that the University is “NOT

Centrally funded Institution for the purpose of circular dated 23.03.2007 as some part of the funding is borne by the State Government of Punjab as the successor state in terms of the Punjab Reorganisation Act, 1966”.

28. Another affidavit was filed by Shri Amit Shukla, Director, Department of Higher Education, MHRD, dated 01.12.2015, which, in effect, finally stated that after considering the comments of the State of Punjab, a decision had been taken by the MHRD and communicated to the learned Assistant Solicitor General, to the effect that the petitioners' prayer for enhancing the age of superannuation, cannot be accepted.

29. Thus, a reading of the aforesaid affidavits shows that at one point there was either a lack of coordination between the different officers of the Central Government, leading to a statement in the affidavit dated 10.05.2015, to the effect that the University is a centrally funded institution but thereafter stating that it is not one. That aspect will have to be considered by this Court, after noticing the arguments of all learned counsel.

30. Coming next to the 'short' reply finally filed in CWP No.617 of 2015, on behalf of the Union of India. It is stated therein that the petitioners' claim to a higher retirement age is essentially based upon the “notification dated 23.03.2007” (actually a letter from the MHRD to the UGC) and the “notification dated 31.12.2008” (actually again shown to be a communication from the MHRD to the Secretary, UGC, by which the scheme of implementation of revised pay scales and other conditions of service of teaching personnel was conveyed).

It is then stated in the reply that as per Section 2(d) of the Act of 2006, five kinds of institutions are defined to be central educational institutions.

Without elaborating on that aspect, but obviously meaning that the Panjab University does not fall within that definition, it is next contended that the University is also not a central funded institution for the purpose of the letter dated 23.03.2007, as part of the funding is borne by the State of Punjab as a successor State, in terms of the Act of 1966.

Julkas' case (supra) has been quoted from in this respect, wherein it was held that there was nothing wrong in the decision of the Central Government in rejecting the proposal for an increase in the age limit on the basis of the stand taken by the Punjab Government, in view of the fact that the said Government (Punjab) was meeting the expenditure of the University to the extent of 40 per cent.

Next, the reply of the Union refers to the judgment in Bindras' case (supra), holding that the University is neither a Central University nor a centrally

funded University, and if a decision is taken by the Central Government in that regard, then the situation may become different.

31. It is next stated that as per Clause 8 (b) of the Central Governments' recommendations on the scheme of revision of pay scales of teachers (vide its letter dated 31.12.2008), the scheme would be applicable only to teachers of central universities and institutions deemed to be Universities, whose maintenance/expenditure is met by the UGC.

As regards universities, colleges and other higher education institutions, falling under the purview of the State Legislature, the scheme would only be applicable if the State Government wishes to implement it.

As regards centrally funded technically institutions like the Indian Institutes of Technology, Indian Institutes of Management, NITs, IISERs and the IISC, Bangalore, the scheme was extended to them by the MHRD on 18.08.2009. It is further stated that as regards these institutions, a communication has also been received by the UGC and "other sources", that the IISC Bangalore is fully funded by the MHRD; the Jamia Hamdard University, Delhi, receives a fixed maintenance grant of Rs. 8 crores per annum and the Tata Institute of Social Sciences is receiving 100 per cent non-plan grant from the UGC. The aforesaid institutions do not receive any fund for pay and allowances from any State Government. Even the IITs and IIMs, IISERs and NITs receive pay/arrangement charges from the plan and non-plan grants of the Central Government/internal resources and no State Government is obligated to give any funds to them. The Jamia Hamdard University, Delhi, is however, a deemed University under Section 3 of the UGC Act, 1956.

It has also been stated in the reply that the State of Punjab had been requested to furnish its comments on the proposal of enhancement in the age of superannuation of teachers of the University and vide its letter dated 01.10.2015, the State Government had intimated that as per the existing Punjab Civil Service Rules, Punjab Government employees superannuate at the age of 58 years, with a further provision for extension for two years, on a year to year basis, subject to eligibility, at the discretion of the employer, and that there is no intention of the State Government to enhance the age of superannuation.

32. Hence, it is stated that the Panjab University being an inter-State body corporate, the scheme does not become applicable to it and simply because the Central Government gives a substantial grant to the University, the status of the University does not change.

As regards the role of the Ministry of MHRD, it is stated that it is to

ensure that the institutions are not starved of funds and that even if the State of Punjab is not contributing as substantially as the Government of India, to the University, it is still a stakeholder therein, with such contribution also being used by the University, other than the fact that it is a successor State under the Act of 1966.

Thus, the stand of the Central Government is that, keeping in view the status of the University as an inter-State body corporate, not being a central educational institution, enhancement in the age of superannuation is “not being supported by the Ministry”.

Very obviously therefore, the Central Government has taken a conscious decision as above, before filing a reply to the amended petition, contrary to the impressions given prior thereto, that the Government was vacillating in its stand, as per different affidavits filed earlier.

33. No reply has been filed to CWP No.11988 of 2014 by the added respondent, i.e. the State of Punjab and, therefore, to determine the stand of the State, as pleaded in other writ petitions, as also that of the University Grants Commission and of the Chandigarh Administration (in relation to the private, Government aided Colleges situated in the Union Territory, affiliated to the Panjab University), the replies of these respondents also shall be referred to, as submitted in the connected writ petitions.

34. Coming to the stand of the State of Punjab, which has filed various replies in different writ petitions. First, a short reply filed to the amended writ petition in CWP No.617 of 2015 shall be referred to, and if necessary thereafter, the replies filed in the other petitions by the State of Punjab, will be referred to.

A short reply of the Deputy Director in the office of the Director, Public Instruction (Colleges), Government of Punjab, in CWP No.617 of 2015, dated 01.03.2016, has been filed, in which it is first stated that the issues raised in these writ petitions have already been settled in a series of judgments by the hon'ble Supreme Court and this Court.

The judgments referred to in the reply, are in **DAV College Trust Management Society Vs. Panjab University**, 1986 (2) ILR (Pb. & Hry.) 430, *Dr. A.C. Julkas'* case (supra), *Prof. S.S. Bindras'* case (supra) and *Jagdish Prasads'* case (supra).

It is stated (as has been stated by the University and the Union), that it is settled by these judgments that the Panjab University is neither a central university established under any central Act, nor a centrally funded institution.

As per the State of Punjab, the University having been established

under a State Act, simply because “certain powers have been conferred upon the Central Government to issue directions regarding affairs of the university, does not alter its position in law, and it remains an inter-state body corporate established under the Panjab University Act, 1947 passed by the Punjab Legislature”

This reply also states that unless the University Regulations are amended in accordance with the provisions of the statute, there can be no change in the age prescribed in superannuation.

A judgment of the Supreme Court, in **B. Bharat Kumar Vs. Osmania University**, (2007) 11 SCC 58, has also been referred to, wherein it was held by their Lordships that “It is not for the Supreme Court to formulate a policy as to what the age of retirement should be as by doing so would be treading into the dangerous area of the wisdom of the legislature”.

It was further held that if the State Government, in its discretion, which is permissible to it under the Scheme, decides to restrict the age and not increase it, it would be perfectly justified in doing so.

A stand has also been taken that the policy to increase the age is to be considered by the Legislature or the Executive, keeping in view various factors, such as the “pressing need to infuse fresh blood into the teaching streams, availability of qualified youth who are waiting for vacancies to arise in order to provide them with suitable avenues of employment, the financial burden on the Exchequer etc.”

Therefore, keeping in view the aforesaid factors, especially the fact that there are a large number of qualified persons with no opportunity to enter service, the Punjab Government has 'retained' the age of superannuation at 58 years (for its employees) and as such, is opposed to enhancing the age of retirement of the University teaching staff (also).

It is, therefore, contended in the reply that determining the age of superannuation of teachers is also essentially a policy matter, to be decided after taking into consideration relevant socio-economic and other factors.

In fact, that is a specific stand taken by the State of Punjab in its reply filed to the amended writ petition in CWP No.617 of 2015.

35. Further in the reply of the State Government, (as in the replies of the University and the Union of India), it is stated that resolutions of the Senate and the Syndicate of the University do not bind the Government, which is to take an independent decision in the matter.

The affidavit on behalf of the State Government further states that the Government has a vital stake in the affairs of the University, which continues

to be funded by the State Government and the territorial jurisdiction of which (i.e. of the University) extends over the districts of Ferozepur, Ludhiana, Hoshiarpur, Muktsar, Moga, and Balachaur Tehsil of District Nawan Shahr, other than the Union Territory of Chandigarh, and hence, consultations and concurrence of the State Government is essential before a decision is taken, pertaining to the University.

Lastly, it is stated that even the University Grants Commission, in its reply filed in CWP No.15353 of 2014 (one of the cases in this batch of petitions), has supported the stand of the State Government, stating in that reply, that fixing the retirement age of teachers of the Panjab University, is exclusively within the domain of the policy making powers of the State Government.

Thus, it is contended that the State Government and the Central Government have taken a decision not to increase the age of superannuation, after considering all relevant factors and hence, this Court would decline to issue a writ of mandamus to the respondents, to enhance the age of superannuation.

36. An affidavit on behalf of the Government of Punjab, dated 23.02.2015, was also filed in a connected writ petition, CWP No.23716 of 2014, which in essence states as above, though in a slightly different form, giving therein some of the relevant statutory provisions contained in the Act of 1947 and the Calendar of the University, as have already been referred to earlier.

37. The U.T. Chandigarh has filed replies in various writ petitions, of which the last, filed in CWP No.8972 of 2016, is being referred to. The stand of the Union Territory is the same as that of the other respondents, to the effect that the University is an inter State body corporate and not a Central University, even after the enactment of the Re-organisation Act of 1966 and further, simply because some of the affiliated colleges are situated in the Union Territory, and are thereby being given grant-in-aid by the Union Territory, does not make either them or the University, centrally funded institutions.

Further, it has been stated in this reply too, that the conditions of service of employees are wholly in the domain of the employer and the Court would refrain from issuing a writ of mandamus in that regard.

It has also been stated that the Union Territory, Chandigarh, has decided to follow the Punjab Education Code and other notifications issued by the Punjab Government from time to time, as regards service matters, including pay fixation of teaching employees, who would also be governed by the Punjab Privately Managed Recognised Colleges (Security of Service) Act, 1974.

It is further stated that the terms and conditions of the financial grant

given to private colleges, to the extent of 95% of their budget deficit, is also as per the instructions issued by the State of Punjab for its colleges. As per condition No.13 of those conditions, no grant is admissible in respect of employees who are retained in service after 60 years of age and further, as per condition No.14, the DPI (Colleges) has the right to refuse/withhold/suspend etc. any grant, in case of non-compliance of the instructions issued by the Government, from time to time.

Other than the above, the judgments relied upon by the other respondents, have also been referred to in the reply of the Union Territory.

38. No reply having been filed by the UGC in the aforesaid two cases, the reply filed by it in CWP No.15353 of 2014, is being referred to.

The stand of the UGC in the aforesaid written statement, dated 02.02.2015, is that the age of retirement is exclusively within the domain of the State Government, to be decided at its own level. It is stated that the condition of enhancement of the age of superannuation to 65 years, as mentioned in the letter dated 31.12.2008, issued by the MHRD, may be treated as withdrawn, for the purpose of seeking reimbursement of the central share of arrears to be paid to a State University and its College teachers. In other words, as was explained by the learned counsel for the UGC also, the UGC had withdrawn the pre-condition of increase in the age of superannuation of teachers to 65 years, for the grant of reimbursement of the extra expenditure to be incurred by the State Governments, upon revision of pay-scales of teachers, such pre-condition having been earlier 'made compulsory' in the letter dated 31.12.2008.

Hence, even if some State Governments chose not to increase the age limit but to otherwise implement the higher pay-scales for the teaching faculty in State Universities and colleges affiliated thereto, as per the scheme promulgated by the UGC, reimbursement by the Central Government, up to the expenditure of 80% of the additional burden, would still be available to such Governments.

Other than the above, the judgments of this Court in Julkas' and Bindras' cases, as also of the Supreme Court in Jagdish Prasads' case, have been referred to by the UGC also, to submit that the teaching faculty of the Panjab University is "not entitled to extension in age on the basis of the direction of the UGC, the Punjab University not being a Central University"

39. In a more detailed reply (counter affidavit) filed in CWP No.23716 of 2014, the Commission has stated that in terms of the University Grants Commission Act, 1956, the Commission has been entrusted the task of taking such steps as it may think fit for promotion and coordination of University education, and for the determination and maintenance of standards of teaching, examination,

and research in Universities. For the said purpose, it has been vested with the power to recommend to any University, such measures as are necessary for improvement of education, and to advise the University as regards the action to be taken, to implement the said recommendations.

Section 2 (f) of the Act of 1956 has been reproduced, wherein a University is defined to be one that is established or incorporated by or under a Central Act, a Provincial Act, or a State Act. It also includes any institution, recognized by the Commission, in consultation with the University concerned.

Section 3 stipulates that deemed Universities are those as are notified as such by the Central Government, on the advice of the Commission.

Other provisions dealing with conferment of degrees by a University, penalties etc., have also been referred to, which are not really germane to the issue.

It is also stated in the reply that UGC Regulations are mandatory in nature and all Universities are required to strictly comply with them, including, if necessary, by making necessary changes in their statutes, regulations etc.

Further elaborating what was stated in the reply to CWP No. No.15353 of 2014, it has been stated that vide its letter dated 14.08.2012, the MHRD had decided to delete the condition of enhancement of the age of superannuation, from payment of the central share of 80% arrears to States, as the question of enhancement of age of retirement falls exclusively within the domain of the policy making power of the State Governments.

Citing from the said letter, it has further been stated that although the Scheme was essentially meant for teachers in Central Universities, provisions of the Scheme could be made applicable by the State Government to State Universities, provided the State Government adopts and implements the Scheme, as a composite Scheme, including enhancement of the age of superannuation and the regulations of the UGC in that regard.

(The quotation in the Commissions' reply from the said letter dated 14.08.2012, is in the context of the letter dated 23.03.2007, by which the age of superannuation of teachers of Central Universities had been enhanced to 65 years).

The letter dated 14.08.2012 having been annexed with the reply, a perusal thereof shows that in paragraphs 4 and 5, the condition of enhancing the age of superannuation had been de-linked from the payment of the Central Governments' share of 80% arrears, to the States, incurred for implementing the scheme.

40. Thus, all in all, reading both the replies together, the stand of the UGC is that the Panjab University is treated by it to be a State University and

consequently, even for implementing the UGC recommendations for enhancement of pay-scales and all other conditions pertaining thereto, in the Scheme framed, the condition of enhancing the age of superannuation, having been de-linked from the Scheme as regards State Universities, Clause 2.1.0 of the UGC Regulations 2010, does not apply to the Panjab University.

41. With the stand taken in the pleadings of the University, the Union of India, the State of Punjab and the UGC having been brought out herein above, the stand of the private colleges in which the petitioners in some of these petitions are working as a part of the teaching faculty, needs to be looked at.

Though the stand of each of the colleges was brought out in simple one line contentions of each learned counsel appearing for them, however, a look at the pleadings in this regard is obviously necessary.

42. In CWP No.23716 of 2014, the petitioner, Dr. Meera Modi, is working as the Principal of the Dev Samaj College for Women, Sector 45-B, Chandigarh.

The said college (respondent No.3), has, however, filed no reply to the writ petition.

In CWP No.2395 of 2015, filed by Meera Madan, Associate Professor in the MCM DAV College for Women, Chandigarh, the Principal of the College (respondent No.8), has filed a written statement stating therein that the issue being a policy matter and the college being a recipient of 95% grant in aid from the Union Territory, Chandigarh (respondents No.5, 6 and 7), the decision with regard to such policy is to be taken by the Union of India, the State of Punjab, the U.T., Chandigarh and the Panjab University. However, it is further pleaded that if the prayer of the petitioners is accepted, then the U.T. Administration would have to ensure that 95% grant-in-aid is given to the college to fulfill its liability of paying the remaining 5% of the salary/emoluments of the petitioners.

It may be stated here itself that Mr. Rajdeep Singh Cheema, learned counsel appearing for the DAV Institutions/Management, submitted that the said reply be taken to be the stand of the management qua all DAV colleges in Chandigarh, and that the management would abide by the decision taken by the official respondents, provided the college is given 95% grant-in-aid, to cover the enhanced financial liability, if any, upon any increase in the age of superannuation.

43. On behalf of the Shri Guru Gobind Singh College for Women, Chandigarh, a short written statement has been filed in CWP No.15353 of 2014. The stand of the college is the same as that of the Union of India and Union Territory Chandigarh, to the effect that the matter already having been adjudicated

upon by this Court and the Supreme Court and the Regulations of the University also not having been amended, the petitioners have no right to seek an increase in the age of superannuation.

It is further stated that even the Director, Higher Education, UT Chandigarh, had rejected the claim of the petitioner for such enhancement of age.

44. The reply of the Principal of the Goswami Ganesh Dutt Sanatan Dharam College, Chandigarh, in CWP No.19921 of 2014, is also almost exactly to the same effect. Additionally, it has been stated that the Punjab Government, vide its notification dated 02.09.2009 also, while revising the pay scales of teachers, did not enhance the age of superannuation (in the State of Punjab), to 65 years.

45. Having referred to all the pleadings of the respondents, it now needs to be specifically mentioned here, that two other writ petitions, i.e. CWP No.9947 of 2015 and 19342 of 2015, were earlier a part of this batch of petitions, in which the petitioners were Assistant/Associate Professors, working in some of the Government Colleges in the U.T., Chandigarh. They too were seeking enhancement of the age of their superannuation, up till 65 years, in terms of the UGC Regulations of 2010 and, in fact, had initially been granted a stay by this Court, similar to the stay granted in the other petitions. However, upon arguments being addressed by Mr. Sanjeev Sharma, learned Senior Standing Counsel for U.T., Chandigarh, specifically on the non-maintainability of those writ petitions before this Court at the first instance, those petitions had been transferred to the Central Administrative Tribunal, Chandigarh Bench, vide an order of this Court dated 24.12.2015.

Learned Senior Standing Counsel, in those cases, had also submitted that the age of superannuation of teachers in Government colleges being governed by statutory rules framed under the proviso to Article 309 of the Constitution, those employees formed a different class and category, to the teachers of the Panjab University Departments, as also the teachers in private colleges situated in the U.T. Chandigarh, affiliated to the Panjab University.

In this regard, learned Senior Counsel had referred to the judgment of the Supreme Court in Jagdish Prasads' case (supra) and to Rule 3.26 of the Punjab Civil Service Rules (Vol.I) Part-1, applicable to the U.T. also.

Hence, in view of above, even while transferring those matters to the Tribunal, this Court had vacated the stay operating in favour of those petitioners, by which they were continuing beyond the age of 58 years, which is the age of retirement of Government employees (including college teachers) in the U.T.

It was held in that order, in view of what was pointed out by the

learned Senior Standing Counsel, from the statutory rules governing the service of the petitioners, as also as per the law settled in the case of Government teachers, that balance of convenience was not in their favour. However, for final adjudication upon the matters, the petitions had been transferred to the Tribunal, this Court not having original jurisdiction with regard to service matters pertaining to the employees of the U.T.

46. Though at that stage this Court had also considered vacating the stay orders in these writ petitions, in view of the Regulations framed under Section 31 of the Panjab University Act, 1947, by which the age of superannuation of University teachers and teachers of privately managed colleges affiliated to the University, is stipulated to be 60 years, and two Division Bench judgments in *Julkas'* and *Bindras'* cases (supra), having also held against the petitioners; however, it was argued before this Court by learned counsel appearing for the petitioners, that as a matter of fact, even the ratio of the judgments in *Julkas'* and *Bindras'* cases would no longer apply, in view of the fact that the Central Government, by a conscious decision, had constituted a "task force/consultative committee" to look into the issue of funding of the Panjab University, and a recommendation had been made to increase the age of retirement to 65 years, and to change of funding pattern of the University, so as to bring it on par with Central Universities/centrally funded institutions.

This involved not only changing the source and channel of funding but also the quantum of such funding, (as already noticed in detail herein above).

Hence, though counsel for the respondents (other than the Panjab University), had submitted that in view of the statutory provisions, the stay may be vacated, yet since the recommendations of the "task force/consultative committee" and the change of funding pattern and quantum was not denied, and further, since the Division Bench in *Bindras'* case, had observed that if the Central Government took a decision that the Panjab University was a centrally funded institution, then the scheme may become applicable; and a direction had been issued earlier to the Government of Punjab to send its response to the letter of Government of India, giving its views on the issue of enhancement of age, and thereafter the Central Government had been directed by this Court, to place on record its decision by 21.10.2015, the stay was continued in favour of the petitioners.

(That direction to the Central Government, to place on record its decision, was not actually complied with at least till 26.11.2015, when some more time had been prayed for by the Union of India, to comply with the said order).

However, more would be said on this, while considering the contentions raised, towards the end of the judgment.

47. Coming now to the arguments addressed by the learned counsel appearing for the petitioners, as also by one of the petitioners (Prof. Shashi Kulbhushan Sharma) himself.

Mr. Sharma first referred to the letter dated 23.03.2007 (Annexure P-3 in his writ petition, CWP No.3730 of 2015), already reproduced earlier herein.

Mr. Sharmas' contention, was the same as raised in CWP No.11988 of 2014, that the University being funded to the extent of 90% of its maintenance grant/deficit by the Ministry of Human Resource Development, through the UGC, and only about 10% of its funding coming from the Punjab Government, it is a centrally funded higher educational institution in terms of the aforesaid letter and therefore, the age of superannuation of all teachers in the University now necessarily had to be raised to 65 years.

The petitioner then referred to the affidavit of Ms. Ishita Roy, Joint Secretary, MHRD, dated 22.05.2015, stating therein that centrally funded institutions are those as are exclusively funded by the Central Government through the MHRD or the UGC, and include institutions such as Central Government Universities, IITs, IIMs, NITs, IISERs etc., for the purpose of the circular dated 23.03.2007.

The petitioner contended that the said affidavit is actually “in violation” of Entry 64 of List I of the 7th Schedule to the Constitution. The said Entry reads as follows:-

“64. Institutions for scientific or technical education
financed by the Government of India wholly or in part and declared
by Parliament by law to be institutions of national importance.”

(Emphasis again applied).

He submitted that for an institution to be declared to be a centrally funded institution, it need not be wholly funded by the Central Government and can also be only partly funded by that Government.

He therefore submitted that the bench mark for declaring any institution as a centrally funded institution, cannot be higher than that given in the Constitution, in reference to institutions of national importance.

48. Mr. Sharma next referred to the Indian Institutes of Information Technology Act, 2014, wherein all such institutions as are created by the said Act, were declared to be institutions of national importance. However, his specific

reference was to the fact that though those institutes were also centrally funded institutions, as was obvious from the heading of Chapter 3 of the Act, which reads as “Authorities of Centrally Funded Indian Institutes of Information Technology”, yet, under Chapter 4, Section 29 of the Act stipulates that every institute shall maintain a fund to which monies received from various sources would be credited. The said sources include the Central or the State Government, as the case may be, or fees etc. received from the students, and all monies received by the institute by way of grants, gifts, donations and also in any other manner from any other source.

Mr. Sharma contended that, therefore, the affidavit of the Joint Secretary, MHRD, was wholly on 'mis-informed information', as to what constitutes a centrally funded institution, as even the institutions referred to in the affidavit are not funded exclusively by the Central Government.

He also referred to the Memorandum of Association of the Indian Institute of Management, Bengaluru, wherein it is contained in Clause 3(v) (a), that the fund to run the institution would consist of monies provided by the Central and the State Governments, in addition to the monies received from any other source.

Hence, he submitted, that though the IIMs, admittedly even as per the aforesaid affidavit of the Joint Secretary, are centrally funded institutions, yet their maintenance funds can be sourced from sources other than the Central Government; consequently, the Panjab University necessarily has to be considered to be a centrally funded institution, with 90% of its maintenance funds coming from the Central Government, and only 10% from the State Government, (other than the revenue generated by the University itself).

The petitioner then referred to a judgment of the Supreme Court in **Thalappulam Service. Coop. Bank vs. State of Kerala and others** 2013 (4) RCR (Civil) 912, to submit that a body can be substantially financed, directly or indirectly, by funds provided by the appropriate Government; and that the word 'substantially' means solid and massive. Consequently, Mr. Sharma submitted, that with more than substantial funding being that of the Central Government, the University has to be declared to be a centrally funded institution, with the UGC Regulations of 2010 becoming “automatically applicable” *ipso facto*, in view of what is contained in Clause 2.1.0 of the Regulations.

49. The next argument of the petitioner, was that Section 72 (4) of the Punjab Re-organization Act, 1966, provides for a grant to be charged from the successor States, as the Central Government may from time to time determine, by

order. He also referred to Clause 62, as contained in the Bill introduced in Parliament (which eventually led to the enactment of the aforesaid Act of 1966), to submit that Section 72(4) was introduced for the purpose of ensuring that funds flow from the State Governments also, to ensure their participation, the University being an inter-State body corporate, as per the said Act itself, serving the needs of the successor States.

His contention therefore was, that the funds contributed by the State Governments were to be utilized for the needs of the colleges and institutions situated in each respective State, as were affiliated to the Panjab University. This was in contradistinction to the funding pattern of the IITs, where the State grants are part of the entire funding of those institutions.

On this aspect, Mr. Sharma further pointed to the table given by him in his replication/counter affidavit dated 09.03.2016, wherein he has drawn up a 10 point comparison as regards the grant of the Central Government to centrally funded institutions and central universities, comparing it with the grant given by the Central Government to the Panjab University.

Foremost is the fact that, as contended by him, the purpose of a Central grant to the CFIs and central universities, is to serve the maintenance and development needs of the recipient institutions, which purpose is identical in respect of the Central grant given to the Panjab University. As opposed to this, the contribution/grant by the State of Punjab, under Section 72 (4) of the Reorganization Act, is used for the purpose of serving the needs of institutions located in the State, as are affiliated to the Panjab University.

Other than that, it is given in the table that the Central Governments' is a 'perennial grant', without any cap, given for the maintenance needs of the University, whereas the State Governments' grant is not co-extensive with the maintenance needs of the University.

He submitted that consequently, the Punjab Governments' grant to the University is a grant with a 'quid pro quo' inherent in it, inasmuch as, with certain colleges situated in certain districts of Punjab being affiliated to the University, the Punjab Government is bound to make a contribution to the University. However, that would not change the character of the grant given by the Central Government, as regards the teaching departments of the University, situated in the Union Territory of Chandigarh and the affiliated colleges situated in Chandigarh.

50. Mr. Sharma next referred to the Central Educational Institutions (Reservation in Admission) Act, 2006, wherein in Section 2(d), a Central

Educational Institution is defined as follows:-

“(d) “Central Educational Institution” means-

- (i) a University established or incorporated by or under a Central Act;
- (ii) an institution of national importance set up by an Act of Parliament;
- (iii) an institution, declared as a deemed University under Section 3 of the University Grants Commission Act, 1956 (3 of 1956), and maintained by or receiving aid from the Central Government;
- (iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause (ii), or a constitute unit of an institution referred to in clause (iii);
- (v) an educational institution set up by the Central Government under the Societies Registration Act, 1860 (21 of 1860)”

He submitted that as per sub-clause (iv), any institution maintained by, or receiving aid from, the Central Government, directly or indirectly, affiliated to a University incorporated by a Central Act, would be a Central Educational Institution and as such, Panjab University and the Colleges affiliated to it would also fall within the definition of Central Educational Institution, and further, since even centrally aided institutions fall within the definition of Central Educational Institutions, it cannot be inferred that the University is not actually also a centrally funded institution, especially when seen with the fact that the IITs and Indian Institutes of Management, which are not created by an Act of Parliament, are also receiving grant-in-aid from different sources but are treated to be centrally funded institutions.

Mr. Sharma also referred to other institutions like the Jamia Hamdard University, the Tata Institute of Social Sciences etc., to submit that Panjab University in any case cannot be placed on a lesser pedestal than those institutions, or even the IIMs.

51. The petitioner then referred to Section 7 of the Panjab University Act, 1947, by which clause (b) permits the University to receive donations, monies, land, funds etc. Hence, he submitted that simply because the University was funded to the extent of 10% by the State Government, did not take away the character of the institution, which essentially is centrally funded, both by virtue of

the fact that 90% of the funds are contributed by the Central Government, and because the eventual control of the affairs of the University is with the Central Government, being the competent authority in terms of the University Act, with all approvals as are required to be taken from that Government, including any amendments to be made in the regulations, being subject to the approval of the Central Government.

He further submitted that in any case, the total funding by the Punjab Government, with a cap of Rs.21 crores thereupon, is at the discretion of, and by direction of, the Central Government, as is obvious from a reading of Section 72 (4) of the Re-organisation Act of 1966.

In fact, upon the above submission, Mr. Sharma contended that the funding of the University being to the extent of 90% by the Central Government, directly through the MHRD and the UGC, as is also in the case of Central Universities, the Panjab University, in fact, by legal fiction also, is a Central University, especially with the funding limit of the Punjab Government being solely at the discretion of the Central Government.

52. He next submitted that any amendment in the Act of 1947 itself was also beyond the competence of the legislature of the State of Punjab, the University being an inter-State body corporate; as such, any legislative changes in the Act of 1947, despite it originally having been a State Act, now lie only within the competence of Parliament. Therefore, as per Mr. Sharma, the University is not just a centrally funded institution, but in fact, actually is a Central University and a Central Educational Institution.

He submitted that therefore, in terms of Clause 2.1.0 of the UGC Regulations of 2010, all institutions maintained and/or funded by the UGC would, *per se*, be bound by the aforesaid notification, with the said clause specifically stipulating that service conditions, including the age of superannuation of teachers of such institutions, would be governed by what is contained in Appendix I of the aforesaid regulations.

53. Mr. Sharma then referred to Clause 2.3.1 of the Regulations of 2010, which reads as follows:-

“2.3.1. The revised scales of pay and age of superannuation as provided in Clauses 2.1.0 above, may also be extended to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid

down in the MHRD notifications provided as Appendix I and in the MHRD letter No.F1-7/2010-U II dated 11 May, 2010 with all conditions specified by the UGC in these Regulations and other Guidelines.”

He submitted that Clause 2.3.1 refers only to such institutions as come within the category of State Universities, as they are within the purview of the State Legislatures and state Governments, whereas in the case of the Panjab University, only Clause 2.1.0 can apply, it being an inter-State University (body corporate), over which the State Legislature no longer has any jurisdiction, it now being actually a Central University, as also a Central Educational Institution, funded by the Central Government.

He further submitted that since an inter-State body corporate is not referred to either in the Concurrent or the State Lists, (in the 7th Schedule to the Constitution), then as per Article 248, the residuary powers of legislation, in respect of such a body, can only, in any case, lie with Parliament.

54. Mr. Sharma then referred to the minutes of the meeting of the committee constituted by the University Syndicate, on 26.04.2014, (Annexure P-1 with CWP No.3730 of 2015), wherein the communication of the MHRD, dated 14.11.2011, is referred to, which in turn refers to the consultative committee constituted at the initiative of the Prime Ministers' Office, (“task force” referred to earlier), by which the recommendation was made, for changing the pattern of funding of the University, by the Central Government, (whereby the funding was to be henceforth routed through the MHRD and UGC rather than the Union Territories Division of the Ministry of Home Affairs).

The Syndicate Committee, in the meeting held on 26.04.2014, had recommended that the UGC would be requested to make the fund requirements (both Plan and non-Plan) for the University, on the same norms as applicable to a Central University.

He submitted that therefore, by virtue of the University in any case being a centrally funded institution, (as contended), and the UGC Regulations of 2010, would becoming *per se* applicable, Clause 17.3 of Chapter VI-A of the University Regulations, would be deemed to have been amended and it would only remain to be a formality that the Central Government was bound to approve the amendment therein, raising the age of superannuation to 65 years instead of 60 years.

In this regard, Mr. Sharma referred to the first part of paragraph 70

(SCC citation) of Jagdish Prasad Sharmas' case (supra), wherein it was held as follows:-

“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.”

(Emphasis applied by this Court).

He submitted that, the last part of the aforesaid paragraph as pertains to State Governments, has no applicability to the Panjab University, it no longer being a State University, and therefore, with it being a centrally funded institution and actually a Central University, only the first part of the paragraph is wholly applicable.

55. The petitioner then referred to an observation of the Division Bench in A.C. Julkas' case (supra), wherein it was eventually held that:

“The fact that Punjab Government is sharing the financial burden in respect of Panjab University, is a matter of record. The Panjab University being an Inter-State Body Corporate, the Government of India rightly took into consideration the fact that Punjab Government, which is meeting the expenditure of University to the extent of 40%, had rejected the proposal for increase in age of superannuation. We do not find that this was an extraneous factor which was taken into consideration by the Government of India while arriving at decision to reject the proposal for enhancement in

age of superannuation. It is, therefore, not possible to hold that the decision Annexure P-13 suffers from Wednesbury unreasonableness”.

He submitted that actually, the judgment in A.C. Julkas' case was delivered as it was, because of the fact that the State Government, at that point of time, was funding the Panjab University to the extent of 40% of the maintenance grant, as opposed to a mere 10% today.

Secondly, Mr. Sharma submitted that it was never brought to the notice of the Division Bench that even institutions which are accepted as centrally funded institutions (CFIs), i.e. IIMs, IITs and NITs etc., are also not necessarily funded to the extent of 100% maintenance grant by the Central Government and as such, the true picture of what constitutes a centrally funded institution, not having been brought before the Division Bench, the judgment was delivered as it was. He further contended that the same holds good even with regard to the judgment in S.S.Bindras' case (supra).

56. Mr. Sharma also referred to an opinion of the learned Attorney General for India, dated 22.03.2011 (Annexure P-4 in CWP No.3730 of 2015), wherein it was opined that this Court, in A.C. Julkas' case, has very categorically held that the Panjab University is neither a Central University nor a centrally funded institution. However, the Ministry (MHRD) may reconsider its stand on the issue of higher age of superannuation, and applicability of the Central Government instructions on reservation in recruitment, in the Panjab University, after filing an application for review before this Court, in Julkas' case.

It was contended by Mr. Sharma that the AGs' advice was sought because very obviously the Government of India actually was wanting to declare the Panjab University to be either a Central University or a centrally funded institution, but was not being able to do so either on account of the judgment in Julkas' case, or because of a rigid stand taken by the Punjab Government in that regard.

57. Lastly, Mr. Sharma referred to a letter of the MHRD issued on 08.11.2011 (Annexure P-8 with CWP No.3730 of 2015), addressed to the Administrators of the Union Territories of the Andaman and Nicobar Islands and Daman and Diu. In this letter it had been directed that those teachers in Government colleges run by those U.Ts, who had superannuated on attaining the age of 62 years but were later re-inducted into service, be paid salary and allowances even for the intervening period, after the pensionary benefits already released to them are refunded.

This argument by the petitioner, had a two fold purpose; first, because the direction was to two Union Territories, indirectly in respect of the enhanced age of superannuation implemented in Government Colleges there; therefore, the Panjab University also being situated in a U.T. (Chandigarh), it was contended, deserves the same treatment, especially as it is a centrally funded institution, as per the petitioner.

Secondly, the argument is specific to this petitioner appearing in person (Professor Shashi Kulbhushan Sharma), in view of the fact that in all the other writ petitions, interim stay orders were passed by this Court, allowing the petitioners therein to continue serving beyond the age of 60 years, but in Professor Sharmas' case, no such interim order was passed, as by the time he had filed the writ petition, i.e. on 25.02.2015, he already stood superannuated since 31.12.2011, i.e. more than three years earlier. However, in terms of the Regulations of 2010, he is seeking to be reinstated and thereafter, to take the benefit of the aforesaid circular, issued by the MHRD to the Union Territories of Daman & Diu and the Andaman & Nicobar Islands.

58. After the petitioner appearing in person, Mr. Puneet Jindal, learned Senior Counsel appearing for the petitioners in CWP No. 617 of 2015 and some other petitions, first reiterated what Mr. Shashi Kulbhushan Sharma had submitted and thereafter, submitted that even if this Court does not agree with the contention that the Panjab University is a centrally funded institution or a central educational institution, then alternatively, it has to be treated as a Central University, or an institution akin to a Central University, after the status of the University changed from a State University incorporated under the Act of 1947, to an inter-State University, in terms of the Punjab Reorganization Act of 1966.

He next submitted that even if it is taken *per se* as an inter-State University only, both the Central Government and the State Government (of Punjab), are estopped from backing out of their own recommendation to increase the age limit to 65 years, inasmuch as, the task force constituted by the MHRD on the initiative of the Prima Ministers' office, duly included representatives of the Punjab Government, and the task force/consultative committee having recommended raising the age limit of superannuation by an amendment in the Regulations of the University, with no objection thereto by the Punjab Government, the amendment of the statute remains only a formality.

Further, he submitted that in any case no liability would fall on the Punjab Government by an increase in the age of superannuation, as now the maximum cap on the States' funding to the University, has been reduced to Rs. 8

crores from Rs. 21 crores.

59. Mr. Jindal thereafter again pointed to the affidavit of Sh. Harpreet Singh, Director in the MHRD dated 10.05.2015, to submit that in any case the question of the University not being a centrally funded institution would not arise, in view of the admission of the said officer, on affidavit, on behalf of the Union of India.

He submitted that though, thereafter, upon amendment of the writ petition (CWP No. 617 of 2015), the Union had changed its stand, such a change being fundamental to the issue, cannot be permitted.

In this regard, learned counsel relied upon a judgment of the Supreme Court in **S.Malla Reddy vs. M/s Future Builders Co.-Op. Sty. and others** 2013 (2) RCR (Civil) 957, to submit that an admission made in categorical terms cannot be allowed to be withdrawn.

60. Mr. Jindal next referred to the order dated 03.11.2011 (Annexure-P7 with CWP No.617 of 2015), passed on an application made under the RTI Act, where the MHRD had stated that there is no criteria for declaring an institution to be a centrally funded institution and that a list of such institutions is available on the website. He further referred to the stand taken by the Government of India in its communication to the learned Assistant Solicitor General, (as conveyed to this Court and recorded in its order dated 08.01.2016), that the instructions dated 23.03.2007 are applicable only to centrally funded institutions as are exclusively funded by the Central Government, and that the Panjab University is not a centrally funded institution.

Mr. Jindals' contention is that the sudden change in the definition, by the same officer who filed an affidavit stating that the University is a centrally funded institution, came "out of thin air", without any statutory or documentary backing.

61. Learned Senior Counsel next submitted that what is contained in paragraph 18 of the judgment in *Julkas'* case, to the effect that Panjab University can not be termed as a Central University, was based on an affidavit filed by the Director in the MHRD, stating so in as many words. He submitted that, in fact later, in *Bindras'* case, a reference had been made to the advice obtained from the Attorney General for India, dated 26.10.2010 and a letter from the Additional Secretary to the Chairman of the UGC, dated 01.11.2010, to the effect that the Attorney Generals' opinion "paves the way to not only fund Panjab University for the purpose of expansion required for implementing the CEI Act 2006, but also enabling UGC to start meeting the financial needs of Panjab University".

Thus, Mr. Jindal submitted that the Union of India and University Grants Commission actually having agreed that the University being not just a centrally funded institution but also within the purview of the Central Education Institutions Act of 2006, the respondents cannot suddenly turn around and state to the contrary.

He again reiterated that though the Division Bench in *Bindras'* case had not agreed with the petitioners at that point, however, that was because of the reason that the judgment came on 04.03.2011, whereas the funding pattern actually changed in November 2011 and the fact that such change was being considered, was duly noticed by the Division Bench, holding that if the Central Government declared the University to be a centrally funded institution, then the scheme for revision of age may become applicable to it.

Hence, it was submitted by learned Senior Counsel that the Government eventually having taken a decision, has backtracked on it only in view of the Punjab Governments' objection, which actually does not change the character of the University, which has actually become a centrally funded institution and for all practical purposes, even a Central University.

62. Next, Mr. Jindal submitted that what was under consideration of the Division Bench in *Julkas'* case was the circular of 1998 issued by the UGC, when it first promulgated such a scheme, which was not binding; however the Regulations of 2010 are binding, they being duly notified and gazetted in the Gazette of India dated 18.09.2010.

Mr. Jindal further submitted that no other University in the country, other than Central Universities, are given a direct annual grant by the UGC, obviously because the Panjab University has a unique character of being an inter-state University; hence it has to be treated on par with Central Universities.

As regards the task forces' recommendation, Mr. Jindal submitted that it was, in fact, a decision and not a recommendation, as is obvious from the letter of the Addl. Secretary to the UGC (referred to hereinabove), as also the opinion of the Attorney General, to the effect that a review application should be filed before the Division Bench, in *Julkas'* case, so as to apprise this Court that the Panjab University was, in fact, now being treated as a centrally funded institution.

In fact, Mr. Jindal submitted that no such review application was required and the Union of India could have simply implemented the recommendation of the task force, making the Regulations of 2010 *ipso-facto* applicable to the University. He again drew attention to the letter of the MHRD dated 14.11.2011, specifically para 7 thereof, by which the UGC was to be asked

to continue funding Panjab University on the same norms as are applicable to Central Universities.

63. Lastly, Mr. Jindal referred to a decision of a Full Bench of this Court in **Dayanand Anglo-Vedic College Managing Committee v. State of Punjab and Others**, AIR 1972 P&H 170 wherein, while considering the effect of Section 72 of the Re-organisation Act 1966, it was held that the legislature of Punjab would still have jurisdiction to de-link the affiliation of certain colleges in Punjab from the Panjab University and to confer jurisdiction upon the Guru Nanak Dev University (then Guru Nanak University), over the areas in which those colleges were situate. Mr. Jindal submitted that it obviously meant that the State of Punjab would have jurisdiction over colleges falling within its own territory, but not as regards the Panjab University itself, which falls in the Union Territory of Chandigarh. Hence, as regards the colleges situated in Chandigarh and the teaching departments of the Panjab University, the State of Punjab could not dictate terms to the Union of India, which has exclusive jurisdiction, territorial, and as the competent authority specified in the Panjab University Act, 1947.

64. After Mr. Jindal, Mr. Salil Sagar, learned Senior Counsel appearing for the petitioners in CWP No.26569 of 2015, first submitted that the term “other than institutions maintained and/or funded by the University Grants Commission”, contained in clause 2.1.0 of the 2010 Regulations, not being qualified by any prefix, nothing extra can be read into the statute (the Regulations) and as such, the University being funded by the UGC, the stipulation above, has to be accepted as it is.

He cited the judgment in **Bangalore Turf Club Ltd. v. Regional Director, Employees State Insurance Corporation** (AIR 2015 SC 221), wherein it was held that a term used must be ordinarily given the common parlance or dictionary meaning assigned to it.

65. On the UGC regulations having statutory force, Mr. Sagar referred to the judgment in **Annamalai University v. Secretary to Government**, (2009) 4 SCC 590. In this regard, he also referred to a judgment of the hon'ble Supreme Court in **Union of India v. Alok Kumar**, (2009) 16 SCC 569 (reference paragraphs 38, 41 and 42).

On the issue of the judgments in *A.C.Julka* and *S.S.Bindra* no longer being binding, in view of the changed situation, he referred to **Sarva Shramik Sanghatana (KV) v. State of Maharashtra and others**, (2008) 1 SCC 494, wherein while citing an earlier judgment in **Bharat Petroleum Corporation Ltd. v. N.R.Vairamani** (2004) 8 SCC 579, it was held that a previous decision cannot

be relied on without disclosing the factual situation. (Reference paragraphs 17 and 18).

66. Learned Senior Counsel then submitted that in terms of Section 31(1) of the Panjab University Act, 1947, the Senate of the University having actually passed the resolution to raise the age of superannuation, upon a move initiated by the PMO and the MHRD itself, the sanction envisaged in the aforesaid provision, already had the approval of the Central Government and a second, post-resolution approval, was not required and as such, the University Regulations would be deemed to have been amended, raising the age of superannuation from 60 to 65 years, with only the formality of an amended publication of the Regulations remaining to be completed.

In this regard, Mr. Sagar cited the judgment in **Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation, (2004) 11 SCC 417**, wherein on an issue of approval for a contract, the previous approval given by the Standing Committee concerned, prior to the contract being entered into, was held to be a proper approval. (In that case it was actually held, in paragraph 17, that in fact, (in that context), prior approval was a pre-requisite).

67. Next, Mr. Sagar also referred to *Jagdish Prasad Sharmas'* case (supra), wherein the Apex court had held that despite the UGC regulations being binding, the State Governments, in respect of State Universities and Institutions, were within their rights to prescribe different service conditions. He submitted that though the aforesaid judgment was delivered in a bunch of appeals from across the country, including the appeal against the judgment of this Court in *Bindras'* case (supra), however, since the appeal against the judgment in *Bindra* was only one of many appeals, there was no specific discussion by the Apex Court, with regard to the status of the Union Territory and the State of Punjabs' lack of jurisdiction, to either legislate or frame any rules etc., qua colleges located in the Union Territory. Hence, he submitted that *Jagdish Prasad Sharmas'* judgment would have to be treated to be *sub silentio* on that issue.

Learned Senior Counsel cited the judgment in **Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101** in this regard (reference paragraph 11 thereof).

68. Lastly, pointing to paragraph 7 of *Bindras'* case, Mr. Sagar submitted that though the contents of clauses 2.1.0, and 2.3.1 of the UGC Regulations 2010 were noticed in the judgment, however, eventually while holding that the University is not a Central University, or a centrally funded University, in paragraph 22, the aforesaid clauses were not considered.

69. Mr. Animesh Sharma, learned counsel appearing for the petitioner in CWP No.15353 of 2014, and Ms. Divya Sharma & Mr. Abhilaksh Grover, learned counsel appearing in some other petitions pertaining to teachers of Government aided private colleges situated within the Union Territory of Chandigarh, all made common arguments, to first submit that these colleges are funded, up to 95% grant-in-aid, by the Union of India, through the Union Territory Administration, from the Consolidated Fund of India. Hence, the Punjab Government, in any case, can have absolutely no role to play as concerns the teachers of these colleges, as no funding, whatsoever, is coming from the Punjab Government to them.

Learned counsel further submitted other than the fact that the Panjab University had now become a centrally funded institution, these colleges in any case, simply by virtue of being funded to the extent of 95% of their deficit budget, by the Union Territory, i.e. in fact by the Union of India, they have to be declared to be centrally funded institutions.

70. Further, all these learned counsel submitted that the Union Territory, Chandigarh, is bound to follow the Central Governments' decision regarding the age of superannuation.

They also submitted that there is no division or separation of legislative powers between the Union of India and the Union Territories, as held by the hon'ble Supreme Court in New Delhi Municipal Corporation v. State of Punjab, (1997) 7 SCC 339. (This argument will be referred to in greater detail, while enumerating the arguments of Mr. Anupam Gupta, learned Senior Counsel who appeared for the Punjab University).

Mr. Animesh Sharma and Mr. Grover further elaborated that in any case, the Union Territory is bound to follow the Central Governments' decision regarding the age of superannuation and with the Central Government having taken a conscious decision to raise the age limit in all centrally funded institutions and Central Universities to 65 years, that decision became binding on the Union Territory, which hitherto has been following the Punjab Education Code, as regard private colleges in the Union Territory, because the retirement age in that Code is prescribed to be 60 years.

Hence, they submitted that even the fact that Government colleges in the Union Territory were governed by different sets of rules, wherein the age of superannuation is 58 years, private colleges, being governed by the Regulations of the University, as also in view of the Punjab Education Code, are retiring their teaching faculty at the age of 60 years. Thus, he submitted that in any case, *de hors* what is applicable to Government colleges, the age of retirement of teachers of

private colleges affiliated to the University, within the Union Territory, Chandigarh, would automatically be deemed to have been raised to 65 years, because of the fact that the Central Government, for all its centrally funded institutions and Central Universities, even those falling in the Union Territories of the Andaman & Nicobar Islands and Daman & Diu, has raised such age to 65 years.

71. Mr. Animesh Sharma further elaborated on the arguments of the learned Senior Counsel before him and of Professor Shashi Sharma, that once the University has become a centrally funded institution in view of the conscious decision taken to change the funding pattern on par with Central Universities, the intention obviously was that it had acquired a status (of a centrally funded institution) therefore, the UGC regulations 2010, specifically clause 2.1.0 thereof, became *ipso-facto* applicable to the Panjab University. In this regard, he pointed to the following part of the judgment in *Bindras'* case:-

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

Learned counsels' contention was that since, in fact, a decision had already been taken to change the funding pattern, the University had become centrally funded and as such, even as per the Division Bench judgment aforesaid, the relevant clauses in the Panjab University regulations, pertaining to enhancement of the age of superannuation, would be deemed to have been amended, as, in fact, even the observation in paragraph 22 of *Bindras'* judgment, to the effect that “the revision of age on superannuation may become applicable”, stood complied with in view of the letter dated 14.11.2011, based upon the recommendation of the Consultative Committee.

72. Learned counsel thereafter reiterated the arguments already raised earlier (noticed herein above) and specifically pointed to the letters dated 23.03.2007, 31.12.2008, clause 2.1.0 of the UGC Regulations 2010, the MHRD letter dated 14.11.2011 and the decision of the Senate of the Panjab University dated 26.12.2011 (Annexure P-13 with CWP No.15353 of 2014).

73. Lastly, Mr.Sharma submitted that just as the Regulations framed by the Medical Council of India are binding on all Governments, with regard to education standards laid down by the Council, in respect of the medical profession, similarly the UGC regulations, framed under Section 26 of the UGC Act, 1956, are binding upon Governments, as regards laying down higher standards of education in Universities, including conditions of service of the teaching faculty in the Universities.

74. With the above, arguments on behalf of the petitioners stood concluded.

Addressing arguments first on the side of the respondents, Mr. Amit Singh Sethi, learned Additional Advocate General, Punjab, first referred to the objects and reasons of the UGC Act of 1956, i.e. that the Statute was enacted to make a provision for the coordination and determination of standards in Universities.

He thereafter submitted that Universities are either those as are defined in Section 2(f), i.e. those established or incorporated by a Central Act, a Provincial Act or a State Act, or as may be recognised by the Commission in accordance with the Regulations framed under the Act; alternatively, it would be those institutions as are deemed to be Universities, by way of any declaration made by a notification in the official gazette, by the Central Government, as per Section 3 of the Act.

Hence, learned counsel submitted that the Panjab University having been established by the Panjab University Act 1947, enacted by the State Legislature of Punjab, by incorporation it is, necessarily, a State University.

He then drew attention to a list of State Universities maintained by the UGC, as on 15.01.2016, wherein the Panjab University is shown as a State University in the "NCT of Chandigarh". (Obviously, the nomenclature "NCT" is a clerical error and what is meant is the 'UT of Chandigarh').

Therefore, Mr. Sethi submitted that the writ petitions are wholly misconceived, inasmuch as, the Panjab University, even till date, is being treated as a State University by the UGC itself. Hence, there is no question of clause 2.1.0 of the UGC Regulations of 2010 applying to the University, as actually it would be covered by clause 2.3.1, which stipulates that the revised scales of pay and age of superannuation, as given in clause 2.1.0, may also be extended to State Universities, subject to the implementation of the scheme as a composite scheme (by the Universities/State concerned).

75. Mr. Sethi next submitted that though Section 26 of the UGC Act

deals with the power of the Commission to make regulations, as specified in sub-clauses (a) to (j) of Clause 1 thereof, “centrally funded institutions”, is not one of those subjects and, in fact, the said term has not been defined anywhere in the Act.

Hence, he submitted that since the UGC Regulations framed under the Act, can obviously only apply to Universities and deemed Universities, as defined under Section 2 (f) and 3, and with Sections 26 also not providing for any applicability of the Act to any other institution not defined or referred to in the Act, the Regulations of 2010 cannot even be held applicable to centrally funded institutions, even if by some stretch of imagination, the Panjab University is to be declared to be one such institution.

76. Further on this, Mr. Sethi pointed to the circular dated 23.03.2007 (Annexure P-2 with CWP No.11988 of 2014), upon which, read with the Regulations of 2010 and the letter of the MHRD dated 14.11.2011, the petitioners are all basing their claim. He submitted that the term 'centrally funded institution' is only referred to in paragraph 2 of the said circular, wherein it is stated that the Central Government had decided that “in the light of the existing shortage” in teaching positions for the centrally funded institutions, in higher and technical education, under the ministry, the age of superannuation of all persons who were holding teaching positions on regular employment, shall be increased from 62 to 65 years, if they were holding such positions as on 15.03.2007.

A copy of this letter had been sent to various ministries, all Central Universities under the MHRD, IITs, IIMs, IISc etc., including the National Institute of Technical Teachers' Training and Research, Chandigarh, Kolkata, Chennai and Bhopal, and the Sant Longowal Institute of Engineering and Technology, District Sangrur, Punjab, but not to the Panjab University. Hence, learned Additional Advocate General submitted, that it was never the intention of the Central Government to include Panjab University in the list of those institutions, that it considered to be centrally funded institutions.

This, as per learned State counsel, is other than the fact that the circular dated 23.03.2007 was only issued as a temporary measure because of shortage of teachers in 2007 and for implementing the Governments' decision to increase access to higher education, and for implementing the policy of reservation for weaker sections, as stated in the circular.

77. He next pointed to clause 8 (f) (i) of the circular of the MHRD dated 31.12.2008, (annexed as Appendix-I to the UGC Regulations of 2010), wherein the relevant issue of the age of superannuation is dealt with and to clause 2.1.0 of the Regulations of 2010. (Both reproduced earlier).

Mr. Sethi submitted that since even in its applicability to Central Universities and institutions maintained or funded by the UGC, the scheme was to be implemented strictly in accordance with the decision contained in Appendix-I, then in terms of the opening paragraph of the circular dated 31.12.2008 (Appendix-I), the revision was only in the scales of teachers of Central Universities, and in terms of clause 8 (f) (i) it was a decision taken only in respect of Central Educational Institutions. The Panjab University, neither falling in the category of Central Universities even as per the UGC, nor defined as a Central Educational Institution anywhere, including the Central Educational Institutions (Reservation in Admissions) Act, 2006, it was obvious that the increased age was not applicable to the University.

In this regard, Mr. Sethi pointed to the definition of what a Central Educational Institution means, as per the Act of 2006 (also reproduced earlier) and submitted that even as per that Act, the Panjab University, neither having been incorporated by a Central Act, nor being an institution of national importance set up by an Act of Parliament, nor a deemed University under Section 3 of the UGC Act, 1956, nor (according to learned State counsel), being an institution maintained or receiving aid from the Central Government, as is affiliated to a Central University or an institution of national importance, nor being an educational institution set up by the Central Government under the Societies Registration Act, 1860, the scheme, *ipso-facto* and *per se*, cannot apply to the University, unless specifically adopted for the University, by the competent authority under the Panjab University Act of 1947, i.e. by the Central Government.

The learned Additional Advocate General referred to a judgment of the Supreme Court in **Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise** (1990) 3 SCC 447, to submit that no term used can be taken in isolation and must be seen in the context of the words accompanying it. Hence, he submitted that the terms “centrally funded institution” never having been intended to create a new class of institutions, either by the Central Government or by the UGC, it is very obvious from the Regulations of 2010, read with Appendix-I thereof, (which is the circular dated 31.12.2008), that the intention was that the scheme would apply only to Central Universities and Central Educational Institutions. The phrase used in clause 2.1.0 of the 2010 Regulations, “and other institutions maintained and /or funded by the University Grants Commission”, has to be read in the context of Central Universities, and Appendix-I, which refers to Central Educational Institutions.

78. The Additional Advocate General then referred to the circular of the

MHRD dated 14.08.2012 (annexed as Annexure R-1 with the reply of the UGC filed in CWP No.23716 of 2014), wherein it is stated that though the UGC scheme contained in the Regulations of 2010 were intended for all teachers in Central Universities and could be made applicable by State Governments to State Universities, subject to the entire scheme being adopted by the State Governments, however, after considering the views of State Governments, the Central Government had decided to de-link the condition of enhancement of age of superannuation from the payment of the central share of 80% arrears to the States. That is to say that even if State Governments decided not to raise the retirement age to 65 years, but otherwise adopted the scheme, the State Governments would still be entitled to 80% reimbursement of arrears incurred due to implementation of the scheme. This letter was addressed to all State Education Secretaries, Incharge of Higher Education, by the MHRD.

Thus, Mr. Sethi submitted, that as regards implementation of the scheme by States, in their Universities, even the Central Government and the UGC, had both de-linked the age of superannuation from the rest of the scheme. Therefore, with the Panjab University being accepted by the UGC also only as a State University (of Chandigarh), the condition of raising the retirement age, would not *per se* apply to the University, even in terms of the Regulations of 2010.

79. Learned counsel next referred to various statutory provisions of the Panjab University Act, 1947, as are reproduced hereinafter, i.e. Sections 2(b) and (d), 4,8,11,12,20 and 31.

He also referred to clauses 23 and 24 of Chapter-II (A) (i) of the Panjab University Regulations, to submit that till the regulations are not framed and approved by the Government, as per procedure, they would not be taken to be final.

“Section 2 (b) “the Government” means the Central Government;

(c) xxxxx xxxxx xxxxx

(d) “the University” means the Panjab University.

3. xxxxx xxxxx xxxxx

Section 4. Incorporation of the University:- The University shall be a body corporate known by the name of the Panjab University having perpetual succession and a common seal, with power to acquire and hold property, movable and immovable, to transfer the same, to contract, and to do all other things necessary for the purpose of its constitution and may sue in, or be sued by, its corporate name.

5,6,7. xxxxx xxxxx xxxxx

Section 8. Body Corporate:-

Subject to the provisions of this Act, the supreme authority of the University shall be vested in the Senate which shall consist of the-

- (a) Chancellor,
- (b) Vice-Chancellor,
- (c) Ex-officio fellows, and
- (d) Ordinary Fellows.

9 and 10. xxxxx xxxxx xxxxx

Section 11. Senate:-

- (1) Omitted by Punjab Act 9 of 1956.
- (2) The Senate shall have the entire management of, and superintendence over the affairs, concerns and property of the University and shall provide for that management, and exercise that superintendence in accordance 'with the statutes, rules and regulations for the time being in force.
- (3) No act done by the University shall be deemed to be invalid merely by reasons of any vacancy among either class of elected Ordinary Fellows. Or by reason of the total number of Ordinary Fellows, or of members of the profession of education to be included among Ordinary Fellows, being less than the minimum prescribed by this Act,
- (4) Omitted by Punjab Act 9 of 1956.

Section 12. Ex-officio Fellows:-

- (1) The persons for the time being performing the duties of the offices mentioned in the list contained in the Schedule to this Act shall be the Ex-officio Fellows of the University.
- (2) The Government may, by notification, make alterations in the list of offices contained in the Schedule.
Provided that the Number of Ex-officio Fellows shall not exceed twelve.”

(The schedule to the Act, lists the following as ex-officio Fellows of the University):-

- “1. Chief Minister, Punjab
- 2. Chief Justice, High Court of Punjab and Haryana.

3. Education Minister, Punjab.
4. Chief Commissioner, Union Territory of Chandigarh.
5. Director of Public Instruction, Punjab.
6. Director of Public Instruction, Chandigarh.”

(Other than the ex-officio Fellows, ordinary Fellows are comprised of all the different categories of persons given in Sections 13 and 14, who also are members of the Senate, but are not being referred to as it is not germane to the controversy. However, the Senate is stated, by learned counsel, to be a 90 member body).

Sections 13,14,15,16,17,18,19. xxxxxx xxxxxx

Section 20. Syndicate:-

- (1) The Executive Government of the University shall be vested in the Syndicate which shall consist of: —
 - (a) the Vice-Chancellor as Chairman;
 - (b) The Director of Public Instruction, Punjab; and
 - (ba) The Director of Public Instruction, Chandigarh.
- (c) Not less than twelve or more than fifteen Ex-officio or Ordinary Fellows elected by the Faculties in such manner and for such period as may be prescribed by the regulations.
- (2) The Regulation referred to in sub-Section (1) shall be so framed as to secure that a majority of the elected members of the Syndicate shall be Heads of, or teachers in Colleges affiliated to the University or Colleges and teaching Departments maintained by the University.
- (3) If in any election the question is raised whether any person is or is not the Head of or a teacher in a college affiliated to the University or a College of teaching Department Maintained by the University the question shall be decided by the Vice-Chancellor.
- (4) The Syndicate may delegate any of its executive functions to

the Vice-Chancellor or to the Sub-Committees appointed from amongst the members of the Syndicate or to a Committee appointed by it which may include persons who are not members of the Syndicate or to any other authority prescribed by Regulations.]

- 5. The Syndicate may make such rules, not inconsistent with the provisions of this Act and the Regulations, as they may deem necessary for carrying on the executive Government of the University as specified in Sub-Section (1).

XXXXX XXXXX XXXXX

Section 31.(1) The Senate, with the sanction of the Government may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University.

(2)(a) and (b) XXXXX XXXXX XXXXX XXXXX

- (c) the procedure at meetings of the Senate, Syndicate and Faculties and the quorum of members to be required for the transaction of business;

XXXXX XXXXX XXXXX

- (t) adequate arrangement to ensure security of service for teachers of the colleges affiliated to the University; and
- (u) adequate arrangement for proper administration of the colleges other than Government Colleges affiliated to the University.

XXXXX XXXXX XXXXX

Panjab University Regulations

“23.1 The Syndicate shall appoint annually a Regulations Committee consisting of six members as under:-

- 1. Four members appointed by the Syndicate, one of whom shall be designated as the Chairman of the Committee.
- 2. Controller of Examinations.
- 3. Registrar (Member-Secretary).

The quorum for a meeting of the Committee shall be four. Proposals for framing of or amendments of Regulations shall be submitted to the Syndicate through this Committee.

23.2 The Committee may be consulted by the Vice-Chancellor, Syndicate or Senate on issues of legal interpretation of the Act of incorporation, the Regulations or the Rules.

24. In making Regulations under Section 31 of the Panjab University Act, 1947, the following procedure shall be followed:-

- a) The Syndicate shall consider all amendments and draft regulations as recommended by the Regulations committee and after making such alterations as it considers fit, shall submit the same to the Senate.
- b) The Senate shall consider all amendments and draft regulations as recommended by Syndicate and may make such alterations as it considers fit. The decision of Senate along with the proposed amendments and regulations shall be forwarded to the Government for sanction and when their sanction has been received, the Common Seal shall be affixed to the regulations. The regulations as finally sanctioned by the Government shall be published in the Government Gazette.”

80. Thus, Mr. Sethi submitted, with the Central Government not having approved the resolutions of the Syndicate and the Senate, dated 26.12.2011 and 20.12.2011 respectively, the regulations cannot be deemed to have been amended and as such, till that is done, the age of superannuation would continue to be 60 years, as stipulated therein, for both, University Department teachers, as also teachers of colleges affiliated to the Universities (other than Government colleges).

81. Mr. Sethi next referred to Section 72 of the Punjab Re-organisation Act, 1966 and submitted that after considering the aforesaid provision contained in an Act of Parliament, a Division Bench of this Court still held, in **DAV College Trust and Management Society and others v. Panjab University, Chandigarh and another** (1986) 2 ILR (P&H) 430, that the University despite having become an inter-state body corporate, and the Central Government having become the competent Government in respect of the University, the University still remained a creature of the Panjab University Act, 1947.

82. Learned Additional Advocate General next referred to the judgment of the Supreme Court in **B. Bharat Kumar** (supra), to submit that as regards State Universities, the scheme of 2008, as reflected even in the UGC Regulations of

2010, is not binding.

Though this judgment was rendered prior to even 2008, State Counsel submitted that it was, in fact, an earlier scheme which formed the basis for the eventual notification in 2010. Thus, he submitted, that their Lordships having considered the effect of Entry 66 in List I, Schedule 7 of the Constitution, vis-a-vis Entry 25 in List III, the ratio of the judgment would still hold.

Consequently, the relevant extracts of the said judgment, referred to by Mr. Sethi, are reproduced hereinunder:-

“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 List I vis-a-vis Entry 25 in List III. In our opinion, the communications, even if they could be heightened to the pedestal of a legislation, or as the case may be, a policy decision under Article 73 of the Constitution, they would have to be read as they appear and a plain reading is good enough to show that the Central Government or as the case may be UGC also did not introduce the element of compulsion vis-a-vis the State Government and the universities. We, therefore, do not find any justification in going to the entries and in examining as to whether the scheme was binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary.”

XXXXX

XXXXX

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19. Learned counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62, as the case may be. We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so.”

Learned counsel also referred to paragraph 78 of *Jagdish Prasads'* judgment (SCC citation), wherein, while dealing with the effect of the UGC Regulations on educational institutions being run under State enactments and by different States, it was held that there was no compulsion on States to adopt the

scheme and as such, there would be no 'automatic application' of the recommendations made by the UGC, without a conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision.

He submitted that this was eventually held in the bunch of appeals before their Lordships, after noticing the contentions of various counsel representing Universities in different States, including the contention of learned Senior Counsel appearing for the teachers of the Departments of the Panjab University.

Hence, he submitted that in any case, the matter having been considered by their Lordships even in relation to the recommendation of the task force/Consultative Committee constituted in respect of the Panjab University, by the MHRD in July 2011, it was still held as above, in respect of all State Universities.

(It may be apposite at this stage itself, however, to notice that Ms. Divya Sharma, learned counsel appearing for the petitioners in some of these cases, pointed to paragraph 70 of the said judgment, to submit that it was also held that “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”. She also submitted that though the UT had been referred to by the Supreme Court in paragraph 42, however, specifically the status of the University, in terms of Section 72 of the Re-organisation Act had not been discussed).

83. Next, Mr. Sethi referred to the judgments in *Julkas'* and *Bindras'* cases (supra), to submit that two Division Benches having specifically held on this very issue, that the Panjab University is neither a Central University nor even a centrally funded institution, this Bench, being a single Bench, would obviously not hold to the contrary.

84. Lastly, Mr. Sethi referred to the reply of the UGC, as contained in CWP No.15353 of 2014, to submit that even the UGC itself did not support the petitioners and as per the reply of the Panjab University in CWP No.11988 of 2014, the status of the Panjab University remained the same as it was prior to the change of the channel of funding.

85. Coming next to the arguments of Mr. Rajiv Atma Ram, learned Senior Counsel appearing for the Goswami Ganesh Dutt Sanatan Dharam College, Sector-32, Chandigarh.

Mr. Atma Ram first pointed to all the three documents earlier pointed

Universities, i.e. it pertains to such facilities for students in the courses that they wish to qualify for, and not to facilities to be provided to the teaching staff, which is wholly at the discretion of the competent authority provided in the statute by which each University is created.

He submitted that, therefore, laying down the age of superannuation of teachers, in the UGC Regulations of 2010, was beyond the power delegated to the Commission, by Section 26 of the Act of 1956.

86. Learned Senior Counsel next pointed to Section 20 of the Act of 1956, to submit that directions given by the Central Government to the Commission are paramount, and in case of any conflict, the decision of the Central Government is to be final.

Hence, he submitted, that the Central Government having taken a categorical stand that the age of superannuation of the teaching faculty of the Panjab University and its affiliated colleges is not to be increased to 65 years, the question of application of any Regulation framed by the Commission, including clause 2.1.0 of the 2010 regulations, to the Panjab University, does not arise.

87. Learned Senior Counsel then again referred to various paragraphs contained in *Julkas'* and *Bindras'* cases (supra), to submit that the Panjab University is neither a Central University nor a centrally funded institution.

Mr. Atma Ram also referred to a judgment of a Division Bench of this Court in **Dr.(Mrs.) S.L. Sud v. Union of India and others** 2007(1) SCT 705, wherein in paragraph 5 thereof, while commenting on the distribution of legislative powers between the Union and the States and specifically to Entry 66 of List-I of the 7th Schedule, in the context of Articles 245, 246 and 254 of the Constitution, it was held as follows, in relation to the notification issued by the UGC in 1998. It was held that whereas the notification:-

“..... could be held to be binding on the State Government only to the extent of maintaining minimum qualifications for appointment of teachers in the Universities and other institutions but not in respect of matters concerning the age of superannuation or even pay scales. In those respects, the view of the State Government is to prevail.”

Hence, learned Senior Counsel submitted that laying down the age of superannuation is beyond the rule making power delegated to the UGC under Section 26 of the Act.

On this, learned Senior Counsel also relied upon a judgment of a Division Bench of the Kerala High Court in **Mathai v. Elizabeth Xavier** (2011(2)

KL T 468 and another judgment of a Division Bench of the Gauhati High Court in Shri Kamalakant Sharma v. Union of India and others (2012)(3) GLD 115 (Gau).

Learned Senior Counsel further referred to another Division Bench judgment of this Court KRM DAV College Nakodar v. State of Punjab and another (2014 (1) SCT 66), wherein, while dealing with an identical issue pertaining to teachers of Universities situated in the States of Punjab and Haryana, as also colleges affiliated to such Universities, the judgments in *Julka* and *Bindra* were relied upon. After citing from the aforesaid judgments, the Division Bench also cited from *Jagdish Prasad Sharmas'* case (supra), to eventually hold, in the context of the UGC Regulations 2010 itself, that the members of the teaching faculty of such Universities etc. cannot claim enhancement in the age of superannuation, on the basis of the 2010 Regulations.

Finally, Mr. Atma Ram referred to another decision of a Division Bench of this Court, dated 14.03.2014, rendered in Review Application No.119 of 2014, filed in CWP NO.6179 of 2012, Krishan Sharma v. Panjab University and others.

Other than dismissing the review application on the ground that the contentions raised in the application were never raised at the time that arguments were addressed in the main writ petition, the Division Bench referred to Sections 11 and 20 of the Panjab University Act, 1947, as also Section 31 thereof. (Sections 11 and 20, as seen, refer to the powers conferred upon the Senate and Syndicate of the University and Section 31 to the power of Senate to issue regulations, with the sanction of the Government). Dealing with Regulation (Clause) 17.3 (referred to earlier in this judgment), and again referring to *Julkhas'*, *Bindras'* and *Jagdish Prasad Sharmas'* cases, it was held that the teaching faculty of the Panjab University is not entitled to extension of age "on the basis of the directions of the University Grants Commission, the Panjab University not being a Central University".

Mr. Atma Ram, consequently, prayed for dismissal of the petitions.

88. Thereafter, Mr. Chetan Mittal, learned Assistant Solicitor General of India, addressed arguments on behalf of the Union of India. It may be stated here itself, that actually it was on these arguments, that the controversy created earlier with regard to the stand of the Union, as to whether Panjab University is a centrally funded institution or not, was resolved, with a categorical statement to the effect that the affidavit of the Director (U.II), in the MHRD, Department of Higher Education, dated 10.05.2015 is not to be taken to be the stand of the Union, as

regards the question as to whether the University is a centrally funded institution. Mr. Mittal however submitted that even that affidavit clarified that despite the fact that the Panjab University is a centrally funded institution, and a centrally funded University, the age of retirement of the employees still cannot be enhanced to 65 years.

Mr. Mittal therefore again referred to the affidavit of Ms. Ishita Roy, Joint Secretary, dated 22.05.2015, reiterating the role of the State of Punjab in the University and further stating that “the meaning and scope of Centrally Funded Institutions pertains to those institutions which are exclusively funded by the Central Government through MHRD or University Grants Commission”.

He contended that in fact, it has been the stand of the Union throughout, that the Panjab University is not a centrally funded institution, despite the earlier affidavit of the Director, dated 10.05.2015.

89. The learned ASG thereafter first referred to Section 72(1) of the Punjab Re-organisation Act, 1966, wherein it is stipulated at the end (of subsection 1) that “the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may, from time to time, be issued by the Central Government, until other provision is made by law in respect of the said body corporate”.

He submitted that eventually as to how much grant is to be paid to the University by the successor States, is also to be determined by the Central Government from time to time and as such, other than the fact that the Central Government is the competent Government even in terms of Section 2(b) of the Panjab University Act, 1947, it is very clear from the Act of 1966 itself, on which the petitioners rely to contend that it is now a central University, that the final decision making authority, for all decisions as require amendments etc. in the Regulations (of the University), is the Central Government and not the Senate or the Syndicate of the University. Hence, despite the fact that for the inter-State University it is the Central Government that is competent to take a decision, that Government having taken that decision, no right flows to the petitioners thereafter.

Thus, the Panjab University Regulations not having been amended, by approval of the Central Government, so as to increase the age of superannuation, and the said Government specifically having taken a stand to the contrary, there can be no deemed amendment of the statute, as contended by the petitioners.

90. The learned ASG thereafter reiterated what the learned Additional Advocate General, Punjab, had submitted, with regard to raising of the age of superannuation, even in terms of the circulars dated 23.03.2007 and 31.12.2008, i.e. that they were only applicable Central Educational Institutions and Central Universities, though, loosely, the term 'centrally funded institutions' had been used in the letter dated 23.03.2007. In this regard, he again specifically pointed to clause 8(f) of the letter/circular dated 31.12.2008 (Appendix-I with the Regulations of 2010). He also reiterated the other contentions of Mr. Sethi, with regard to the age of superannuation, even as per clause 2.1.0 of the 2010 regulations, being strictly in terms of Appendix-I.

Mr. Mittal also pointed to the affidavit dated 03.04.2015 (actually signed by the counsel for Union of India on that date, but otherwise undated), filed by Shri Harpreet Singh, Director (U.II), MHRD, to re-iterate the contents of the said affidavit.

91. Thereafter, Mr. Mittal also referred to *Julkas'* and *Bindras'* cases and specifically submitted that as a matter of fact, it was because of what was observed in *Bindras'* case, to the effect that if the Central Government accepts the Punjab University to be centrally funded, the scheme for revision of age of superannuation may become applicable, and that till such a decision is taken, the scheme cannot be held to have become applicable, that the Consultative Committee/ task force was constituted, to take a conscious decision, after which the Government has done so and decided not to enhance the age limit of the teaching faculty to 65 years.

Pointing to recommendations made by the said Consultative Committee, from the notings of the Government, produced in Court by him, the learned ASG specifically referred to paragraph 33 (iv) thereof, pertaining to the age of superannuation and stated that, in fact, the petitioners were correct in saying that a recommendation was made that the age limit should be raised, with some observation on behalf of the UT Administration that it should be subject to fulfillment of certain conditions; however, eventually the decision was taken not to increase the age limit.

Mr. Mittal also very fairly pointed to the second meeting of the Consultative Committee held on 07.07.2010, wherein it was discussed as follows:-

“Inter-State matters are the subject matter of the Union and therefore, added to the fact that the Inter-State character of the University has been accorded to it by an Act of Parliament [State Reorganization Act], and that it is substantially funded by the Central Government [through the U.T. of Chandigarh], there is a need to

review the earlier decision of not treating Panjab University as a Central Educational Institution. Accordingly, it is proposed to seek the opinion of the Learned Attorney General for India, through the Ministry of Law and Justice.”

(Reference paragraph 3 of the minutes of the said meeting).

It was, thereafter, in that meeting itself, decided that the opinion of the Attorney General be also taken, as also of the State of Punjab. (Though the reference to the State of Punjab seems to be more in the context of the fact that if the State Government agrees to the enhancement of age of superannuation, then the University would be eligible for 80% central financial assistance. Obviously, this was prior to the decision of the Central Government to de-link the condition of raising the age of superannuation for all State Universities, to the grant of such financial assistance).

92. Again very fairly, learned ASG pointed to another file noting dated 02.09.2011, wherein the status of the Panjab University, in terms of the Re-organisation Act of 1966, was discussed, and as to whether it should be treated as a centrally funded institution in terms of what was held in *Julkas'* case, (to the effect that it is not such an institution as a substantial financial burden (40% at that stage) was being borne by the State Government).

Thereafter, it was discussed that neither under the CEI Act of 2006, nor under any other instructions etc., could the University be accepted to be a Central Educational Institution and as such, if the provisions available to such institutions are to be extended to the Panjab University, then it could only be after revision of the instructions issued by the Department of Personnel and Training, and an amendment made to the CEI Act 2006, and after filing a review of the judgment in *Julkas'* case.

It was further stated in the noting that since the State of Punjab is a successor State for the University, the reservation policy of the State would be applicable and as regards amendment of the Regulations, it would be for the Senate to make a resolution and take the approval of the Government in that regard.

The next noting on that issue, dated 12.09.2011, made by the Secretary (Higher Education) in the MHRD, before putting up the matter to the hon'ble Minister, is to the effect **“that Panjab University is not a CEI, but a uniquely positioned inter-state body corporate and will remain so till the CEI Act is amended, DoPT guidelines revised and a review is filed before High Court and a judgment contrary to one passed in A.C.Julka case is obtained”**.

Thereafter, the file notings are seen to show that a letter conveying the stand of the Government, as above, was written to the Vice-Chancellor, Panjab University, on 21.10.2011, by the Director (U.II) in the Ministry (Department of Higher Education).

The said letter refers to the following three issues:-

- i) Reservation Policy for faculty.
- ii) Admission of students.
- iii) Service rules of teachers including raising of retirement age from 62 to 65 years.

(Actually should have been “60 to 65 years”).

Though in the context of an amendment to the Regulations, proposed by the Senate for approval of the Central Government, it is the reservation policy which is spoken of in the letter, however, since in paragraph 2 before that, raising of the age of retirement is also referred to, the implication possibly is, as submitted by Mr. Mittal also, that any amendment would have to be proposed by the Senate as per procedure, and approved by the Central Government.

It is obvious that the Syndicate and Senate of the University thereafter proposed the enhancement of age of superannuation, by resolution, and as such, the petitioners are considering that to be an approval already given by the Central Government. That would also be considered further ahead.

93. Finally, Mr. Mittal referred to the letter of the Under Secretary, Government of India, MHRD, Department of Higher Education, addressed to him (Mr. Chetan Mittal, ASG), dated 07.01.2016, in which it is stated that though the letter dated 23.03.2007 is applicable to all centrally funded institutions, however, the Panjab University is not such an institution, “for the purpose of the said circular”.

Hence, the learned ASG submitted, the appropriate Government under the act of 1947 having taken a conscious decision not to raise the age of superannuation of teachers of the University, this Court would not issue a writ of mandamus to that effect.

94. Next, the matter was first argued by Mr. I.P.S. Doabia, learned counsel, on behalf of the respondent-Union Territory, who first submitted that all the modifications made to the University Act of 1947 have been so made only on account of the re-organization of Punjab, vide the Act of 1966 and consequent to Section 72 of that Act, since the University became an inter-State University, therefore, notifications were necessary to be issued for amendment of the

University Act and were so issued on 29.06.1968 and 09.07.1968, stating therein that due to the provisions of Section 72 (1) of the Act of 1966, amendments in Sections 12, 20 and 13 were necessitated (with regard to the number of Fellows and Ordinary Fellows of the Senate, the composition of the Syndicate etc.). Similar notifications were issued from time to time thereafter, as the States of Haryana and Himachal Pradesh withdrew affiliation of the colleges in those States, to the Panjab University.

He further submitted that since Section 72 (4) of the Act of 1966 states that successor States are to provide grants for the University, the 90% grant now being disbursed to the University by the Central Government, is actually on behalf of the Union Territory as a successor State.

(He submitted that in terms of Section 2(m) of the Act of 1966, the Union Territory of Chandigarh is also a successor State to the (earlier) existing State of Punjab).

Learned counsel thereafter also referred to various judgments earlier referred to by other counsel for the respondents, i.e. the judgments of this Court in **Julkas', Bindras', Krishan Sharmas' and Dr. (Mrs.) S.L. Suds'**, cases and those of the Supreme Court in **B.Bharat Kumars'** and **Jagdish Prasads'** cases (supra).

From **Jagdish Prasads'** judgment, Mr. Doabia pointed to the last part of para 64 thereof, which reads as follows:-

“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.”

As such, learned counsel submitted that the State being very much within its rights to legislate, and to issue executive instructions on all subjects on which it can legislate, the decision to not raise the age of superannuation to 65 years, was within the legislative and executive domain of the Union Territory, as a successor State.

95. Next, Mr. Doabia also reiterated the arguments raised by Mr. Rajiv Atma Ram, with regard to the UGC Regulations of 2010 actually being beyond the delegated power conferred by Section 26 of the UGC Act, upon the Commission.

He referred to a judgment of the Supreme Court in **Union of India and others** vs. **S.Srinivassan** AIR 2012 SC 3791, to submit that if a rule goes beyond the rule making power conferred by the statute, the rule has to be declared ultra vires.

Hence, learned counsel submitted that the UGC Regulations 2010 having exceeded the rule making power conferred upon the Commission, to the extent that other than laying down higher standards of education etc., they also lay down the conditions of service of employees of the University, they have to be declared to be ultra vires to that extent and as such, even if this Court comes to the finding that the Panjab University is a centrally funded institution, the regulations to the extent of raising the age of superannuation, would be inapplicable, being beyond the power delegated to the Commission.

96. Ms. Alka Chatrath, learned counsel appearing for the Union Territory in some of these petitions, also reiterated the above and cited a judgment of a Division Bench in **Union Territory, Chandigarh** vs. **Hemant Kumar Mittal and others** 2011 (4) RSJ 352, to submit that even though the Union Territory is a territory of the Union, however, its employees do not, *ipso facto*, become Central Government employees and as such, the employees of Government Aided Private Colleges in the U.T., cannot, by any stretch of imagination, be deemed to be Central Government employees, to be 'covered' only by the rules and policies applicable to Central Government employees.

(Reference Paragraph 7 of **Hemant Kumar Mittals'** case).

Thus, the submission of learned counsel is that simply because the Central Government has decided to raise the age of superannuation of employees of teachers of Central universities to 65 years, the same age limit does not become automatically applicable to teachers of Government Aided Private Colleges in the Union Territory, even if they are getting 95% grant-in-aid from the Union Territory.

She further submitted that as regards Government colleges, the Union Territory had, by a decision taken, decided to follow the Punjab Privately Managed Recognized Colleges (Security of Service) Act 1974, as also the rules/instructions, issued by the Punjab Government from time to time, in respect of its aided colleges, w.e.f. 01.04.1999.

She has also produced in Court a notification to that effect, issued by

the Government of India, published in the Chandigarh Administration Gazette Extraordinary, dated 13.01.1992, stipulating therein to the above effect, as regards the conditions of service of persons appointed to the Central Civil Services under the administrative control of the Administrator, U.T., Chandigarh. (The aforesaid document, as a matter of fact, is a notification of rules titled as “Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992”, which were notified w.e.f. 01.04.1991).

She further submitted that in any case, Clause 7 of Chapter VII (E) of the Panjab University Regulations, stipulates that the age of retirement of all whole time teachers in non-Government colleges affiliated to the University, shall be 60 years, which applies to all private colleges of the U.T., also.

97. Therefore, as per both learned counsel, as regards the Union Territory, though in effect the stand is not different from the other respondents, however, it is contended that the U.T., as a matter of policy also can adopt its own conditions of service, as a successor State to the State of Punjab, in terms of Section 72 of the Reorganization Act, 1966.

98. Mr. Anupam Gupta, learned Senior Counsel appearing for the Panjab University, at the outset submitted that though the University has taken a stand common to the Union of India, in its written statements, however factually, he wished to take this Court through various provisions in the Constitution of India, the Constitutional debates pertaining to those provisions, the implication of those provisions on the decision making power of the Central Government, qua colleges situated in the Union Territory, as also qua the University itself, it being an institution with a unique status of an inter-State University, by virtue of Section 72 of the Punjab Re-organization Act, 1966, which status is not enjoyed by any other University in the country.

Hence, Mr. Guptas' arguments were focused on the issue that the Union of India was bound to take decisions free from any influence of the State of Punjab, in the spirit of Constitutional provisions including the relevant entries in List-I and List-III of the 7th Schedule, both, because of the implication of such decisions on institutions of higher learning, i.e. the University, as also in view of the independent status of the UT.

99. Therefore, though the Universitys' categorical stand in its written statement, filed in CWP No.11988 2014, is that even after the change of the funding pattern, the status of the University did not change and unless the regulations pertaining to the age of superannuation of teachers are amended by due process, the age for retirement would remain 60 years; however, since Mr. Gupta,

argued the matter in detail with reference to whatever he felt bound to refer to, in law, any submissions made by him beyond what is contained in the written statements of the University in this batch of cases, would be taken as submissions made as *amicus curiae* or as a counsel who wished to assist the Court as he felt was necessary, for the proper adjudication of the matter, such submissions having been made on the basis of Constitutional and statutory provisions referred to in detail by learned Senior Counsel.

Though Mr. Guptas' arguments had spread over many days, they are being summarised by this Court, with reference to Constitutional debates only where absolutely necessary, to convey what he had argued, in view of the fact that the decision of this Court will be based, as would be seen, on a different reasoning, even if this Court may otherwise agree with the submissions made by Mr. Gupta as also by counsel for the petitioners, as regards the issue of the University being at least akin to a centrally funded institution, after the change of funding pattern by the Central Government, and as to an ideal decision by that Government.

100. At the outset, Mr. Gupta also referred to the history of the Panjab University, being established in 1882 in Lahore but thereafter, the present University having been established by an enactment of the East Panjab University Act, 1947.

He also drew attention to Section 4 of the said Act, pertaining to incorporation of the University, which has been reproduced earlier.

Learned Senior Counsel submitted that incorporation, of any particular body, has to be explicit and unambiguous and as such, the establishment or incorporation of the University, was done by way of the aforesaid Act of 1947 and not by virtue of any provision of the Punjab Re-organisation Act 1966, which simply changes the status of the University from that of a State University of Punjab, to an inter-State body corporate or inter-State University, serving the needs of the territories which stood separated from the State of Punjab by enactment of the said Act of 1966.

He next referred to the Central Universities Act, 2009, in which Section 2(r) stipulates:-

“University” means a University established and incorporated as a University under this Act.

Section 3 thereof enumerates various Universities which already stood established under various enactments of State Legislatures but were, by virtue of the said provision, i.e. Section 3, held to be bodies corporate established under the Act of 2009. Sub-section 4 of Section 3 further refers to the 1st Schedule

to the said Act, wherein new Universities, established as Central Universities, have been enumerated.

Section 4 of the Act of 2009 thereafter names all the Universities 'converted' and gives the purpose of establishment of such Universities as Central Universities.

Learned Senior counsel submitted that therefore, for a University to be declared to be a Central University, it either has to be incorporated by an Act of Parliament, or by its inclusion in the list of Universities named in the Act of 2009.

Hence, Mr. Gupta submitted that contrary to the arguments raised on behalf of the petitioners, the Panjab University, not finding any mention in the Central Universities Act, 2009 and never before or thereafter having been declared to be a Central University, cannot be treated to be such and in fact, continues to be a University incorporated and established under a State Act as opposed to a Central Act, and by virtue of Section 72 of the Re-organisation Act, is an inter-State University.

101. As regards the contention of the petitioners that the Panjab University is a Central Educational Institution (CEI for short), Mr. Gupta submitted that this term was never used prior to the enactment of the Central Educational Institutions (Reservation in Admission) Act, 2006. He then referred to the definition given in Section 2 (d) (already reproduced), to submit that the Panjab University not falling within any of the five categories enumerated in clause (d) of Section 2 aforesaid, cannot also be termed as a Central Educational Institution. Even in clause (iv), only such institutions as are directly or indirectly affiliated to the institutions described in sub clauses (i), (ii) and (iii), and are maintained by or receive aid from, the Central Government, would be covered by the definition.

Thus, the contention of the petitioners that the University being maintained to the extent of 90% by the Central Government and definitely receiving aid from that Government, makes it a CEI, is misplaced as that still does not qualify it to become a Central Educational Institution, obviously not being affiliated to any institution described in sub-clauses (i), (ii) and (iii) of clause (d) of Section 2 of the Act of 2006.

102. Thus, up to this point, there is no difference between the submissions made by Mr. Gupta, with the written statement filed on behalf of the University.

The difference of opinion, where Mr. Guptas' is virtually the same as those of the petitioners, is in respect of the issue of the University being a centrally funded institution.

According to learned Senior Counsel, in view of not just the fact that the University is now funded to the extent of 90% by the Central Government and is funded in the same manner as Central Universities and Central Educational Institutions are funded, it does become a centrally funded institution, but also because the Central Government, being the competent Government to finally decide issues as are required to be decided or approved by Government, in terms of Section 2(b) of the University Act of 1947, the University acquires such character necessarily, and is therefore to be included in the term 'Centrally Funded Institution'.

103. Mr. Gupta then took this Court through various statutory provisions starting from Sections 33 and 65 of the Government of India Act 1915-19 and Sections 46, 94, 99 and 100 of the Government of India Act, 1935, as also Entries in the Federal and Provincial Legislative Lists of the 7th Schedule to the latter Act (as the precursor to the lists in the 7th Schedule of the Constitution), to submit that with the distribution of powers between the Central and the State legislatures and Governments being so clearly defined, decisions taken by the Central Government, even for the Panjab University, need to be taken wholly independently of any influence by any State legislature or Government, including the State of Punjab, even if the State of Punjab is a stakeholder in the University. He submitted that it was obviously a conscious decision and a correct one, in 1966, to substitute the Central Government in place of the Punjab Government in Section 2(b) of the University Act of 1947, with the University serving the needs of three states and one union territory, instead of simply one State of Punjab prior thereto.

He further submitted that that character of the University still does not change even after the States of Haryana and Himachal Pradesh ceased to be successor states for the purpose of the University, these two states no longer having any college situate in their territories, affiliated to the University. With colleges in the Union Territory Chandigarh still very much being affiliated to the University, and the seat of the University being in the union territory, its inter-State character remains intact and therefore, necessarily, only the Central Government is the appropriate Government for the purposes of the University Act of 1947. This is all the more so because the Union Territory is a territory directly administered by the Union and is not a part of any other State, despite it being the capital of two States.

104. Mr. Anupam Gupta next referred to Entries 62 to 64 as they originally stood in List-I of the 7th Schedule to the Constitution, to submit that the institutions referred to in these entries, i.e. institutions of national importance

(Entry 62), and the three Universities and other institutions as are subject matter of Entry 63 and those institutions as are referred to Entry 64, do not necessarily have to be wholly funded by the Central Government, but would still continue to enjoy their special status, even if they are only partly funded by the Government of India.

He, like Mr. Shashi Sharma (petitioner-in person), submitted that thus, even though Panjab University does not fall, as per the constitutional entries, into the category of institutions of national importance, like the Aligarh Muslim University, Benaras Hindu University and Delhi University, however, the contention of the Union of India, in its affidavit, that for an institution to be declared to be a CFI, it must be 100% centrally funded, is a wholly misconceived contention, which does not find corroboration in the above referred Constitutional entries, with respect to even institutions of national importance. Thus, with substantial funding of the University (90%), being by the Government of India, it has acquired the status of a CFI.

105. Mr. Gupta thereafter addressed arguments on the issue of the importance that higher education has been given, in various provisions of the Constitution/entries in the lists of the 7th Schedule, to submit that in view of such importance given to higher education, including, specifically, University education, the Central Government has not given due thought process to the fact that despite it (Central Government) having approved the UGCs' scheme, inclusive of a higher age of superannuation for Central Universities and declared CFIs and CEIs, it is still, for reasons of local influence by the State of Punjab, not implementing the higher standards set, in the scheme, to the Panjab University.

Specifically, learned Senior Counsel referred to Entry 11 of List II of the 7th Schedule, as it stood prior to the 42nd amendment of the Constitution, i.e. prior to 03.01.1977. The said entry that was contained in the State list, pertained to Education, including Universities, but was still subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List III.

However, learned Senior Counsel submitted that, realizing the importance of education in Universities, Entry 11 was entirely omitted from the State list, and its contents were included entirely in Entry 25, List III, which hitherto only pertained to vocational and technical training of labour. Thus, after the 42nd amendment, Education, including technical education, medical education and Universities, also came to be included in Entry 25 of List III, though still subject to Entries 63 to 66 of List I.

106. To further emphasize the importance attached to higher education by the founding fathers of the Constitution, Mr. Gupta drew attention to

Constitutional debates, wherein, Entry 40 of List I (now entered as Entry 63 of that list), Entry 40-A (now Entry 64) and other entries pertaining to professional, vocational or scientific research etc., as also, specifically, coordination and maintenance of standards in institutions for higher education (subject matter of Entry 66 List I), were discussed at great length, before they were finally incorporated in the Union list, as Entries 63 to 66. Hence, he submitted that institutions of higher education and the maintenance of standards in such institutions, having been given the utmost importance in the Constitution, the University Grants Commission was set up by the UGC Act of 1956, so as to ensure that a body consisting of highly educated and knowledgeable persons in the field of education, determined the standard of education and the standard of teachers imparting that education. Consequently, the recommendations made by the UGC are notified from time to time, as in the case of the Regulations of 2010, so as to ensure that such standards of education are maintained. Learned Senior Counsel submitted that those Regulations having acquired the force of law, by acceptance of the Government, by way of a notification duly published, need to be implemented in all institutions of higher learning, especially institutions directly under the control of the Central Government, so as to ensure that they set a standard to be followed by other such institutions set up by the State Governments.

107. In a nutshell, in the present context, the contention of learned Senior Counsel is, that even though State Universities have been given a certain lee-way in the UGC Regulations of 2010, with regard to certain parts of the scheme pertaining to setting of standards of higher education in Universities, such lee-way firstly should not be there, so as to maintain high standards of education as per the importance attached to this subject by the founding fathers of the Constitution; and in any case should not be made applicable to the Panjab University, both, for the reason that it is an inter-State University, for which the competent Government to take decisions is the Central Government, and it, in any case, having become a centrally funded institution, even though the Central Government is now not prepared to recognise it as such.

108. Learned Senior Counsel further submitted that it is rather strange that even though the Indian Institutes of Technology (IITs) established in different parts of the country, including one at Ropar in Punjab, as also NIITs etc., have been declared to be institutions of national importance, old Universities like the Panjab University, Bombay, Calcutta and Allahabad Universities, have not been so declared, which they need to be, being Universities more than one century old, serving higher education needs in different parts of the country, since their

establishment.

109. Mr. Gupta next submitted that the age of superannuation is a fundamental principle intrinsic to higher standards of education and therefore, in the context of Universities of such stature, it is directly relatable to Entry 66 of the Constitution, and it is obviously for that reason, that raising of the age of superannuation has been made a composite part of the scheme contained in the Regulations of 2010.

Learned Senior Counsel stressed in detail on the importance of coordination and determination of standards in institutions of higher learning, as contained in Entry 66 of List I of the 7th Schedule, reproduced hereinunder:-

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

He submitted that it is actually for this reason that even acceptance of the raised age of superannuation, as contained in the aforesaid Regulations, was made a pre-condition for the State Governments to take the benefit of 80% reimbursement from the Central Government (of the additional expenditure incurred by those Governments, by implementation of the scheme, in State Universities). However, coming under pressure of different State Governments, the Central Government decided to de-link the condition of acceptance of a higher age of superannuation, from the issue of reimbursement of 80% of the aforesaid expenditure.

Learned counsel submitted that whereas even in the case of State Governments, such de-linking was not proper, it being a necessary part of the scheme for ensuring higher standards of education across the country, in the case of an inter-State University, which even the Central Government had initially decided to give the status of either a centrally funded institution or a Central Educational Institution, also seeing its historical importance and stature, the raising of age needs to remain a necessary part of the scheme implemented.

In this regard, Mr. Gupta cited the judgment of the Supreme Court in **Frank Anthony Public School Employees' Association v. Union of India and others** (1996) 4 SCC 707. In that judgment, their Lordships, after citing extensively from earlier judgments, eventually held as follows, in relation to conditions of service of school teachers, which was sought to be regulated by the Delhi Administration, even in the case of a private school:-

“16. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in

turn, that would depend on the quality and the contentment of the teachers. Considerations of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution.”

110. As regards the decision of the Central Government to actually treat the University to be a CFI, Mr. Gupta referred to the letter of the Director in the Department of Higher Education, MHRD, dated 14.11.2011 (Annexure P-5 in CWP No.3730 of 2015), which though is not shown to be addressed to anyone in particular, nevertheless, is the decision pertaining to the change of funding pattern to the Panjab University, as already noticed earlier. To repeat yet again, as per clause 5 of this letter, in terms of the recommendation of the Inter-Ministerial Consultative Committee (Task Force) constituted at the initiative of the PMO, the funding was to be routed to the University from the MHRD through the UGC and not from the Ministry of Home Affairs through the UT Administration of Chandigarh.

Mr. Anupam Gupta specifically pointed to the last line of the said clause which states that:-

“The Panjab University will be required to comply with guidelines of UGC.”

Thus, Mr. Gupta submitted that as regards the implementation of the Regulations of 2010 in toto, to the University, that had been already decided by the MHRD, and it was pursuant to that objective, that the letter dated 21.10.2011 was addressed by the Director in the MHRD to the Vice-Chancellor of Panjab University, pursuant to which the Syndicate and Senate had actually initiated and passed the resolutions to amend the University regulations, so as to raise the age of superannuation to 65 years.

Hence, he submitted that it was a decision actually already taken, and to that extent the petitioners would be right in saying that there was a pre-approval of the issue by the Central Government. However, Mr. Gupta submitted, that the formality of an approval by the Government, even after the resolutions by the Senate, would still be needed. Yet, it was very obvious that on the basis of the recommendation of the task force, the Government had decided to treat the

University at par with centrally funded institutions, for the purpose of funding, as also with regard to implementation of the scheme contained in the Regulations of 2010.

111. Finally, on this aspect of approval by the Central Government, Mr. Gupta submitted that the decision taken on paper thereafter by the Central Government, in the form of affidavits filed before this Court, actually is wholly inconsistent with the reasoning given in the scheme (and in the letter dated 23.03.2007), for increasing the age limit, as also for implementing the entire scheme in respect of the University.

Hence, with the University being an inter-State University, located in a UT, with the Central Government as the competent Government to take the decision, any subsequent change in such decision is actually *non-sequitur*, i.e. the said decision does not follow from the reasoning given. In fact, according to learned Senior Counsel, it is an arbitrary and eventually in fact, a perverse decision, with no rationale behind it.

112. Mr. Gupta next contended, (in the context of the argument of Mr. Doabia, learned counsel for the Union Territory, Chandigarh), that the Union Territory, is not a successor State in terms of Section 72 of the Act of 1966. He pointed to Section 2(m) of the said Act, which reads as follows:-

“(m) “successor State”, in relation to the existing State of Punjab, means the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory”;

He thus submitted that the Union Territory is actually the Union of India and cannot in any case, have an independent identity, except for the purpose of distinguishing it from other Union Territories.

In this regard, on the status of Union Territories, Mr. Gupta also cited the judgment of the hon'ble Supreme Court in *New Delhi Municipal Corporation* (supra), wherein it was held that:-

“There is no division of legislative powers between the Union and Union Territories. Similarly, there is no division of powers between States and Union Territories. So far as the Union Territories are concerned, it is clause (4) of Article 246 that is relevant. It says that Parliament has the power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. Now the Union Territory is not included in the territory of any State. If so, Parliament is the only law-making body available for

such Union Territories.”

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“All this necessarily means that so far as the Union Territories are concerned, there is no such thing as List I, List II or List III, The only legislative body is Parliament – or a legislative body created by it. Parliament can make any law in respect of the said territories-subject, of course, to constitutional limitations other than those specified in Chapter I of Part XI of the Constitution. Above all, the Union Territories are not “States” as contemplated by Chapter I of Part XI; they are the territories of the Union falling outside the territories of the State”.

(both excerpts form para 152, SCC Citation).

113. Hence, the contention is, like it was by the counsel for the petitioners, that even if the State of Punjab is a stakeholder, the competent Government, even in terms of territorial jurisdiction for the Union Territory, Chandigarh, where the Panjab University is located (except for the extension campuses in Punjab), is the Central Government. (This is other than for the reason that in the University Act of 1947, the Central Government in any case is the competent Government.)

Further, to repeat, he submitted that the University being a University of “virtually national importance”, at least on par with Delhi University, Benaras Hindu University and Aligarh Muslim University, the Central Government should stand by its decision taken, to treat the University as at least a centrally funded institution.

114. As regards the decision of the Full Bench of this Court, in *DAV College v. State of Punjab* (supra), cited by the learned Additional Advocate General, Punjab, Mr. Gupta submitted that that judgment pertains only to the competence of the Punjab State legislature to de-link colleges situate in parts of the State, from the Panjab University, such colleges falling within the territorial jurisdiction of the State of Punjab. However, with regard to colleges falling in the Union Territory, as also the teaching staff of the University campus, and even, as regards teaching faculty of those colleges in Punjab as still remain affiliated to the University, only the Central Government is competent under the Act of 1947, to take a final decision on the amendment of the Regulations of the University.

Learned Senior Counsel, however qualified that contention, to

submit that since the colleges affiliated to the University, as are located in Punjab, are being given grant-in-aid by the Punjab Government, the State Government would not be bound to implement the scheme qua them, in view of the financial implications. Yet, the same rationale does not apply to the Union Territory and in fact, by that logic alone, no decision of the Punjab Government should influence the Central Government qua the Union Territory, Chandigarh.

115. As regards Mr. Rajiv Atma Ram, learned Senior Counsels' argument on behalf of the GGSD College, that the letter dated 23.03.2007 is only a letter and as such, even in terms of Entry 66 of List I, it has no significance and definitely no statutory basis, Mr. Gupta cited the judgment of a five Judge Bench of the Supreme Court in **M.R.Balaji and others v. The State of Mysore and others** (AIR 1963 SC 649).

In that case, while considering the issue of whether, by an executive order, the State of Mysore could make provisions for advancement of socially and educationally backward classes of citizens, in terms of Article 15(4) of the Constitution, it was held as follows:-

“19. Then it is urged that even if special provision can be made by the State under Art.15(4) the said provision must be made not by an executive order but by legislation. This argument is equally misconceived. Under Art.12, the State includes the Government and the Legislature of each of the states, and so, it would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government. Besides, where the Constitution intended that a certain action should be taken by legislation and not by executive action it has adopted suitable phraseology in that behalf. Article 16 (3) and (5) are illustrations in point. Both the said sub-cls. of Art. 16, in terms, refer to the making of the law by the Parliament in respect of the matters covered by them. Similarly, Arts. 341(2) and 342(2) expressly refer to a law being made by Parliament as therein contemplated. Therefore, when Art. 15(4) contemplates that the State can make the special provision in question, it is clear that the said provision can be made by an executive order.”

This was reiterated by the Constitution Bench in **Indra Sawhney and others v. Union of India and others** 1992 Supp. (3) SCC 217, while discussing the executive power of the Union in relation to reservations made under Article 16(4), by issuing executive orders in terms of Articles 73 (reference paras

735 to 740, SCC citation).

Thus, Mr. Gupta submitted, that the letter dated 23.03.2007 actually takes the form of executive instructions under Article 73 of the Constitution, it being a policy decision of the Government of India and not merely “a letter”. It thereafter found support in the letter dated 07.01.2016, addressed by the Under Secretary to Government of India, MHRD, to Mr. Chetan Mittal, learned ASG appearing for the Union of India in these cases. Mr. Gupta drew attention to clause 5 of the letter to Mr. Mittal, which states that the letter dated 23.03.2007 is applicable to all centrally funded institutions. He submitted that even though the Panjab University was held not to be a CFI by that letter, for the purpose of raising the age of superannuation, however, it remains a fact that the letter of 2007 was a policy decision, effectively taken under powers conferred under Article 73 on the Union Government.

116. Finally, Mr. Anupam Gupta referred to the judgment of a Full Bench of this Court in **Sehajdari Sikh Federation v. Union of India and others 2012(1) RCR (Civil) 384**. While considering the provisions of the Sikh Gurdwara Act, 1925, and the effect of the re-organisation of Punjab on the operations of the Sikh Gurdwara Parbandhak Committee and its jurisdiction in the successor states, as per the Act of 1966, the Full Bench finally found that the Union of India had not taken a decision in the matter with due deliberation and application of mind, by seeking legal opinions thereupon. In other words, “a well informed decision“ had not been taken by the Central Government.

Learned Senior Counsel submitted that in the present case also, keeping in view the importance attached to the issue of setting standards of higher education and coordination of such standards, the Central Government was required to fully apply its mind to the implications of its decision, the status of the University, its operation in one State and one Union Territory and the fact that the Government itself has implemented the decision qua all Central Universities and centrally funded institutions.

Hence, the Government actually having backtracked from its own decision based upon the recommendation of the Consultative Committee formed at the initiative of the Prime Ministers' office, the decision given to this Court is wholly irrational and without proper application of mind. Therefore, he submitted that the Government needs to take a proper and informed decision, keeping especially in view the intention behind omitting Entry 11 from List II, and the supremacy of Entry 66 of List I even over Entry 25 of List III.

On the paramountcy of Entry 66, as regards the issues concerning

coordination and determination of standards in institutions of higher education, Mr. Gupta referred to Prof.Yashpal and another v. State of Chhattisgarh and others (2005) 5 SCC 420, wherein, after noticing the Constitution Bench judgment in Gujarat University v. Krishna Ranganath Mudholkar (AIR 1963 SC 703) and in Preeti Srivastava v. State of M.P. (1999) 7 SCC 120, it was observed that Entry 66 of List I would prevail over Entry 25 of List III, in case of any conflict between laws framed on standards of higher education, by the Union and a State.

With regard to the role of the UGC, the Statement of Objects and Reasons of the UGC Act, 1956, were referred to by the Supreme Court, eventually holding that the standards set by the Commission, are within its jurisdiction and “Any State Legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly *ultra vires*”.

With the above, arguments on behalf of the respondents were also concluded.

117. In rebuttal, Mr. Puneet Jindal, learned Senior Counsel appearing for some of the petitioners, relied upon a judgment of the Supreme Court in Kalyani Mathivanan v. K.V.Jeyaraj and others AIR 2015 SC 1875, to submit that the UGC Regulations 2010 have been held to be mandatory in nature by the hon'ble Supreme Court, and in the case of a conflict between a University Act and regulations framed thereunder, and the UGC Regulations of 2010, the latter would prevail. Though in that case the issue was the appointment of the Vice-Chancellor of Madurai Kamaraj University, Mr. Jindal pointed to the penultimate paragraph of the said judgment, wherein the judgment of the Bombay High Court in *Suresh Patilkhede v. The Chancellor, Universities of Maharashtra*, was over ruled, with the Supreme Court holding that the UGC Regulations of 2010 having been passed by both houses of Parliament, even though the regulations are by way of subordinate legislation, they have a binding effect on the Universities to which they apply. However, as regards Universities, colleges and other higher educational institutions, falling under the purview of State legislation, it is up to the State Government to debate and implement the scheme contained in the said regulations.

Thus, the regulations were held to be partly mandatory and partly directory.

It was also specifically held by their Lordships that the regulations are not beyond the power delegated to the Commission under clauses (e) and (g) of Section 26 of the UGC Act.

Hence, Mr. Jindal repeated that the Panjab University not being a

University falling under State legislation any longer, but with the Central Government being the competent Government under the University Act, the Regulations of 2010 become automatically applicable to the University and colleges affiliated to it.

Learned Senior Counsel further reiterated that in any case, in relation to the Union Territory, Chandigarh, it being a directly administered part of the Union of India, the Regulations would in any case be binding.

118. He next submitted that the legislative body of the Panjab University, i.e. the Syndicate and Senate, comprises also of representatives of the Punjab Government, as per Sections 12 and 20 of the University Act, 1947. (Already reproduced earlier). Thus, with three persons, including the Chief Minister, Punjab, being ex-officio Fellows of the Senate, and the Director Public Instructions, Punjab, also being a member of the Syndicate, it was not open to even the Government to Punjab to raise any objection to the resolution of the Syndicate and the Senate, to increase the age of superannuation, they having had a complete opportunity to do so at the relevant time.

In this regard, Mr. Jindal referred to clause 3.2 of Chapter-II (A) (i) of the Regulations framed by the University, which reads as follows:-

“3.2. Not less than ten days before the date of a meeting, the Registrar shall, under the directions of the Vice-Chancellor, issue to every member an agenda paper, specifying the date, hour, and place of the meeting, and the items of business to be brought before the meeting.

No item of business shall be included in the agenda unless it has first been considered by Syndicate except as provided in Regulation 13.”

Thus, he contended that with the Government of Punjab having enough notice of the meetings held in that regard, and no objection having been raised by them in the said meetings, they are now estopped from raising such objection, thereby leading to the Central Government also rejecting the proposal.

119. He next submitted that the Rajiv Gandhi National University of Law, Patiala, enacted by an Act of State legislature, also provided for the age of superannuation of its teachers as 65 years and as such, it did not lie in the mouth of the Punjab Government to oppose the age of superannuation of teachers of the Panjab University.

120. Lastly, Mr. Jindal referred to a judgment of a Division Bench of this

Court in **Tirlokh Chand Gupta v. the Panjab University, Chandigarh** (2008(2) RCR (Civil 50), wherein a specific question of law was raised, in relation to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as follows:-

“Whether the Panjab University by virtue of Section 2(e)(2)(iii) is a University established or incorporated by a Central Act so as to entitle (it) to appoint an Estate Officer under Section 3 of the Act.”

The issue therein was, as to whether the term “public premises”, as defined in the aforesaid Act, could mean any premises belonging to/taken on lease by, or on behalf of, any University established or incorporated by a Central Act.

After considering the provisions of section 72 of the Punjab Re-organisation Act 1966 and citing from the judgment of another Division Bench in **Gopal Chand v. Panjab University and others** (1978(1)Rent Law Reporter 276), wherein also the issue was with regard to the Universitys' residential quarters falling within the ambit of the Public Premises Act or not, and also noticing the judgment of the Full Bench in *DAV College v. State of Punjab* (supra), it was held in Guptas' case that “We do not wish to go into details of those observations but feel content to observe that the object of the provision was not to give power of governance to the interstate corporations but to make their services available to the successor States till such time the successor States could make their own arrangements. It is significant that what the University was expected to continue to do was to serve the needs of the successor State, subject to Central Government's directions. Therefore, the appointments of Estate officer by the University must continue as it would serve the needs of this corporate body”.

Thus, even while holding that all decisions of the Universities were subject to the Central Governments' directions, the status of the University was still observed by their Lordships, to be that of an inter-State body. Nowhere was it held that Panjab University was incorporated by a Union legislation.

Further, in any case, all observations made in that judgment, were in the specific context of the applicability of the Public Premises Act to the University.

Hence, no mileage can be derived by the petitioners from that judgment.

121. Mr. Animesh Sharma, learned counsel for the petitioner in CWP No.15353 of 2014, in rebuttal, referred to the judgment of the Supreme Court in **Manmohan Singh Jaitla v. Commissioner, Union Territory of Chandigarh and others** (1984 Supp. SCC 540), wherein, citing from **Ajay Hasia v. Khalid**

Mujib Sehravardi (1981) 1 SCC 722, it was held that the Government aided schools in the UT, Chandigarh, receiving 95% grant-in-aid from the public exchequer, would be amenable to writ jurisdiction, as they were subject to deep and pervasive State control, thereby bringing them within the ambit of State, in terms of Article 12.

Thus, Mr. Sharma submitted that with the private aided colleges in the UT Chandigarh also having the status of 'State' under Article 12, with 95% grant-in-aid from the public exchequer, by that rationale also, they come within the definition of centrally funded institutions, to which the UGC Regulations of 2010 would apply, *ipso-facto*.

122. Ms. Divya Sharma, learned counsel appearing in CWP No.3788 of 2015 and some other matters, in rebuttal to the argument raised by Mr. Amit Sethi, learned Additional Advocate General, Punjab and Mr. Rajiv Atma Ram, learned Senior Counsel for the Sanatan Dharam College, submitted that if the contention of these learned counsel is to be accepted, to the effect that Appendix-I is to be literally construed, then the scheme contained in the 2010 regulations, would not even become applicable to the institutions maintained or funded by the UGC, given in clause 2.1.0 thereof.

She pointed to sub-clause (p) of clause 8 of the said Appendix to the 2010 regulations, which reads as follows:-

“8. Other terms and conditions:-

xxxxxx xxxxxx xxxxxx

“(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.”

(Emphasis applied).

Thus, learned counsel submitted that as per sub-clause (p), the

scheme is only applicable to teachers and equivalent cadres in all Central Universities and colleges and 'Deemed Universities' and not even to “other institutions maintained and/or funded by the University Grants Commission”, as stipulated in clause 2.1.0 of the regulations.

Hence, she contended that obviously what was meant by the reference to Appendix-I in clause 2.1.0, is only with regard to the applicability of the scheme as it was first promulgated on 31.12.2008 by a circular, which circular in fact (dated 31.12.2008), is Appendix-I. Therefore, actually, as regards applicability of the scheme contained in Appendix-I, it would also apply to those institutions as are enumerated in clause 2.1.0.

Consequently, as per learned counsel, the Government aided private colleges of the UT, Chandigarh, being centrally funded institutions, in terms of what was argued by Mr. Jindal and Mr. Animesh Sharma, would in any case be covered by clause 2.1.0 and therefore, the raised age of superannuation would apply to their teachers.

123. Mr. Abhilaksh Grover, learned counsel appearing for the petitioners in CWP No.2395 of 2015 and in some other matters, while reiterating the aforesaid arguments, in rebuttal, referred to the judgment of the Supreme Court (Large Bench) in **State of Bihar and another v. Bal Mukand Sah and others (2000(4) SCC 640)**, wherein, in relation to what constitutes public service, it was held that the term means “anything done for the service of the public in any part of the country in relation to the affairs of the Union or the State” and it includes “posts in connection with the affairs of the Union or of any State”.

He further submitted that the proviso to Article 309 of the Constitution, authorises the executive to make rules relating to the recruitment and conditions of service of persons appointed to such public services or posts, consequent upon which, the Union of India had notified the “Conditions of Service of Union Territory of Chandigarh Employees' Rules, 1992”, on 13.01.1992, w.e.f. 01.04.1991. These rules are only applicable to Government/civil servants under the administrative control of the Administrator, UT, Chandigarh and do not apply to teachers in Government aided colleges and as such, the rules of the Punjab Government, as have been made applicable to Government college teachers, stipulating the age of retirement to be 58 years, would not in any case apply to private college teachers, even in aided colleges, in view of clause 7 of Chapter VIII (E) of the University Regulations, which stipulates the age of retirement for teachers of colleges affiliated to the University to be 60 years, which in fact, is being implemented qua all such teachers even presently.

Hence, the two fold contention of learned counsel is that firstly, the judgment in *Jagdish Prasad Sharmas'* case, holding that employees governed by rules framed under the proviso to Article 309 would continue to be governed by them, as regards age of retirement, would be an observation not applicable to teachers of Government aided colleges. Therefore, even if the age of superannuation of Government college teachers is continued at 58 years, no analogy can be drawn by the respondents for its applicability to aided college teachers.

Secondly, Mr. Grover submitted that even if the Government of Punjab cannot be held bound to raise the age of superannuation of teachers in the Government aided or wholly Government run colleges in that State, for the reason that the Punjab Government is providing 95% grant-in-aid to the aided colleges in the State and as such, no financial burden can be compulsorily foisted on it, as per the judgment in *Jagdish Prasad Sharma*, the same reasoning would not hold good for Government aided colleges in the Union Territory. This is for the reason that the Central Government is eventually aiding these colleges through the Union Territory, and for its own institutions, has already implemented the raised retirement age. Hence, financial burden, miniscule as it would be, is not a reason that can be adopted by the Central Government, for the U.T.

124. The above concluded the arguments of all learned counsel in this batch of cases.

Thus, this Court is now to formulate the various questions that have arisen on the basis of the pleadings and the aforesaid arguments made by all learned counsel. The six basic questions are:-

(i) Whether Panjab University can be declared to be a Central University because:-

a) By virtue of Section 72 of the Punjab Re-organisation Act, 1966, it has become an inter-State University rather than only a State University, and the competent Government in terms of Section 2(b) and Section 31 of the Panjab University Act, 1947, is now the Central Government and not the State Government of Punjab.

b) The quantum of funding of the University has been raised to 90% of the maintenance grant by the Central Government, with only about 10% thereof being funded by the Punjab Government and further, because after 2011, the

pattern of funding has also changed and is the same as is the pattern of funding for Central Universities.

- (ii) Whether the Panjab University is a Central Educational Institution (CEI) in any manner?
- (iii) Whether it is a Centrally Funded Institution (CFI) for the reason that the funding pattern and quantum of funding by the Central Government has changed?
- (iv) If it falls in any of the aforesaid categories, would the UGC Regulations of 2010 become applicable, *ipso-facto*, to the University, on all aspects of the Regulations, especially Clause 2.1.0 thereof, thereby making it incumbent upon the Central Government to grant approval for amendment of the relevant clauses of the Regulations of the University, so as to raise the age of superannuation of teachers from 60 to 65 years?
- (v) Whether there was any prior approval by the Central Government, to the resolution passed by Senate of the University on 20.12.2011, proposing an amendment in the Regulations of the University, to raise the age of superannuation to 65 years?
- (vi) In the case of Government aided private colleges affiliated to the University, situated in the UT Chandigarh, are they, *ipso-facto*, centrally funded institutions, by virtue of not just the changed funding pattern to the University, but also because the colleges in the UT are funded to the extent of 95% grant-in-aid, from funds provided by the Union, to its territory?

124. Before going on to consider the aforesaid questions, it must first be noticed that with two Division Bench judgments in *Julkas'* case and *Bindras'* case (supra), having authoritatively held that the University is neither a Central University, nor even a centrally funded institution, there would otherwise be absolutely no reason for a single Bench to consider the matter afresh and if at all it was necessary, the matter should have been referred to a larger Bench at the outset. However, what obviously weighed with different coordinate Benches, including this one, to hear these matters at length was the fact that in *Bindras'* case, as already repeatedly noticed, it was observed (in paragraph 22) that "If the Central Government accepts the Punjab University to be centrally funded, the scheme for

revision of age of superannuation may become applicable. Till such a decision is taken, the scheme cannot be held to have become applicable. The Panjab University will, thus, stand on the same footing as other State Universities".

Hence, it was contended at the outset by the counsel for the petitioners, as also at different stages thereafter, that with a task force/Inter-Ministerial Consultative Committee having been constituted at the initiative of the Prime Ministers' Office, to go into the question of funding of the University and thereafter, the funding pattern having completely changed, on the recommendation of the said Committee, to bring it at par with the funding pattern of Central Universities, by the Central Government, i.e. by the Ministry of Human Resource Development through the UGC, rather than through the Ministry of Home Affairs and the UT Chandigarh, as was being done earlier, and the quantum of funding by the Central Government having also increased to the extent of 90% of the maintenance grant, from 60%, (commensurately bringing down the Punjab Governments' contribution from 40% to 10%), the Central Government had actually accepted the Panjab University to have become a centrally funded institution.

This contention was found to be logical at that stage, in the *prima-facie* opinion of this Court.

This was especially so as it was a conscious decision taken by the Prime Ministers' Office to recommend that the pattern of funding be changed to bring it on par with that of Central Universities.

125. It had been also argued by learned counsel for the petitioners, that the stand of the Central Government that the University cannot be treated as a centrally funded institution, because the State of Punjab continued to fund at least a part of the maintenance grant, was not a decision based on any sound reasoning, because IITs, IIMs etc. were also funded by different sources, contrary to what was contained in the affidavit of the Joint Secretary, MHRD, dated 22.05.2015. They had also referred to the affidavit of the Director (U.II), MHRD, dated 10.05.2015, in which it was stated "That though the Punjab University is a centrally funded university but it is humbly submitted that State of Punjab is also a stakeholder and contributes in the total funds which are being utilized by the Punjab University".

Hence, with seemingly a doubt being there even in the mind of the Ministry of Human Resources and Development itself, as to whether the University was a centrally funded institution or not, the matter continued for further arguments, with the stay operating in favour of the petitioners.

Therefore, it seemed illogical that despite the University's status as

such (as a CFI), the Central Government was simply not implementing the higher age of superannuation, in all probability because of objections from the Punjab Government.

As such, with the Consultative Committee also having initially recommended that the University be treated as a CEI/CFI and the Attorney Generals' opinion having been sought thereupon, with the learned Attorney General opining that it could not be done without the judgment in *Julkas'* case being reviewed, this Court had formed an opinion that other than the Punjab Governments' objection, the only impediment in treating the University to be a CFI was the judgment in *Julkas'* case, even though that was qualified later in *Bindras'* judgment, to the effect that in case the Central Government accepted the University to be centrally funded, then the scheme may become applicable, which was not noticed by the Attorney General.

126. Of course, on consideration of the above facts, it is very obvious that at one point the Central Government had, in fact, held the opinion that the University could be treated to be a centrally funded institution or a central educational institution. However, undoubtedly, that decision was not formalised ever and it was considered necessary to first consult the Punjab Government in that regard.

Therefore, in the above background, arguments were addressed, to the effect that the University had actually become a Central University/Central Educational Institution/centrally funded institution and it was only because the Punjab Government was not agreeing to the proposal, that the Central Government had not accorded it that status.

Consequently, the questions formulated hereinabove, are being considered and answered in the following paragraphs.

127. Coming to the first question as to whether the University is a Central University or not.

That question has to be answered in the negative for three very basic reasons; firstly, it is created by a State Act, of 1947, and thereafter, even by virtue of the Punjab Re-organisation Act, 1966, it has been declared to be an inter-State body corporate or, in other words, an inter-State University, by Section 72(1) of that Act.

If it was the intention of the law makers to treat it as a Central University, it would have been declared as such in Section 72 itself and not as an inter-State body corporate. In the alternative, it could have been declared to be so even sometime later, by the Central Government, by virtue of the power conferred

upon it by Section 72(1) of the 1966 Act.

That not having been done, the only other reason even to consider that the Panjab University may have acquired the status of a Central University, is the fact that the inter-Ministrial consultative committee/task force constituted to go into the issue of a change in the funding pattern of the University, actually recommended that it be funded in a similar manner as Central Universities are funded. In the letter dated 14.11.2011 written by the Director in the MHRD, also it had been stated that the UGC be asked to project its fund requirements for the University, on the same norms as applicable to Central Universities. Thereafter, that funding pattern was adopted and the University is now funded in the same manner as Central Universities are.

Yet, simply because the funding pattern is the same as that of Central Universities, does not bestow the status of a Central University upon Panjab University, because for such status to be granted, it necessarily has to be declared to be so; both, in view of the fact that it is described as an inter-State body corporate in Section 72(1) of the 1966 Act and not a Central University; and after the enactment of the Central Universities Act, 2009, that status has to be specifically conferred on an institution. That has not been done in the case of the Panjab University.

Therefore, just because it is funded on the same pattern as Central Universities are funded, does not change the status of the University from an inter-State body corporate, to a Central University.

128. Mr. Sharma, the petitioner in CWP No.3730 of 2015 and the learned counsel appearing for the petitioners in other cases, may not be entirely incorrect in submitting that at one point the intention of the Central Government was to confer a similar status as Central Universities, upon the Panjab University, at the time the new pattern was recommended.

However, eventually, the recommendation specifically contained in paragraph 33 of the Consultative Committees' recommendation, is that though the University "exhibits a national character", "the uniqueness of the University may be accepted, guarded and its national character be recognised by granting a special status, while preserving the existing reputation, position and status of Government of Punjab". It nowhere flows from the above that there was an eventual intention to confer actual status of a Central University upon the Panjab University.

Though no reasons need be gone into for the above, it being a matter of policy, however reasons for that are not far to seek; inasmuch as, even in the recommendation of the consultative committee, the history of the Panjab

University has been traced since the inception of its predecessor in Lahore in the late 19th century. Thereafter, the new University having been established by the State of Punjab, post-partition, and having acquired an inter-State character upon the division of Punjab in 1966, obviously all point to its unique status as an inter-State body corporate, serving three States and a Union Territory, and after the withdrawal of the colleges situate in Haryana and Himachal Pradesh, from its affiliation, it continuing to serve a part of the State of Punjab and the Union Territory of Chandigarh.

Thus, with that history, obviously the State of Punjab is still an existent stakeholder in the University, with 159 colleges situate in that State still affiliated to the University. Hence, for practical, as also historical reasons, it is not surprising that the Central Government did not consider it appropriate to actually change the status of the University to that of a Central University.

Even presuming that at some stage the Central Government did consider the above, no such decision actually having been taken and, in fact, a decision having been consciously taken to continue with the existent special status of an inter-State University, with the State of Punjab as an important stakeholder, there is no reason for this Court to hold that it has acquired the status of a Central University.

The petitioners are perhaps right to an extent that the Committee having recommended that since the University “exhibits a national character,” such character should “be recognised by granting (it) a special status” and for that reason alone, the Government should have treated it similar to a Central University. However, that expectation by the petitioners overlooks the aspect that without a doubt, the State of Punjab is a stakeholder in the University and consequently, the Central Government rightly decided to take the State Governments' view on the issue and thereafter took its decision, as will be dealt with further ahead in this judgment. Thus, that decision cannot be faulted, other than the fact that it is a matter of policy which this Court would not interfere with, whcih issue would also be elaborated further ahead.

129. Therefore, Mr. Shashi Sharmas' contention that simply because the competent Government as per the Act of 1947, is now the Central Government and even the State legislature of Punjab, has no jurisdiction to legislate to make any amendment in the Panjab University Act 1947, and therefore the University must be declared to be a Central University, is also an argument which is not acceptable because though the first part of his contention is correct, to the effect that the State

legislature and the State Government of Punjab no longer have any jurisdiction to either amend the Act of 1947 or to take decisions in terms of that Act (respectively); however, that does not change the fact that Parliament and the Central Government, do have the jurisdiction over the University but have consciously taken a decision not to declare it to be a Central University. Hence, though the basis of Mr. Sharmas' argument is not innacurate, however, the argument itself is without any merit, as simply by virtue of a change of jurisdiction and control, the University does not, *ipso facto*, become a Central University.

130. In fact, it for this very reason that the other argument of Mr. Sharma on this aspect, also has to be rejected. The petitioner had argued that since an inter-State body corporate is not referred to either in the Concurrent List or in the State List in the 7th Schedule to the Constitution, then as per Article 248, the residuary power of legislation lies exclusively with Parliament. Even though I do not see the basis of that argument to be correct; inasmuch as, education, including Universities, is contained in Entry 25 of List III and therefore, with the State legislature and Government no longer having jurisdiction, such jurisdiction would vest in the Union even as per that entry, and not on account of its residuary powers under Article 248. This is especially so as coordination of higher education is contained in Entry 66 of List I. However, the net result still is that undoubtedly Parliament is now the only legislature that can legislate with respect to the Panjab University and the Central Government is only the competent Government to take executive decisions in terms of the Panjab University Act, 1947. Yet, as already said, that does not change the fact that the competent Government has taken a conscious decision not to do so, which is not seen to be an irrational or arbitrary decision in any manner.

In fact, that would apply not just to the issue whether the Panjab University is a Central University or not, but also regards the other two contentions raised, on the question of it being or not being a Central Educational Institution and a centrally funded institution. This, of course, is other than the reason, that the University has never been declared to be a Central University, either in the Punjab Re-organisation Act, 1966, nor subsequently even at the time of enactment of the Central Universities Act, 2009.

Consequently, the contention of the petitioners to that effect is rejected for the aforesaid reasons and Q.(i) is answered to the effect that Panjab University is not a Central University.

131. This is also apart from the fact that two division Benches, in *Bindras'* and *Julkas'* cases, have specifically held that it is not a Central University. Even

the observation in paragraph 22 of *Bindras'* case does not change that, because the observation of the Division Bench was that on a re-consideration of the issue of the age of superannuation becoming applicable to the University, may be possible, if the Central Government decided to consider the University to be centrally funded. That not having happened, there would be no question of reconsidering what was held by both Division Benches, to the effect that it is not a Central University.

132. Coming then as to whether the University can be declared to be a Central Educational Institution. Undoubtedly, this term has been inter- changeably used by the respondents, including the UGC, with the term 'centrally funded institution', at different points of time. However, the exact definition of the term is only found in the Central Educational Institutions (Reservation in Admission) Act, 2006, in Section 2(d) thereof, as already noticed earlier in this judgment.

“Section 2 (d) of the Act is again reproduced hereinunder, for the sake of convenience:-

“(d) “Central Educational Institution” means-

- (i) a University established or incorporated by or under a Central Act;
- (ii) an institution of national importance set up by an Act of Parliament;
- (iii) an institution, declared as a deemed University under Section 3 of the University Grants Commission Act, 1956 (3 of 1956), and maintained by or receiving aid from the Central Government;
- (iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause (ii), or a constitute unit of an institution referred to in clause (iii);
- (v) an educational institution set up by the Central Government under the Societies Registration Act, 1860 (21 of 1860;”

Obviously, the Panjab University cannot come within the ambit of sub-clauses (ii), (iii) and (v) above, it neither having been declared to be an institution of national importance, nor a deemed University, nor an institution set up under the Societies Registration Act.

The question therefore is, as was contended by the learned counsel for the petitioners, whether it is covered in the definition contained in clause (i) or

(iv) above, by virtue of it having been declared to be an inter-State body corporate under a Central Act, i.e. the Punjab Re-organisation Act, 1966.

That also need not detain us much further, in view of the fact that it has already been held by this Court hereinabove, as was held by the Division Benches earlier, that the University is not established under a Central Act in any case, (even after its status changed to an inter-State body by virtue of the Act of 1966), it having been established by the Panjab University Act, 1947. No question therefore, arises of its “re-incorporation” under a Central Act, i.e. the Act of 1966, for the purpose of Section 2 (d) (i) above, because the declaration of the University as an inter-State body corporate, by Section 72 (1) thereof, was only a consequence of the area of its operation extending over three States and a Union Territory (at that time), upon the division of the composite State of Punjab. Thus, just because the area of operation, even while remaining geographically the same at that time, came to be spread over three States and a Union Territory, instead of a single State, that would not amount to the University having been established or incorporated afresh under a Central Act. It continued to be established and incorporated under the Act of 1947 but necessarily had to be termed as an inter-State body corporate, so as to enable its operation to continue over the territory it already operated in. Simply put, there was no new establishment or incorporation of the University by the Act of 1966, only a re-designation of the nature of its incorporation.

Of course, as already observed earlier, had the law makers in 1966, or the Central Government by virtue of the powers conferred upon it under Section 72, declared the University to be a Central Educational Institution, even thereafter, obviously it would have become one.

133. Again, without a doubt, the opinion of the Attorney General referred to earlier and the minutes of the meeting taken by the Additional Secretary (Higher Education) in the MHRD, on 07.07.2010, as part of the consultative committee constituted, reveals that the Government did consider declaring the University as a Central Educational Institution (reference paragraph 3 of the minutes of the aforesaid meeting, as given in the file notings shown to this Court by the learned Assistant Solicitor General).

Yet, consideration of declaring the University as such, most definitely does not amount to it being actually having been declared as a Central Educational Institution. In fact thereafter, a file noting dated 02.09.2011, made by the Joint Secretary, shows that it was specifically observed that the University cannot be defined as such in terms of the 2006 Act and that though many State

Universities and colleges are also receiving substantial grant from the Central Government through the UGC, they are also not categorised as centrally funded institutions. Hence, it was further observed in the noting, that for the University to be declared to be a CEI, a revision in the instructions would need to be made, an amendment in the CEI Act would also need to be made and a review would need to be filed in *Julkas'* case.

A decision to that effect was never taken and to the contrary with the stand now taken by the Central Government before this Court, that it was not treating the University as a CEI, naturally, again this Court would not interfere in that decision of the Government either, it being wholly a matter within the domain of the competent executive authority, with no arbitrariness or irrationality seen in that decision. To the contrary, good reasoning was given even by the Consultative Committee, as noticed earlier, to retain the Universitys' unique status as an inter-State University (and not a Central institution).

134. The question of sub-clause (iv) of Section 2(d) of the Act of 2006 being applicable to the Panjab University again does not arise, because though it is an institution receiving aid and being very largely maintained by the Central Government, it is obviously not an institution affiliated to a University established or incorporated under a Central Act, or to an institution of national importance, or to a deemed University, it being an independent University itself.

135. Linked to this issue, of the University being a central educational institution, is the contention of the petitioners that since the Inter-Ministerial Consultative Committee/Task Force constituted by the MHRD, gave the University the status of a central educational institution, with representatives of Punjab and of the MHRD being on the committee, that itself constituted a pre-approval of the resolution passed by the Senate.

Factually having seen that no such decision was taken by the Committee, that the University be declared to be either a CEI or a Central University, simply suggestions made earlier or discussions held, considering such a declaration, did not by any means amount to a decision taken in that regard. Hence, whether or not the Punjab Government was represented on the Committee, makes no difference. In any case, as would be discussed ahead, there can be no estoppel on Government to change its decision or policy, unless some irreversible consequences have occurred prior to such a change of decision.

Thus, no matter what the 'conception' in the minds of the petitioners was, on the basis of the recommendations of the consultative committee constituted by the MHRD, or in view of the opinion given by the learned Attorney

General that a review application would need to be filed in *Julkas'* case before declaring the University to be a Central Educational Institution, the fact remains that no such decision was taken and to the contrary, the Consultative Committee also eventually recommended that its unique character be maintained, and the Central Government has given its decision to this Court to not declare the University as such.

Hence, there is no reason or ground for this Court to hold that the Panjab University is a Central Educational Institution. Q.(ii) is also, accordingly answered in the negative.

136. Next coming to the hotly argued issue of whether the University, by virtue of the change in the nature, quantum and channel of funding, has necessarily become at least a centrally funded institution.

The basis for this, as already observed many times earlier, starts with the letter dated 23.03.2007, which of course would not in any case have been applicable at that time (in 2007) to the Panjab University, in view of the fact that at that time, it was almost equally funded by both the Central Government and the Punjab Government, in the ratio of 60:40, which issue was before their Lordships in *Julkas'* case and the prayer of the petitioners, for an increased age of superannuation, was categorically rejected.

However, thereafter, as noticed by the Division Bench in *Bindras'* case, the issue of declaring the Panjab University as a centrally funded institution, was under consideration of the Central Government and as such, the Court had held that in that event taking place, the scheme may be applicable to the University.

Looking at the documents relied upon by the petitioners to contend that the University is now a centrally funded institution, those documents need to be considered in chronological order, starting with the circular dated 31.12.2008.

137. That is the first document relied upon by the petitioners after the letter dated 23.03.2007, issued by the MHRD to the Secretary, UGC, which, as a matter of fact is Appendix-I with the subsequently notified UGC Regulations, 2010.

This letter/circular is the basis of the scheme which was eventually notified as the Regulations of 2010. The subject head of this letter is as follows:-

“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 issue of raising the age of superannuation is contained in clause 8 (f) (i) of the said letter and as has already been discussed earlier, it refers to the age of superannuation for teachers in Central Educational Institutions having already been raised to 65 years, vide the letter dated 23.03.2007.

138. The core of the issue now therefore is, whether the University, (since it is not a central university or a central educational institution), is or is not a centrally funded institution, so as to make Clause 2.1.0 of the UGC Regulations 2010 *ipso facto* applicable to it.

At this point, before that issue is finally discussed, it needs to be considered by this Court, whether the contention of learned Additional Advocate General, Punjab, and other counsel for the respondents (other than the Punjab University), is correct or not, to the effect that the letter dated 23.03.2007, does not apply to centrally funded institutions but only to central educational institutions and Central Universities, as would appear from a reading of sub-clause (i) of sub-clause (f) of clause 8.

Ms. Divya Sharma, learned counsel for the petitioners, on the other hand, had pointed out that if this interpretation is to be accepted and only those institutions as are mentioned in sub-clause (i), are to be given the benefit of the raised age of superannuation, then clause 2.1.0 of the 2010 Regulations would itself becomes redundant, which in fact is the operative provision by which the age of superannuation is enhanced “with respect to other institutions maintained and/or funded by the UGC”, as is very clearly stated in the said clause itself.

In this regard at least, learned counsel for the petitioners is correct, because what clause 2.1.0 stipulates, is that the revised pay scales and other service conditions, including the age of superannuation “in Central Universities and other institutions maintained and/or funded by the University Grants Commission”, shall be strictly in accordance with the decision of the Central Government, as contained in Appendix-I.

Clause 8 (f) (i) contained in Appendix-I, further reads to say that “the age of superannuation for teachers in central educational institutions has already been enhanced to 65 years, vide the Department of Higher Education letter” dated 23.03.2007, for those involved in class room teaching. The letter dated 23.03.2007, in clause 2 thereof again very clearly states that “The matter has 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 this Ministry”, and that the age of superannuation of all persons who were holding teaching positions as on 15.03.2007, on regular employment against sanctioned

posts, “in any of the centrally funded higher and technical education (*sic*) under this Ministry shall be increased from present 62 years to 65 years”. (Obviously, the word “institutions” has been missed out in the aforesaid line, in the letter).

Hence, though when clause 8 (f) (i) of the letter dated 31.12.2008, i.e. of Appendix-I of the Regulations of 2010, is seen in isolation, it refers, in itself, only to central educational institutions. However, it also refers to the letter dated 23.03.2007, which speaks of centrally funded institutions. Clause 2.1.0 of the 2010 Regulations refers to Central Universities and other institutions maintained and/or funded by the UGC. Therefore, if the clause is to be correctly interpreted, it is obvious that enhancement of the age of superannuation to 65 years, is applicable to Central Universities, Central Educational Institutions, as also centrally funded institutions.

Therefore, the contention of learned counsel for the respondents, to the effect that a literal reading of Appendix-I shows that centrally funded institutions are not included in the ambit of the raised age of superannuation, is wholly incorrect. In any case, it has been admitted by learned ASG, on query, that those institutions as are accepted to be centrally funded institutions by the Central Government, have been given the benefit of the raised age of superannuation.

The question therefore again boils down to whether the decision of the Government to not declare the Panjab University as such an institution, is an arbitrary or a rational decision, which would be discussed while further dealing with the other documents relied upon by the counsel for the petitioners.

139. The letter dated 11.05.2010 addressed by the MHRD to the Education Secretaries of all State Governments, has also been relied upon, wherein, in clause 8, a condition was put by the Central Government that release of central assistance to the State Governments, upon implementation of revised pay scales to teachers, on the basis of the recommendations of the 6th Pay Commission, would be dependent upon the entire scheme, including the raised age of superannuation, being implemented by the State Government.

The reliance upon the said letter is also wholly misplaced, in view of the fact that subsequently, as already discussed, the UGC as also the Central Government, vide a letter dated 14.08.2012, de-linked the issue of an increased age of superannuation from the rest of the scheme as contained in the Regulations of 2010 (and prior to that, as contained in the letter dated 31.12.2008), in respect of State Universities and institutions. Hence, the Panjab University being an inter-State University, the choice was with the Central Government to continue with it in the same capacity or to declare it to be a central institution and with the decision

being the former, the de-linking of the age of superannuation would also very much apply in the case of this University, as per the decision of the competent Government.

140. The next document relied upon by the petitioners, is the letter dated 08.11.2011, from the Under Secretary of the MHRD to the Administrators of the Union Territories of Andaman & Nicobar Islands and Daman & Diu, directing them to pay salary allowances for the intervening period that teachers remained out of service, before their re-induction into service, pursuant to raising the age of superannuation to 65 years.

The mileage that the petitioners are trying to draw from this letter, is that the age of superannuation had been enhanced for teachers in Government colleges in at least two Union Territories and as such, the Union Territory of Chandigarh should not be treated any differently, including the teachers on the University campus in the Union Territory, and those of the private, Government-aided colleges in the Union Territory.

No doubt and obviously, the Union Territories of the Andaman & Nicobar Islands and Daman & Diu, are also territories administered by the Union, just as Chandigarh is. However, in the opinion of this Court, there is no legal compulsion upon the Union to uniformly apply laws to Union Territories located in different parts of the country, with no heed to local conditions and practices in different areas. Naturally, what may be a good policy in one part of the country, need not necessarily be a good policy in another part of the country, depending on the local conditions and surrounding circumstances.

The Central Government has already notified rules under the proviso to Article 309, i.e. the “Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992”, by which it has adopted the rules and instructions of the Punjab Government, as regards the conditions of service of employees of the Union Territory, including lecturers of Government colleges. Without a doubt, none of the petitioners before this Court is employed in a Government College, those petitions already having already been transferred to the Central Administrative Tribunal on a question of jurisdiction. Even so, in the opinion of this Court, neither Government employees in the Union Territory Chandigarh, nor teachers of non-Government colleges located in the Union Territory, can claim parity with employees of different Union Territories in different parts of the country, or with other employees of the Central Government.

The Union Territory Administration of Chandigarh having taken a conscious decision 24 years ago, to implement for its employees the service

conditions that are applicable to similar employees in the neighbouring State of Punjab, of which Chandigarh is the capital, (alongwith being the capital for the State of Haryana), I see no irrationality in that decision, it being in consonance with service conditions of employees a State of which the Union Territory was actually once a part and more than that, to keep up parity of service conditions of Government employees in the region.

That is not to say that the Union Territory Administration (Union Government) could not have taken a different decision to have its own service conditions for its employees, but a conscious decision having been taken, to adopt the conditions applicable to the employees of a geographically contiguous State, this Court finds no reason to interfere in that decision, it again being wholly a matter of policy, which is not seen to be arbitrary in any manner, and with the Rules of 1992 having been duly notified by the Central Government itself, (by the Ministry of Home Affairs). As already seen from paragraph 70 of *Jagdish Prasad Sharmas'* judgment, it was held by their Lordships that though Regulations framed by the UGC relate to Entry 66 List I, it still does not empower the Commission to alter any of the terms and conditions of enactments made by States under Article 309 of the Constitution. Of course, Chandigarh is not a State but a Union Territory, but where different rules, laying down service conditions of employees of different Union Territories, have been promulgated under the proviso to Article 309, it is obvious that parity of service conditions between employees of different Union Territories, is also not at all necessary. If that is so, even employees of aided colleges cannot claim parity with Government employees of different Union Territories. Consequently, no benefit is available to the petitioners from the letter dated 08.11.2011.

141. The next document referred to on behalf of the petitioners, is an order passed by the Director-cum-Appellate Authority in the MHRD, on an appeal filed by Shri Shashi Sharma (petitioner in person before this Court), under the Right to Information Act, 2005, whereby essentially, Shri Sharma was seeking information in respect of the proposed amendment to Regulation 17.3 of the University Regulations.

By the said order, he was informed that “ the appeal is now admitted” and that there is no criteria/guidelines for declaring an institution/University as a centrally funded institution and further, that the list of central institutions falling within the purview of the MHRD, is available on its website.

The order further stated that the proposed amendment sent by the Registrar of the University on 15.02.2011 to the Ministry, had been sent to the UGC for comments, from whom a response was still awaited.

142. The contention of the petitioner before this Court, on this, was that the Government itself was not clear on what a centrally funded institution is and as such, it would for this Court to determine, in the circumstances of the changed funding pattern to the University, by the Central Government, as to whether it is a centrally funded institution or not.

Having considered the above, as would be discussed further also, no doubt, the changed funding pattern does suggest that the Panjab University is a centrally funded institution, as contended by the petitioners, with 90% funds to the University coming from the Central Government and the pattern of such funding also being the same as in the case of Central Universities. However, this simple premise ignores the fact that other than the 10% funding by the Punjab Government, factually 159 colleges situated in the State of Punjab are affiliated to the Panjab University and therefore, the stand of the Central Government before this Court, to the effect that the State is an important stakeholder in the University, is a wholly rational stand. As such, in its wisdom, the Central Government considered it necessary to consult the Punjab Government and thereafter take its own decision.

Hence, even if by the aforesaid order dated 03.11.2011, the petitioners had been informed that there was no criteria/guidelines by which an institution/a University is to be declared to be a centrally funded institution, that cannot be interpreted by the petitioners in a simplistic manner to say that simply because of the pattern and quantum of funding, the status of the University is to be declared to be such an institution.

Consequently, no benefit can be derived by the petitioners from the fact that there is no specific criteria or guidelines to declare a University as a centrally funded institution and indeed, the issue would have to be looked at on a case to case basis, with the present case not being one, in view of the necessary interest of the Punjab Government being involved, where the University can *per se* be declared to be a centrally funded institution, simply on the basis of the funding pattern.

143. Great reliance has also been placed by the petitioners on the letter/circular of the MHRD dated 14.11.2011, by which the Director (U.II) Department of Higher Education in the Ministry, requested the Director (Finance) in the same Department, to implement the changed funding pattern as recommended by the consultative committee constituted by the MHRD, at the initiative of the Prime Ministers' Office. It was on the basis of this letter that the new funding pattern was given effect to, making it similar to the funding pattern of

Central Universities. However, as already discussed, the recommendation for changing the funding pattern to make it similar to that of the Central Universities, does not amount to a decision to change the character of the University, to that of a central educational institution or a centrally funded institution, especially in terms of what is stated towards the end of the recommendations made by the committee, to the effect that the character of the University should be retained as it is. This issue has already been discussed earlier in this judgment and as such no further elaboration is required again, other than to repeat that the decision was neither irrational nor arbitrary.

144. The next document relied upon by the petitioners is a D.O. letter dated 26.04.2012, again addressed by an officer in the MHRD, essentially with regard to the appointment of the Vice-Chancellor of the Panjab University. In that letter, it was stated that the UGC Act having been enacted by Parliament, the Act by which the University was created in 1947, would have to yield to the former and therefore, in terms of the UGC Regulations of 2010, (promulgated under Section 26 of the UGC Act), all Universities and State Governments shall modify or amend their respective statutes so as to bring them in consonance with the UGC Regulations.

The letter refers to Entries 63 to 66 of List-I of the 7th Schedule, as also to Entry 32 of List-II and Entry 25 of List-III, finally stating that Entry 66 would prevail over the entries in the other lists.

Whereas there can be no quarrel at all with that proposition, in view of Article 254, however, in the present context, two things need to be very clearly remembered. Firstly, the UGC Regulations of 2010 themselves make a distinction between Central Universities/centrally funded institutions/central educational institutions on the one hand, and State Universities and institutions on the other. Whereas the former are governed by its clause 2.1.0 of the Regulations, the latter are governed by clause 2.3.1 thereof. The latter clause leaves the option to adopt the revised pay scales and age of superannuation, as given in clause 2.1.0, to the State Governments.

Therefore, *per se*, as regards the question of implementation of the scheme contained in the UGC Regulations, including the age of superannuation, with the Regulations themselves having categorised Central and State institutions separately, the supremacy of the UGC Regulations, over State enactments, does not create any right in the petitioners on that issue, unless the University is eventually held to be a centrally funded institution.

Hence, no mileage can be derived by the petitioners from that letter either, in relation to the present issue.

145. The last important document relied upon by the petitioners, is the letter dated 26.12.2011, addressed by the Registrar of the University to the Director (U.II), in the Department of Higher Education, MHRD. Alongwith this letter, is the resolution of the Senate of the University dated 20.12.2011, approving the amendment in Section 10 (2) of the Panjab University Act (pertaining to the tenure of the Vice-Chancellor), as also in Regulation 17.3 contained in Chapter-VI (A) and Regulation 7 contained in Chapter-VIII (E) of the Panjab University Calendar, Volume-I (2007). These two Regulations contained in the University Calendar, are the ones by which the age of superannuation was proposed to be raised, by amendment, to 65 years from 60 years.

The contention of the petitioners is that the resolution of the Senate must necessarily be approved by the Central Government as, by virtue of having approved the new pattern of funding, on the recommendation of the Consultative Committee, and discussions having been held for treating the University on par with Central Universities, it amounted to a pre-approval of the resolution.

Without a doubt, the Senate, on the recommendation of the University Syndicate, approved the amendment proposed. Again without a doubt, this was done after (but not in terms of) the letter of the Director (U.II) MHRD, addressed to the Vice-Chancellor of the University, on 21.10.2011.

In that letter (of 21.10.2011), it was very clearly stated that neither in terms of *Julkas'* case, nor in terms of the CEI (Reservation in Admission) Act, 2006, has the Panjab University been declared to be a central educational institution. It is also stated in the letter that the University is not a Central or a State University but an inter-State body corporate in terms of the Panjab Re-organisation Act. Hence, the instructions contained in the letter dated 23.03.2007, would not become *ipso facto* applicable to the University.

The letter thereafter states in effect, that the issue of a decision to be taken on the reservation policy in the University, as also on the question of raising the age of superannuation, is first in the domain of the University Senate and thereafter, in the domain of the the Central Government, for approval on the decision taken by the Senate.

The following lines of that letter would need to be reproduced, to convey the intention of the MHRD, to the Vice-Chancellor:-

“In case, the senate decides to apply extent of reservation followed in central Educational Institutions, the basis of such a decision should

be properly analyzed duly keeping in mind the provisions of Punjab Reorganization Act, CEI Act and this Department's instructions dated 23rd March 2007. It would also be appropriate to obtain concurrence of Punjab Government since Punjab remains the successor state as per the provisions of Punjab Reorganisation Act,

5. It is, therefore, requested that an informed decision may be taken by the University regarding the above mentioned points. The Central Government is not in a position to give any specific directions/clarifications in this regard.”

146. A perusal of the aforesaid letter of the Director (U.II) MHRD, shows that in no manner had the Central Government granted any prior approval to the resolution dated 20.12.2011, passed by the University Senate. It is very clearly stated in the letter that the University is not a central educational institution, nor a Central University and that “it would be appropriate to obtain concurrence of the Punjab Government, since Punjab remains the successor State as per the provisions of Panjab Re-organisation Act”.

Therefore, it was further opined in the letter, that the University must take an informed decision keeping the above in mind and the Central Government was not in a position to give any specific directions/clarifications in that regard.

As to how, after this, the petitioners consider any action of the Government to be a pre-approval of the Senates' resolution, is wholly and completely misunderstood. Simply, because a Task Force/Committee had been constituted to look into the issue of proper and constant funding to the University, which resulted in a funding pattern similar to that of Central Universities, by no means makes that decision (on the pattern of funding), to be either a pre-approval of the status of the University as a centrally funded institution, or on the specific issue of amending the University regulations to raise the age of superannuation, or to consider it to be a Central institution, even though the Committee did at one stage contemplate both issues.

The Director in his aforesaid letter, about two months prior to the resolution passed by the Senate, had stated that the Central Government is not giving any clarification with regard to the action to be taken by the Senate, but he specifically brought to the notice of the University that it was neither a central institution nor a Central University, but an inter-State body and as such, the letter dated 23.03.2007 did not apply to it and that the State Government was also a successor State (which had a necessary interest in the University).

It was thus polite advice to the University, pointing out that it was neither a central educational institution nor a centrally funded institution, so as to bring it within the ambit of either the Act of 2006, or the policy contained in the letter dated 23.03.2007.

In fact, the action of the MHRD, leaving the University free to take its own decision, in the light of the aforesaid advice, needs to be appreciated, inasmuch as, the freedom of the Syndicate and the Senate of the University to take their own independent decision, has been recognised by the MHRD. Thus, despite making its own opinion very clear, the Central Government still left it wholly open to the University, as it should have, to take its own decision, as an independent institution.

147. However, leaving the University free to take its own decision, did not in any manner bind down the Central Government to approve that decision. In fact, pointing out that in terms of the Re-organisation Act and the CEI Act of 2006, the University should not assume that the raised age of superannuation would apply to it, and further, that the approval of the Punjab Government was considered necessary, it being a successor State, should have been indication enough to the University that the Central Government was not likely to approve the amendments in the Regulations, without the concurrence of the State of Punjab.

Hence, the aforesaid letter of the Director (U.II) MHRD, categorically points contrary to any pre-approval to the action/decision that the Senate may take, with regard to either the issue of reservation (not concerned in the present petitions), or on the issue of raising the age of superannuation of teachers.

That is not to say that the Syndicate and the Senate of the University do not have the power to pass such a resolution, as they obviously have the independence to do so. However, it definitely does not mean that the independence of the Syndicate and the Senate overrides the final decision to be taken, as per Section 31 of the Panjab University Act, 1947, by the Central Government, for an amendment in the University Regulations. Just as the Syndicate and Senate are free to take their decision, the Central Government is obviously equally free to approve or not approve the decision, provided of course, that the such approval/non-approval, is not arbitrary or irrational.

148. Thus, this Court having found that there was no pre-approval by the Central Government of the amendments to be made in the University Regulations, so as to raise the age of superannuation, nor does anything flow from the documents relied on by the petitioners, to suggest that a decision in that regard was

taken, or that it *per se* has become a central institution, the arguments of learned counsel need to be considered, as are not covered by the aforesaid finding, to come to a final conclusion as to whether, because of the changed pattern of funding and the hugely increased quantum of funding by the Central Government, the University, *per se* has become at least a centrally funded institution, though not a Central University or a Central Educational Institution.

149. Before examining that question, it is necessary to refer to the issue raised by Mr. Anupam Gupta, learned Senior Counsel appearing for the University, to the effect that the Constitution itself, in terms of Entries 63 to 66, especially Entry 66, of List-I contained in the 7th Schedule, having given so much importance, and rightly so, to higher education, the Central Government ought to have taken “a more informed decision”.

This issue has to be examined also keeping in mind that without a doubt, in *Frank Anthonys'* case (supra), their Lordships held that conditions of service of teachers is an integral part of the education system and improved service conditions obviously result in better talent being attracted to the profession and better imparting of education, by educationists. (In fact, that is what is contained in the paragraph reproduced from that judgment, earlier herein).

Whereas there can be obviously no doubt on the above, however, would that, in the present context, entitle this Court to issue a writ of mandamus to the respondents to approve the amendments proposed by the University Senate, so as to raise the age of superannuation of teachers?

In the opinion of this Court, such a writ of mandamus cannot be issued, it being wholly a matter in the realm of a policy decision, within the domain of the executive. It is too well settled that the correctness of a policy decision will not be gone into by this Court, unless it can be shown to be wholly and completely arbitrary, or specifically violative of any Constitutional or statutory provision. If any citation is needed on the above settled proposition of law, the judgment of the Supreme Court in **BALCO Employees' Union (Regd.) v. Union of India** (2002) 2 SCC 333, can be referred to, wherein it is held as follows:-

“92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about

change cannot *per se* be interfered with by the court.”

(SCC Citation)

Though the above is also in the context of a change of policy with a change of Government, however, it does mean that even otherwise it is not the prerogative of the executive (Government), to frame its own policies.

Similarly, in Villianur Iyarkkai Padukappu Maiyam v. Union of India (2009) 7 SCC 561, it was held that:-

“169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.”

(SCC Citation)

Even in *Bharat Kumars'* case (supra), in the context of the same kind of controversy, the hon'ble Supreme Court held that the issue of raising the age of superannuation is wholly a matter of policy, falling within the domain of the executive. Therefore, no further elaboration is needed by this Court on that issue.

The ratio of that judgment and all judgments on that issue, very much hold good even today.

150. Even so, this Court is to examine whether the decision of the Government, is arbitrary or not.

In my opinion that argument of the petitioners is also without merit and cannot be accepted. This is for the reason that firstly, even though the Central Government has implemented the decision qua Central Universities and other central educational institutions/centrally funded institutions, it does not necessarily have to extend the same policy to the Panjab University, it being an inter-State University. No doubt, the Central Government would have been within its jurisdiction to implement the decision qua this University also, that Government being the competent Government to do so. Simply because the Government chose not to exercise its discretion in one way and exercise it in another, keeping in view local factors, i.e. the views of the Punjab Government as a participant State, does not mean that the decision of the Central Government was either arbitrary or not an independent decision, as suggested by all learned counsel for the petitioners and learned Senior Counsel appearing for the University.

This Court can see no arbitrariness or lack of independence by the Central Government, in choosing to agree with another stakeholder in the

University, which is also a State in which 159 colleges affiliated to the University are situated, and which remains a successor State for the University, even in terms of Section 72 of the Act of 1966.

The Punjab Governments' reasoning, as submitted to this Court by the learned Additional Advocate General, was that such a policy decision to raise the age of superannuation, could have a cascading effect on other colleges in the State of Punjab. Obviously, the Punjab Government would be within its rights to express its opinion to the Central Government, either due to the financial implication that such an effect might have on the State, or for the reason that raising the age of superannuation is against the policy of the State Government for any other reason such as providing more job opportunities to unemployed qualified youth.

Of course, the Central Government being the competent Government, could easily have ignored the advice of the Punjab Government, especially as 90% of the funding of the University is now being contributed by the former Government. However, in its wisdom and sagacity, the Central Government considered it appropriate to consult the other stakeholder in the University, no matter how small such stakeholders' funding or financial contribution was. The competent Government then chose to agree with the decision of the State Government, rather than impose its own decision, even being the major fund contributor.

Actually, even the reasoning behind a policy decision, unless shown to be wholly arbitrary or violative of any statutory provision, would not be gone into by this Court. However, with the Central Government having consulted a State Government which was a partner in the University, no matter how small financially, and having agreed to go by the decision of that partner, is a wholly reasoned decision of the competent Government.

It needs to be further elaborated that simply because the Central Government chose to agree with the Punjab Government, does not make the decision any less an independent decision, because the choice eventually to go with the Government of Punjab's views, was with the Central Government and if it chose to agree with those views, it would not amount to a surrender of its own powers to take a decision, because it could also have very well chosen not to agree with the Punjab Government, as already said.

151. Mr. Anupam Guptas' argument, that with the importance given to higher education in the Constitution, the recommendations of the UGC, even with regard to the conditions of service of teachers of higher educational institutions,

need to be and are to be accepted, may not *per se* be incorrect; especially as the Central Government has approved it as regards its own Universities and institutions. However, it again cannot be lost sight of, that the UGC Regulations themselves make a distinction between the Central Institutions and State institutions, leaving the State Governments free to either adopt or not adopt the scheme, obviously keeping in view the fact that financial implications would be falling on those Governments, and equally importantly, their own policies with regard to recruitment of youth etc. may be different to that of the Central Government. It is very obvious that that was the reason why the condition of raising of the age of superannuation was de-linked by the UGC itself, from the rest of the scheme of revised pay scales etc., in the case of State Universities and institutions.

Thus, in a federal structure, local policies may necessarily be at variance with a 'central policy', and if the Union Government recognises the need for such variance, no fault can be found with that.

If, of course, even State Universities had been given parity with Central institutions, so as to make all aspects of the Regulations binding on the State Universities and only in the case of the Panjab University the Central Government had taken a different decision, then some arbitrariness may have been seen by this Court in that decision. However, because in the case of an inter-State University, the Central Government decided to go with the decision of the State Government, that decision cannot be seen to be arbitrary.

The ideal situation may have been as Mr. Gupta said, that all conditions of service that the Central Government made applicable to its own institutions, should also be extended to all State level higher educational institutions, including especially an inter-State University, so as to ensure complete parity and coordination between institutions of higher learning, across the country. Yet, again, whether one policy is better or the other, is not in the domain of the Court to decide, but wholly in the domain of the executive. In its wisdom, keeping in view all factors, once the Central Government approved the UGC Regulations 2010, recognizing that Central Universities and State Universities and institutions fell in two separate categories, this Court would not interfere in that matter, again not finding it to be either an arbitrary or irrational decision, despite the fact that an ideal situation may be different.

Thus, though undoubtedly coordination of standards of higher education in Universities, is a Union subject contained in Entry 66 of List I, the Union itself took a policy decision that Central and State Universities be treated differently in some respects and the inter-State University be also not made subject

to all conditions that apply to Central Universities.

For that reason, even the suggestion of learned Senior Counsel for the University, as also counsel for the petitioners, that the matter be referred again to the Central Government for a final and “more informed decision”, is not accepted by this Court, that Government already having taken a well thought out decision, including having considered the recommendations of the consultative committee formed by the MHRD. Of course, if at any point that decision is changed by the competent Government, that too would be within its competence to do so.

152. Consequently, it is held that the Panjab University has not, simply by virtue of the changed funding pattern, and the increased quantum of Central funding, become a centrally funded institution, and as such, Clause 2.1.0 of the UGC Regulations 2010, is not applicable to it. Since it is an inter-State University, then even with the Central Government being the competent Government as per Section 2 (b) of the Panjab University Act 1947, it would still be governed by clause 2.3.1 of the said Regulations, unless the said Government, by a conscious decision, declares it to be a central institution. For that reason, that it is still an inter-State University, no fault can be found with even the UGCs' listing of the Panjab University in the list of State Universities, rather than in the list of Central Universities.

Questions (iii) to (v) are also answered in the negative, having been dealt with collectively, though intermittently, in the foregoing paragraphs.

153. Finally, coming to the issue of whether the colleges managed by private bodies, that are getting 95% grant-in-aid from the Chandigarh Administration, necessarily have to be held to be centrally funded institutions, as contended by the learned counsel appearing for the petitioners who are teaching in such colleges.

The 'literal logic' given by the learned counsel is not incorrect, to the extent that the funding of these colleges coming to the extent of 95% from the exchequer of the Chandigarh Administration, which in turn is funded wholly by the Union of India, the colleges on that score alone, are to be declared centrally funded institution.

However, that 'literal logic' does not hold good in the present context, firstly again for the same very reason, that to raise or not to raise the age of superannuation of a particular category or class of employees, or in a particular category of institutions, is wholly a matter of policy, in the employers' domain.

154. The reasoning of the Central Government to go with the decision of

the Punjab Government even in respect of private colleges situated in the Union Territory is otherwise also not far to seek, inasmuch as, if the Punjab Government is not agreeing to raise the age of superannuation of teachers in private colleges situated within the territory of Punjab, with such colleges being given 95% grant-in-aid by the Punjab Government, the decision may simply even be for the sake of maintaining parity of service conditions, of teachers teaching in different colleges in the Union Territory and in Punjab, as are affiliated to the University.

The right of State Governments to not accept any part of the UGC Regulations, as regards State Universities, in view of even the financial implications involved, has already been upheld by the Supreme Court in *Bharat Kumars'* and *Jagdish Prasad Sharmas'* cases (supra). Hence, the decision of the Panjab Government not to raise the age of superannuation of teachers in its own colleges, even though affiliated to Panjab University, cannot be faulted, especially when the competent Government in the case of the University, i.e. the Central Government, has decided to agree with the State Government.

In fact, that reasoning alone, of maintaining parity between all institutions affiliated to the Panjab University, would be a sufficiently good reason for the Central Government to not agree to raise the age of superannuation of teachers teaching in privately managed Government aided colleges of the Union Territory and even for teachers of the Panjab University teaching departments, any other given reasons apart.

Hence, for the aforesaid reasons, even the teachers of the private Government aided colleges situate in the Union Territory, Chandigarh, cannot claim an indefeasible right to be declared to be centrally funded institutions, to which clause 2.1.0 of the UGC Regulations of 2010 would apply, *ipso-facto*.

Therefore, that argument on behalf of these colleges is also not accepted by this Court and the last question (no.vi) is also answered against the petitioners.

155. With all six questions posed in para 124 of this judgment having been answered in the negative, against the stand taken by the petitioners, some related arguments raised by learned counsel on both sides, still need to be looked at.

156. The contention of Mr. Shashi Sharma, petitioner in person, on the location of the University, also does not hold good, because even though the University itself is situated within the Union Territory of Chandigarh, as are 26 colleges affiliated to it, however, simply because of that, the 159 colleges situated in the State of Punjab, which are also affiliated to the same University, can not be

treated differently, unless a conscious and specific decision is taken in that regard by the competent Government, which again is wholly in the domain of policy and the petitioners cannot expect a writ of mandamus from this Court to be issued to Government, to promulgate a particular kind of policy, nor to strike down a particular policy which is otherwise not unreasonable or violative of any statutory or constitutional provision.

157. Coming to the contention of Mr. Jindal, relying upon *Malla Reddys'* case (supra), that an admission made in categorical terms in the pleadings, cannot be withdrawn. This contention of Mr. Jindal is in the context of the admission in the affidavit of the Union dated 10.05.2015, that the University is a centrally funded institution.

Firstly, as seen, even that admission in the said affidavit is clarified in the affidavit to the effect that for the purpose of the implementation of the UGC Regulations, specifically the age of superannuation, the University is not being treated as a centrally funded institution. Hence, the tenor of the affidavit is to state that as a matter of policy, the Central Government is not implementing Clause 2.1.0 of the 2010 Regulations, qua the University.

Secondly, that one line in the affidavit of the Director, even though it did create a confusion leading to the interim orders continuing for a long time in favour of the petitioners, cannot be taken as a 'substantive admission', in view of the fact that both before and after that affidavit, it has been the categorical stand of the Union, that the University is not being treated as a centrally funded institution for the purpose of the said UGC Regulations.

Hence, the argument is misplaced.

158. Mr. Jindals' contention that because the State of Punjab has also established the Rajiv Gandhi National University of Law, by an Act of the State legislature, wherein the age of superannuation of its teachers has been fixed at 65 years, also does not help the petitioners, because it is very much within the competence and jurisdiction of the State to adopt a particular policy for a particular institution, especially a professional institution, but not make the same policy applicable to the majority of the institutions, for any number of the reasons, including, as already said, that the Government wishes to infuse new blood in the teaching profession, or to provide job opportunities to young qualified persons, etc., as has been stated even in the reply of the State, in CWP No.11988 of 2014. Hence, the action of the Punjab Government in recommending to the Central Government, to retain the age of superannuation at 60 years for teachers of the Panjab University and its colleges, and the Central Government accepting such

recommendation by a conscious decision, cannot be found fault with, on the ground of discrimination either.

159. Mr. Salil Sagars' contention, that the plain meaning of the words contained in clause 2.1.0 must be given effect to, without any additions or subtractions, is again a misplaced argument in the present context, because the intention behind the policy needs to be gone into, especially when the policy making bodies themselves, i.e. the Central Government and the UGC, have categorically stated that clause 2.10 is not to apply to the Panjab University. Hence, that contention is also rejected, for the same reason, that the University, having 159 colleges located in the State of Punjab affiliated to it, with the Punjab Government providing most of them 95% grant-in-aid, cannot be declared to be a centrally funded institution, even with 90% central funding, unless the competent Government takes a different decision.

160. Coming next to Mr. Atma Rams' argument that the 2010 Regulations, in as far as they relate to the conditions of service of teachers, are beyond the power delegated to the Commission under Section 26 of the UGC Act, 1956. Though, on the face of it, that argument does not seem to be faulty; however, it has been authoritatively held by the Supreme Court in *Kalyani Mathivanans'* case (supra), that the UGC Regulations 2010, having been passed by both houses of Parliament, has "binding effect on the universities to which it applies".

It was also held in that case that the said Regulations are partly mandatory and partly directory and that as regards the State Universities, they are not mandatory.

Hence, this Court would have nothing further to say on that issue, (of a part of the Regulations being beyond the power delegated under Section 26, to the Commission).

Yet, even if the matter is looked at from a different angle, it is seen that the said Regulations were promulgated in exercise of the powers conferred under Section 26 (1) (e) and (g) of the UGC Act 1956 and further, in pursuance of the instructions of the MHRD dated 23.10.2008, read with the instructions/circular of the Finance Ministry, dated 30.08.2008. (Reference, the Regulations published in the Gazette of India, dated 18.09.2010).

Therefore, if any part of the Regulations were to be seen to be beyond the power delegated to the Commission, under Section 26 of the UGC Act, then such part of the Regulations would fall within the ambit of Article 73 of the Constitution, by which the Union Executive is empowered to promulgate a policy and take decisions, in matters which fall within the domain of the law making

power of Parliament. Thus, education in any case being contained in Entry 25 of List III and coordination of standards for higher education, being within the exclusive domain of the Union, as per Entry 66 of List I to the 7th Schedule, no part of the Regulations can be held to be beyond the competence of the Central Government.

Yet, even holding as above, it does not favour the petitioners in any manner, with clause 2.1.0 of the said Regulations already having been held by this Court to be inapplicable to the Panjab University, it not being either a central University or a central institution.

161. Even while disagreeing with the petitioners, another aspect needs to be dealt with, in which the stand of the Union Territory, Chandigarh, has to be disagreed with, though again that would make no difference with regard to the main issue as has been dealt with by this Court.

That aspect is the contention of the learned counsel for the U.T. Chandigarh, that the Union Territory is a successor State and as such, in its own right it can refuse to treat its private aided colleges, to be centrally funded institutions. Even though this Court has already held that such colleges cannot be declared to be centrally funded institutions, however, the stand of the learned UT counsel that the UT is a successor State in terms of Section 72 of the Punjab Re-organisation Act has to be rejected, in view of the fact that firstly, even vide Section 2(m) of the Act of 1966, as pointed out by Mr. Gupta, learned Senior Counsel for the University, a successor State means the States of Punjab, Haryana and “includes also the Union in relation to the Union Territory of Chandigarh”. Thus, even the Act of 1966 actually recognises only the Union of India as a successor State to the undivided State of Punjab, the territory of Chandigarh, being a territory of the Union itself.

In this regard, Mr. Gupta's reliance upon the judgment in *New Delhi Municipal Corporations'* case settles that issue, where it was authoritatively held that “There is no division of legislative powers between the Union and the Union Territories” and that Parliament is the only law making body for Union Territories. It was also held that there is no such thing as List I, List II or List III, as regards Union Territories. Obviously what is meant thereby is that any action of the Union Territory Administration is only an extension and a part of an action taken by the Union of India itself, i.e. the Central Government. Of course, any delegation of powers to the Administrator of the Union Territory, by the Union of India, would again only be because the Administrator (in his capacity as such Administrator), is a functionary of the Union itself.

162. In conclusion, having considered all aspects and issues raised by the counsel for the petitioners, this Court finds that eventually the question of raising the age of superannuation, being wholly a matter of executive policy and a decision having been taken by the competent Government not to raise the age, and that decision having been found to be not arbitrary but wholly reasonable and rational, these petitions are held to be without merit.

The 'window' given by the Division Bench in paragraph 22 of *Bindras'* case, is also not available to the petitioners, because the Central Government has not changed its decision in that regard and this Court has again found no irrationality in that decision.

163. Consequently, finding no merit in these writ petitions, they are dismissed and all interim orders passed in different petitions herein, allowing the petitioners to continue in service beyond the age of 60 years, are hereby immediately vacated.

The contentions of the petitioners, that they are entitled to superannuate from service at the age of 65 years instead of 60 years, having been found eventually to be without merit, they will be deemed to have retired at the age of 60 years and pensionary benefits and service benefits would be paid to them accordingly.

164. As noticed earlier, when the petitioner in CWP No.11988 of 2014 was allowed to continue in service vide the order dated 30.06.2014, it was specifically stated in that order that the continued service rendered by the petitioner shall be subject to the decision of the writ petition. The petitioners in the other writ petitions were also granted continuation of service in the same terms, during the pendency of these writ petitions. Hence, as a matter of fact even the financial benefits of service which have accrued to the petitioners during the operation of the stay orders till today, would otherwise be liable to be recovered from them, an interim order not creating an indefeasible right in a petitioners' favour. This Court is obviously aware of the judgment of the Supreme Court in *State of Punjab and others etc. v. Rafiq Masih (White Washer) (2014) 8 SCC 883*, wherein recovery from retired employees has not been approved by the hon'ble Supreme Court. However, the difference here is that the benefits of service granted to the petitioners were by operation of the stay orders in their favour and not because of any action by the respondents themselves. Hence, the judgment in *State of Rajasthan and another v. Kulwant Kaur (2006) 9 SCC 564*, needs to be cited, wherein, though the issue was otherwise different, it was held that a legal right cannot be said to be derived by an employee only because an interim order

was passed by the High Court. (That case was one in which the petitioner (respondent before the Supreme Court) was allowed to continue in service, despite the fact that she did not possess the requisite qualifications).

165. The reason for the above observation of this Court, is that it may otherwise amount to complete inequity qua those who are still to retire or were not granted a stay on retirement by this Court. Thus, those who approached this Court in the year 2014, continued to get the benefit of the stay order, i.e. they continued in service and got full pay and allowances for more than two years, whereas those who were retiring at the age of 60 years subsequently, after judgment had been reserved by this Court, on 15.06.2016, did not get the benefit of a stay order, and those who are yet to retire at the age of 60 years later this year, or after, would get no benefit of continuation of service, as a consequence of this judgment. Hence, it seems completely inequitable to grant benefits to the petitioners who got interim orders in their favour, and continued in service upto even 62 years, in a matter which was otherwise covered against them by two Division Bench judgments, but upon having made out simply a *prima-facie* case in their favour, at that point. Other identically placed persons, on the other hand, would not get those benefits. This is especially so as actually, it has been found, *ex facie*, that there was in fact, no vacillation in the stand of the Central Government, except for the fact that the University had been at one stage been stated to be a centrally funded institution, yet with no rights of an increase in the age of superannuation of its teachers, yielded to by the Government.

However, it is made clear that if the competent authorities in these cases take a decision to recover the financial benefits as have accrued to the petitioners, by virtue of the stay orders allowing them to continue in service beyond the age of 60 years, such recovery would be made only in very easy installments, so as to ensure that the pensioner (petitioner concerned) does not get less than at least 85% per month, of the pension due to her/him, upon her/his deemed retirement at the age of 60 years, unless the pensioner herself/himself choses to have greater amounts deducted.

166. This Court is, thus, not specifically directing any recoveries to be made from the petitioners, but leaving it wholly to the wisdom of the competent authorities in each case to do so if they chose to, for the aforesaid reasons of complete inequity created qua the petitioners vis-a-vis other employees who are still to retire in the near future.

167. Learned counsel for the petitioners had also argued at the end, that the new academic session of 2016-17 was about to get underway (now in progress)

and hence, sudden retirement of a large number of the teaching faculty, if the petitions are to be dismissed, would create a void in the teaching departments.

Undoubtedly, that is true. Of course, retirements during the course of the session are a routine feature, but possibly, sudden retirements at one go, in different Departments, by vacation of the stay orders in these petitions, may possibly create a problem, dependent of course on the number of teachers retiring now from each individual department or college. The University and the colleges concerned, would therefore immediately start the process of regular recruitment of all teaching positions that they consider necessary to be filled, and complete such process within a period of three months hereinafter.

168. A word at the end. The volume of this judgment far exceeds the 'size' of the issue involved, because eventually the writ petitions have been dismissed on the simple reasoning that without a specific declaration by the Central Government, the University cannot be granted the status of a central institution, it being an inter-State University, and as such, consultation with the concerned State Government having been found necessary by the Central Government itself. And further, the petitioners cannot be 'granted' a higher age of superannuation, that being a matter of policy, and such policy not seen to be either arbitrary or even illogical. However, since arguments were addressed at very great length, especially on the issue that the University had become a centrally funded institution after the changed pattern of funding, it would have been unfair on the part of this Court to not reproduce or refer to those arguments, in extenso, and to deal with them. Even so, certain ancillary arguments have not been dealt with by this Court, there being no necessity to do so, due to the reason that the core issues have been adjudicated upon on the two simple premises given hereinabove.

With that, this judgment finally stands concluded, dismissal of the petitions already having been stated in paragraph 163 hereinabove.

No order as to costs.

August 16, 2016
vcgarg/nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE