

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 884/2013**

% **Reserved on: 1st February, 2017**
Pronounced on: 3rd March, 2017

K.S. JAWATKAR Petitioner

Through: In person.

versus

THE CHANCELLOR PROF. YASH PAL & ORS. Respondents

Through: Ms. Monika Arora, Advocate for JNU.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. Petitioner, Dr. K.S. Jawatkar has filed this writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) Declare 1993 amendment to Clause 6 of Academic Ordinance of JNU Act, 1966, vide Res. No.5.6/EC/4.10.1993, as illegal, null and void and ultra-vires the JNU Act, 1966, its Statutes and Ordinances and violative of the Petitioner’s Fundamental Rights under Article 14, 16, 19(1)(g) and 21 of the Constitution of India;

(b) Direct the Chancellor and the respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1.1.1992 and/or alternatively Appardorai Chair as contemplated in its order dated 27.7.1984 on the benefits of emoluments as well as seniority and promotions implicit in its final judgment dated 12.5.1989: *JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: [1989] 3 SCR 273* and do complete justice under Article 142 of the Constitution;

(c) Direct the Chancellor and the respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of

statutory provision of Clause 6 of Academic Ordinance vide Res. No.4(h)/EC/19.4.1976;

(d) Direct the Chancellor and the respondent-University to pay the petitioner entire arrears of salaries up to 31 August 2003 and other statutory dues with interest thereon;

(e) Direct the Chancellor and the respondent-University to grant consequential benefits of service to the petitioner, including the benefits of emoluments, designation, scale of pay, increment, provident fund, retirement benefits, pension etc. in terms of prayers (b), (c) and (d) above with interest thereon;

(f) Pass such and further order, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and

(g) Award the costs to the petitioner.”

2. The aforesaid relief clauses show that petitioner seeks two reliefs. First relief sought is of continuation in service up to the age of 65 years i.e the petitioner not being retired at the age of 62/63 years. Prayers (a) and (c) to (e) are all relevant to this prayer of the petitioner being entitled to continue in service till the age of 65 years instead of 62 years. Petitioner has retired at the age of 62/63 years on 31.8.2001. It is relevant to note that the age of superannuation in the employer/Jawaharlal Nehru University (JNU) was increased from 60 to 62 years, however in the period just before increase of the retirement age to 62 years there was a provision for re-employment of three years after superannuation and which option since was exercised by the petitioner, he retired at the age of 63 years instead of 62 years, on account of the judgment dated 20.11.2003 in W.P. (C) No. 6107/2000 filed by the petitioner. The second relief which the petitioner seeks is

prayer (b) and which is for granting of promotion to the petitioner as Professor with effect from 1.1.1992 and/or alternatively the Appadorai Chair.

3. The present writ petition, as the discussion given hereinafter will show, is hopelessly barred by the principles of *res judicata*. In fact the filing of the present writ petition is a gross abuse of process of law because the present writ petition is not the first writ petition seeking the reliefs of benefits of higher age of retirement to 65 years and for grant of promotion to the post of Professor/Appadorai Chair, but is in fact the third writ petition filed by the same petitioner on the same subjects and in which earlier petitions the petitioner was unsuccessful. Putting it in other words, inspite of the issues raised having been decided in one earlier writ petition, the petitioner thereafter inspite of the bar of principles of *res judicata* filed yet another second writ petition seeking the same reliefs and which was held to be barred by the principles of *res judicata* in terms of the judgment dated 16.9.2011 in W.P. (C) No. 911/2007. Petitioner has however once again filed this present third writ petition for the same reliefs and which thus is liable to be dismissed as being barred by the principles of *res judicata*. The details of the earlier two writ petitions are given below and it is to be noted that each time the petitioner

carried the issue after dismissal of the earlier two writ petitions by the learned Single Judges of this Court, firstly by filing an appeal to a Division Bench of this Court which was dismissed, and then thereafter filing Special Leave Petitions (SLPs) before the Supreme Court, and which SLPs were also dismissed.

4. The first writ petition which was filed by the petitioner was W.P. (C) No. 6107/2000. This writ petition was disposed of in terms of the judgment dated 20.11.2003. In this W.P. (C) No. 6107/2000 the following prayers were made by the petitioner:-

“(a) Issue an appropriate Writ, or Order or direction, including a Writ of certiorari, to quash recommendation of the Selection Committee for appointment of respondent No.10 to Process A.Appadorai Chair in International Relations without interview as ultra vires the JNU Act, 1966, its Statutes and the petitioner’s Fundamental Rights under Article 14, 16(1), 19(1)(g) and 21 of the Constitution of India;

(b) Issue Mandamus directing the respondent University & its Vice-Chancellor to reconstitute the Selection Committee with due regard to specialization i.e. International Relations in accordance with relevant Statute and reasoning provided for amending the said Statute having regard to the recommendation of the Ganendragadkar Committee on Governance of Universities and Colleges;

(c) Direct the respondent University and its Vice-Chancellor to comply with Academic Council Resolution No.5-AC(b) Dated 12.2.1993 for rotating Appadorai Chair among all (seven) Centres of the School (SIS);

(d) Quash Office Order No.630 Dated 15.5.2000 (sic. 15.6.2000) (Annex. P-9) and direct the respondent University to continue services of the petitioner until he attain the age of 65 years as per Academic Ordinance No.1, Clause 6.3.;

(e) Direct the respondents, 1 and 2 to produce the original file relating to interview dated 16th August, 1995 for Professor Appadorai Chair in International Relations, including attendance sheet of candidates appeared for interview and bio-data of Selection Committee Members as well as candidates in this Hon’ble Court;

- (f) Pass any such further and other Orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case; and
- (g) Award costs to the petitioner."

5. A reading of the aforesaid prayer clauses of W.P. (C) No. 6107/2000 shows that petitioner had prayed for continuation in services up to the age of 65 years and benefit of Appadorai Chair/post of Professor. This writ petition when was disposed of in terms of the judgment dated 20.11.2003 by the learned Single Judge of this Court whereby the petitioner was granted the benefit of continuation in his post of Assistant Professor up to the age of 63 years by granting re-employment for a period of three years, however, the petitioner's claim for appointment to the post of Professor/Appadorai Chair was rejected. The relevant operative paras of the judgment dated 20.11.2003 in W.P. (C) 6107/2000 are paras 12 to 15 and which read as under:-

"12. The Respondent's case on this issue is untenable and is an ipse dixi. No material has seen the light of day indicating that the Petitioner had accepted "the first alternative" of his superannuating at 62 years. On 1st September, 1998, the decision of the Ministry of Human Resource Development dated 27.7.98 had not been implemented and enforced. This took place only on October 23, 1998 on the issuance of the Circular reproduced herein above. Therefore on 1st September, 1998, there could not have been any question of the Petitioner continuing in service other than as a reemployed teacher. It has been contended by learned counsel for the Respondent that there was same oral understanding between the parties to the effect that the Petitioner would be governed by the H.R.D. Ministry decision dated 27.7.98. This contention is wholly incredible. If it was known to all concerned that the age of superannuation had stood increased to 62 years, in the hiatus between the 27.7.98 and 31.8.98, the earlier decision of reemployment could have been cancelled by the Respondents. This has not been done, and for obvious reasons the HRD decision was applied to teachers of the Respondent University as late as on October 23, 1998 albeit

with retrospective effect relating back to 27.7.98. There is no document evidencing the Respondent's case that the Petitioner had agreed to be regulated by the Circular dated October 23, 1998. In the Office Order No. 630 dated June 15, 2000, there is no reference to any previous communications or understandings. I am of the considered opinion that the offer of reemployment, which was accepted and acted upon by the Petitioner whereby the service of the Petitioner would continue for a period of three years had come into operation and could not have been altered without the consent of the Petitioner by virtue of the Circular dated October 23, 1998. It is also not open to the Petitioner to contend otherwise viz. that he had opted to continue in regular service till his attaining the age of 62 years. In the absence of any clear evidence of an agreement or understanding having been arrived at on or after October 23, 1998, such contentions, or either complexion, would be anachronistic. The effect is that the Petitioner has a right to be considered to have been continued in service till the expiry of the period of reemployment for three years i.e. 31st August, 2001 in accordance with the then extant regimes. The Petitioner shall be entitled to all consequential benefits, which should be paid to him within two months.

13. That leaves to be considered the period when the Petitioner's reemployment had expired on his attaining 63 years or three years from his superannuation, i.e. 1st September, 2001 till his reaching the age of 65 years. The Rules applicable on the date of his superannuation in 1998 as well as in 2001 envisaged reemployment till the age of 65 years. The Petitioner was considered but the Vice Chancellor did not recommend his case. This Court ought not to review the decision of whether the Petitioner's continued service was in the "interests" of the University. I do not find any infraction of Ordinance 6 or Regulation 16. It is not for the Court to circumscribe the manner in which the Vice Chancellor is to exercise his discretion or to superintend the body of his advisors, especially where no mala fides are evident.

14. Arguments have been heard at great length because every indulgence has been granted to the Petitioner who argued in person. The plethora of case law relied upon by him has been taken into consideration together with all written submissions. If each and every argument advanced by the Petitioner is to be taken up separately, this judgment will become needlessly and excruciatingly prolix and lengthy. It may, therefore, be deemed that every contention raised in the written argument has been considered and rejected to the extent not accepted above.

15. The conclusion is that the Petitioner has no right to be considered for appointment to the A. Appadorai Chair in International Relations. There is no legal impropriety in the Chair having been left vacant. The Petitioner also has no right to be reemployed till his having attained the age of 65 years. The Petitioner, however, shall be deemed to have continued in service, on reemployment, till 30th August, 2001 i.e. three years after his having superannuated. Salary and consequential benefits be paid to the Petitioner by the Respondent within two months.” (underlining added)

6. (i) The petitioner challenged the judgment dated 20.11.2003 which denied the petitioner's right to be re-employed till 65 years and also denied the claim of the petitioner to Appadorai Chair by filing LPA No. 68/2004 before a Division Bench of this Court. This writ appeal/LPA was dismissed by a Division Bench of this Court vide its judgment dated 21.1.2004, and the relevant para of the judgment of the Division Bench reads as under:-

“Arguing in person, he again invoked the University Order dated 22nd May 1998 to claim that he was entitled to re-employment for three years and remain in service up to the age of 65 years. No other issue was taken by him.

Apart from the reasoning given by the writ Court, we find that appellant's claims suffers from serious misconception. He overlooks that he was initially to retire in August, 1998 on attaining 60 years of age and it was in that context, that he was offered reemployment for three years from 1st September 1998. And since meanwhile retirement age was raised on which basis he remained in service till he attained 62 years of age on 30.8.2000, the question of giving effect to a previous University Order dated 22nd May 1998 which was passed in the light of his retirement due on attaining 60 years of age, therefore, did not arise. On the other issue of appointment to the A. Appadorai Chair, we find ourselves unable to disagree with the reasoning of the learned Single Judge. Appeal is accordingly dismissed.”

(ii) Petitioner challenged the judgment dated 21.1.2004 of the Division Bench by filing SLP (Civil) No. 4427/2004 in the Supreme Court. This SLP was dismissed by the Supreme Court *in limine* on 16.11.2004.

7. Therefore the issues with respect to the entitlement of the petitioner to seek enhancement of age up to 65 years and for petitioner

to be appointed as Professor/Appadorai Chair achieved finality against the petitioner in terms of the judgment dated 20.11.2003 in W.P. (C) No. 6107/2000 and the finality of which judgment stood affirmed by dismissal of the appeal filed by the petitioner before the Division Bench and thereafter dismissal of the SLP filed in the Supreme Court.

8. (i) Petitioner remained undeterred by dismissal of W.P. (C) No. 6107/2000, and he then filed W.P. (C) No. 911/2007 seeking same reliefs of retirement at 65 years and promotion to the post of Professor/Appadorai Chair. This W.P. (C) No. 911/2007 was decided by a learned Single Judge of this Court by the judgment dated 16.9.2011. By the judgment dated 16.9.2011 another writ petition being W.P. (C) No. 2044/1992 was also decided by a learned Single Judge of this Court, but we are not concerned with the same and hence the facts of the said case are not stated herein. It is, however, relevant to note that though the W.P. (C) No. 911/2007 was disposed of finally by the judgment dated 16.9.2011 of a learned Single Judge of this Court, however, the prayer clauses (b), (c) and (d) of W.P. (C) No. 911/2007, were in fact rejected by an earlier detailed order dated 19.11.2008 by another learned Single Judge of this Court and as will be detailed hereinafter.

(ii) The prayer clauses of W.P. (C) No. 911/2007 read as under:-

“(a) Direct the Chancellor and respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1-1-1992 and/or alternatively Appadorai Chair in International Relations w.e.f. 1995 as contemplated in Supreme Court order dated 27th July 1984 on the benefits of emoluments as well as seniority and promotions and its final judgment dated 12th May 1989; JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: (1989) 3 SCR 273 and do complete justice;

(b) Direct the Chancellor and respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of Academic Ordinance relating to conditions of service of University appointed teachers as stood on the Statute Book vide Resolution No.4(h)/EC/19.4.1976;

(c) Direct the Chancellor and respondent University to pay the entire arrears of salaries up to 31st August 2003 and other statutory dues, including pension w.e.f. 1st September 2003 with interest thereon;

(d) Direct the Chancellor and respondent-University to grant consequential benefits to the petitioner, including the benefits of emoluments, designations, scale of pay, increment, provident fund, retirement benefits, pensions etc. in terms of prayers(a) to (c) with interest thereon; and

(e) Pass such and further orders, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

9. It is seen that the prayer clauses (b), (c) and (d) of W.P. (C) No. 911/2007 were the same prayers of the earlier W.P. (C) No. 6107/2000 of petitioner being granted continuation of service up to the age of 65 years with consequential benefits. Since this prayer was already dismissed right till the Supreme Court in the earlier W.P. (C) No. 6107/2000, a learned Single Judge of this Court while hearing W.P. (C) No. 911/2007 by his order dated 19.11.2008 rejected the prayers (b) to (d). This order dated 19.11.2008 of the learned Single Judge in W.P. (C) No. 911/2007 reads as under:-

“CM No.15733/2008 in W.P.(C) No. 911/2007

This is an application under Section 151 CPC filed by the petitioner seeking to place on record certain judgments which according to him are relevant for deciding the present case. The judgments annexed by the petitioner along with this application are taken on record.

The instant application stands disposed of accordingly.

W.P.(C) No. 911/2007

The petitioner has filed this writ petition seeking the following prayers:-

“(a) Direct the Chancellor and respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1-1-1992 and/or alternatively Appadorai Chair in International Relations w.e.f. 1995 as contemplated in Supreme Court order dated 27th July 1984 on the benefits of emoluments as well as seniority and promotions and its final judgment dated 12th May 1989: **JNU V. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: (1989) 3 SCR 273** and do complete justice;

(b) Direct the Chancellor and respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of statutory provision of Clause 6 of the Academic Ordinance relating to conditions of service of University appointed teachers as stood on the Statute Book vide Resolution no.4(h)/EC/19.4.1976;

(c) Direct the Chancellor and respondent University to pay the entire arrears of salaries up to 31st August 2003 and other statutory dues, including pension w.e.f 1st September 2003 with interest thereon;

(d) Direct the Chancellor and respondent-University to grant consequential benefits to the petitioner, including the benefits of emoluments, designations, scale of pay, increment, provident fund, retirement benefits, pensions etc. in terms of prayers (a) to (c) with interest thereon; and

(e) Pass such and further orders, which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

Mr. S.C. Dhanda, learned counsel appearing on behalf of the respondents says that prayers ‘b’, ‘c’ and ‘d’ made by the petitioners in the present writ petition have already been considered and decided against the petitioner upto the Hon’ble Supreme Court and in support of his said contention he has referred to the judgment of the learned Single Judge at page 63, judgment of the Division Bench at page 89 and has filed the copy of the order of the Supreme Court by which SLP of the petitioner against the order of Division Bench in LPA was also dismissed.

The operative part of the order of Division Bench dated 21.1.2004 in Writ Appeal No. 68/2004 reads as under:-

“Apart from the reasoning given by the writ Court, we find that appellant’s claims suffers from serious misconception. He overlooks that he was initially to retire in August, 1998 or attaining 60 years of age and it was in that context, that he was offered reemployment for three years from 1st September 1998. And since meanwhile retirement age was

raised on which basis he remained in service till he attained 62 years of age on 30.8.2000, the question of giving effect to a previous University Order dated 22nd May, 1998, which was passed in the light of his retirement due on attaining 60 years of age, therefore did not arise. On the other issue of appointment to the A.Appadorai Chair, we find ourselves unable to disagree with the reasoning of the learned Single Judge. Appeal is accordingly dismissed.”

The SLP filed by the petitioner against the above order of the Division Bench was dismissed by the Hon’ble Supreme Court vide order dated 16.11.2004 in SLP(Civil) No. 4427/2004.

This Court is of the opinion that since the question regarding extension of retirement age of the petitioner upto 65 years has already been considered and decided against the petitioner upto the Hon’ble Supreme Court, this question cannot be allowed to be re-agitated in this fresh round of litigation. Hence, the prayers ‘b’, ‘c’ and ‘d’ made by the petitioner in this writ petition are not maintainable.

This petition is now restricted only to prayer ‘a’ made by the petitioner for his promotion.

Issue notice of this writ petition to the respondents restricted only to prayer ‘a’. Mr. S.C. Dhanda accepts notice on behalf of the respondents and he request for time for filing of counter-affidavit in the matter. Counter affidavit be filed within four weeks. Rejoinder, if any, be filed within three weeks thereafter.

List on 12.3.2009.”

10. The order of the learned Single Judge dated 19.11.2008 rejecting prayers (b) to (d) as being barred by principles of *res judicata* was challenged by the petitioner by filing an appeal before a Division Bench of this Court being LPA No. 1/2009. This LPA No. 1/2009 was dismissed by the Division Bench of this Court vide its order dated 6.1.2009. Petitioner challenged the order of the Division Bench by filing of an SLP being SLP No. 10313/2009 and which was also dismissed by the Supreme Court by passing the following order:-

“Delay condoned.

Having heard the Petitioner-in-person, we are not inclined to entertain the special leave petition since the question sought to be agitated herein appears to have been gone into in earlier proceedings. The basic relief sought for by the Petitioner is that he ought to have been retired at the age of 65 years and not at the age of 60 years, as has been done in this case. The said question, in our view, is no longer *res integra* on account of the fact that the same was decided by the Division Bench of the High Court in Writ Appeal No. 68 of 2004 and the special leave petition filed against the said decision was also dismissed.

However, we are informed by the Petitioner that there is some matter pending before the High Court. If that be so, the same may be pursued and be disposed of at an early date.

The Special Leave Petition is dismissed.”

11. A reading of the remaining prayer (a) of W.P. (C) No. 911/2007 shows that the same pertains to the claim of promotion to be granted to the petitioner with effect from 1.1.1992 and/or alternatively Appadorai Chair with effect from 1995. This relief was declined by a learned Single Judge of this Court vide his judgment dated 16.9.2011 holding the same barred by *res judicata*. In this judgment dated 16.9.2011 a learned Single Judge has noted all the detailed facts with respect to the fact that reliefs (b), (c) and (d) in W.P. (C) No. 911.2007 as prayed for were not maintainable on account of dismissal of the earlier W.P. (C) No. 6107/2000 as also the detailed order dated 19.11.2008 in the same W.P. (C) No. 911/2007 and challenge against which order dated 19.11.2008 stood dismissed right till the Supreme Court.

12. As regards prayer (a) in W.P. (C) No. 911/2007 of the claim of petitioner to the appointment to the post of Professor/Appadorai Chair, the learned Single Judge dismissed that claim as being barred by *res judicata* by observing as under in paras 32 to 35 of the judgment dated 16.9.2011, and which paras read as under:-

“Prayer (a) in W.P. (C) No. 911 of 2007

“32. Prayer (a) in W.P. (C) No. 911 of 2007 concerns the Petitioner’s claim to be appointed to the Professor Appadorai Chair in International Relations. After the order dated 20th November 2003 of this Court in W.P. (C) No. 6107 of 2000, which was affirmed by the Division Bench by its order dated 21st January 2004 dismissing the Petitioner’s Writ Appeal No. 68 of 2004, the issue already stands answered against the Petitioner. Both orders were affirmed by the Supreme Court when it dismissed the Petitioner’s S.L.P (C) No. 4427 of 2004 on 16th November 2004. The Petitioner cannot be permitted to reargue the same issue all over again.

33. As regards the claim to the appointment as Professor, the JNU by its additional affidavit filed on 12th April 2010, placed on record the minutes of the Meeting of the Selection Committee dated 30th August 1996 which recommend that the Petitioner should be considered for such promotion after two years. It is stated that the Petitioner did not submit his work for reassessment thereafter till his retirement. Therefore, he could not be considered for promotion. The Petitioner retired on 31st August 2000 without such promotion being granted. This was the position when the Petitioner filed W.P. (C) No. 6107 of 2000. However he did not at that time raise the issue of non-grant of promotion as Professor. His entire focus, at that stage, was on the Professor Appadorai Chair. There is no explanation why the Petitioner chose to wait for seven years thereafter to file the present writ petition claiming merit promotion to the post of Professor.

34. The Petitioner urged that his claim for promotion as Professor with effect from 1st January 1992 was not barred by *res judicata* or under Order II Rule 2, CPC. He relied upon the decisions of the Supreme Court in **State of Maharashtra v. National Construction Company, Bombay AIR 1996 SC 2367**, and **Deva Ram v. Ishwar Chand AIR 1996 SC 378**. According to him, even the earlier litigation would not constitute as *res judicata*. He stated that W.P. (C) No. 6107 of 2000 was based on the 1993 amendment to Clause 6 of the Academic Ordinances which was not applicable to him by virtue of Clause 7 thereof. He relied upon the decisions of the Supreme Court in **Joseph Pothan v. State of Kerala AIR 1965 SC 1514** and **Municipal Committee, Amritsar v. State of Punjab AIR 1969 SC 1100**.

35. After the order dated 19th November 2008 of this Court limiting the scope of W.P. (C) No. 911 of 2007 to prayer (a), the Petitioner cannot be heard to urge the issue concerning Clause 6 of the Academic Ordinances. This Court therefore cannot entertain the claim of the Petitioner that he should be declared to have continued up to the age of 65 years. Both issues have already been answered against the Petitioner by this Court earlier. Even assuming that such plea is not barred by res judicata it is barred by laches. Consequently, this Court finds no merit in prayer 'a' of W.P. (C) No. 911 of 2007 and it is rejected as such. (underlining added)

13. The judgment of the learned Single Judge dated 16.9.2011 was challenged by the petitioner by filing a writ appeal being LPA No. 93/2012. This LPA was dismissed by a Division Bench of this Court as per its judgment dated 13.7.2012. Against the judgment of the Division Bench in LPA No. 93/2012 the petitioner filed SLP (Civil) No. 26924/2012 and that SLP was dismissed by the Supreme Court on 21.9.2012 by passing the following order:-

“ After arguing the matters for quite some time, the petitioner, appearing in person, seeks permission to withdraw these petitions. Permission granted. The petitions are, accordingly, dismissed as withdrawn.”

14. In fact, the petitioner again challenged the judgment of the Division Bench of this Court dated 13.7.2012 in another SLP (Civil) No. 34653/2012 and this SLP was dismissed by the Supreme Court vide its order dated 2.1.2013. By the same order a W.P. (C) No. 499/2012 which was filed by the petitioner directly before the Supreme Court seeking the same reliefs as stated in this writ petition was also dismissed but the Supreme Court observed that petitioner if so advised

may approach the High Court under Article 226 of the Constitution of India and that the High Court shall decide the petition when filed in accordance with law. This order of the Supreme Court dated 2.1.2013 reads as under:-

“UPON hearing counsel the Court made the following
O R D E R

SLP(C)No.34653/2012: Petitioner, appearing in person, had earlier filed SLP(C)No.26924 of 2012 challenging the judgment and order dated 13.7.2012 of the High Court of Delhi in Letters Patent Appeal No.93 of 2012, which was dismissed by us on 21.9.2012 passing the following order:

"After arguing the matters for quite some time, the petitioner, appearing in person, seeks permission to withdraw these petitions. Permission granted.

The petitions are, accordingly, dismissed as withdrawn."

Petitioner has now filed present SLP(C)No.34653 of 2012 challenging the same order dated 13.7.2012 of the High Court of Delhi, which cannot be entertained since earlier special leave petition was already dismissed and no liberty was granted by this Court. The special leave petition is accordingly dismissed.

As a sequel to this, interlocutory application for impleadment also stands dismissed.

Writ Petition (C) No.499 of 2012: This writ petition has been preferred under Article 32 of the Constitution seeking following reliefs:

"(a) Declare 1993 amendment to Clause 6 of Academic Ordinance of JNU Act, 1966, vide Res.No.5.6/EC/4.10.1993, as illegal, null and void and ultra vires the JNU Act, 1966, its Statutes and Ordinances and violative of the Petitioner's Fundamental Rights under Article 14, 16, 19(1)(g) and 21 of the Constitution of India;

(b) Direct the Chancellor and the respondent-University to grant statutory promotion to the petitioner as Professor w.e.f. 1.1.1992 and/or alternatively Appadorai Chair as contemplated in its order dated 27.7.1984 on the benefits of emoluments as well as seniority and promotions implicit in its final judgment dated 12.5.1989: JNU v. Dr. K.S. Jawatkar & Ors. AIR 1989 SC 1577: [1989] 3 SCR 273 and do complete justice under Article 142 of the Constitution;

(c) Direct the Chancellor and the respondent-University the petitioner be deemed to have continued in service up to the age of 65 years in terms of

statutory provision of clause 6 of Academic Ordinance vide Res.No.4 (h)/EC/19.4.1976;

(d) Direct the Chancellor and the respondent-University to pay the petitioner entire arrears of salaries up to 31 August 2003 and other statutory dues with interest thereon;

(e) Direct the Chancellor and the respondent-University to grant consequential benefits of service to the petitioner, including the benefits of emoluments, designation, scale of pay, increment, provident fund, retirement benefits, pensions etc. in terms of prayers (b),(c) and (d) above with interest thereon;

(f) Pass such and further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and (g) Award the costs to the petitioner."

We find no reason to entertain this writ petition, which is accordingly dismissed. However, if so advised, the petitioner may approach the High Court by way of filing writ petition under Article 226 of the Constitution, which shall be decided in accordance with law, on which we express no opinion. In other words, we leave it entirely to the discretion of the High Court."

15. The petitioner, therefore, filed the present and sequentially the third writ petition in view of the order of the Supreme Court dated 2.1.2013. It is already noted that it is not as if Supreme Court by its order dated 2.1.2013 held that petitioner has a right to file a writ petition in this Court which will be decided on merits, inasmuch as, the Supreme Court has specifically observed in the order dated 2.1.2013 that it expresses no opinion on the matter and the High Court was to decide the writ petition in accordance with law.

16. In view of the above discussion it is seen that the petitioner is a habitual litigant. In spite of causes of action and subject matters of writ petitions achieving finality right till the Supreme Court,

petitioner is habituated of indulging in unnecessary repeated litigations inspite of the principles of *res judicata* operating against the petitioner. The reliefs as prayed for in this writ petition of entitlement of the petitioner to be continued till the age of 65 years with consequential benefits to the petitioner and for the petitioner to be appointed to the post of Professor/Appadorai Chair have achieved finality against the petitioner repeatedly as per the various writ petitions which have been decided by this Court, LPAs of the petitioner which have been dismissed by the Division Benches of this Court, and thereafter the SLPs filed by the petitioner being dismissed by the Supreme Court.

17. Therefore the present writ petition is a clear cut and a gross abuse of the process of law.

18. The only remaining issue to be considered is that whether petitioner by now seeking to challenge the 1993 Amendment to Clause 6 of the Academic Ordinance of the Jawaharlal Nehru University Act, 1966 can now claim that there is a different and valid cause of action for filing of this writ petition for seeking retirement age of 65 years. The answer is a categorically no and the reasons are given hereinafter.

19. The Petitioner cannot claim by urging prayer (a) of this writ petition for grant of retirement age of 65 years to the petitioner by

questioning the validity of 1993 Amendment to Clause 6 of the Academic Ordinance of the Jawaharlal Nehru University Act on account of the fact that petitioner would be barred by the principles of constructive *res judicata*. As per Section 11 Explanation IV of the Code of Civil Procedure, 1908 (CPC) any matter which might and ought to have been made a ground of attack in an earlier proceeding will be deemed to be directly and substantially in issue in the earlier proceedings. The object of law is that for the same relief a person is bound to take up all entitlements together, and a person cannot use different entitlements for the same reliefs by filing repeated proceedings. CPC no doubt does not apply to writ petitions, however, the principles of *res judicata* are not only because of CPC because the principles of *res judicata* are matters of general public policy. In fact, it has also been held for this very reason that Section 11 of CPC is not a sole repository of the doctrine of *res judicata* vide ***Gulam Abbas and Others Vs. State of Uttar Pradesh and Others (1982) 1 SCC 71.***

20. The relief as regards prayer (a) and for seeking retirement age of 65 years is also barred by doctrine of delay and *laches*, and also so held in the judgment dated 16.9.2011 in W.P. (C) No. 911/2007.

21. Therefore, the writ petition is barred for prayer (a) on the ground of *res judicata* and also doctrine of delay and *laches*.

22. Even if I examine prayer (a) independently, it is seen that this prayer (a) is predicated on the petitioner pleading that the amendment which is made to Clause 6 of the Academic Ordinance results in terms of service being adversely taken against the petitioner and the terms of the services of the petitioner cannot be degraded. For this purpose petitioner has pleaded the following paras 32 to 35 in the writ petition and which paras read as under:-

“32. In 1993 during the pendency of this writ petition, original Clause 6 of Academic Ordinance of 1976 of the JNU Act relating to conditions of service of University appointed teachers was amended. Under the Act, no change could be made in terms and conditions of service of a teacher after his/her appointment so as to adversely affect him by virtue of Clause 7 which reads:

“7. Variations in terms and conditions of service:

Every teacher of the University shall be bound by the Statutes, Ordinances and Regulations for the time being in force in the University:

Provided that no change in the terms and conditions of service of a teacher shall be made after his/her appointment in regard to designation, scale of pay, increment, provident fund, retirement benefits, age of retirement, probation, confirmation, leave, leave salary and removal from service so as to adversely affect him.

33. The relevant provisions of Clause 6 of Academic Ordinance of JNU Act relating to conditions of service of University appointed teachers vide Res. No.4(h)/EC/19.4.1976 and Amended provision of Clause 6 of Academic Ordinance vide Res. No.5.6/EC/4.10.1993 reads:

6. <u>Age of retirement</u> (vide Res. No.4 (h)/EC/19-4-1976	6. <u>Age of Retirement</u> (Amended vide Res. No. 5.6/EC/4-10-1993
Subject to the provision of Statute 30, every teacher confirmed in the service in such service until he/she attains the age of 60 years:	6.1 Subject to the provision of Statute 30, every teacher in the service of the University shall retire from service on the afternoon of the last date of the month in which he/she attains the age of 60 years;
Provided if the Executives Council is satisfied that such an appointment is in the interest of the University it may on the	6.2 If the Executive Council is satisfied that such an

recommendation of the Vice Chancellor make ex-cadre appointment in respect of a teacher of the University in sound health, who has attained the age of 60 years and is able to perform his duties satisfactorily, on such terms and conditions as the Executive Council may specify, for a period not exceeding three years in the first instance. Provided further that no further contract of extension shall be granted to a teacher who has attained the age of 65 years.	appointment is in the interest of the University, it may on the recommendation of the Vice-Chancellor, re-employ a teacher on the superannuation against the post held by him if he is in sound health and is able to perform his duties satisfactorily, on such terms and conditions as the Executive Council may specify, for a period not exceeding three years in the first instance. 6.3 Where the date of superannuation, or the expiry of the terms of re-employment of a teacher falls due during the course of a semester the Executive Council may, on the recommendation of the Vice-Chancellor, allow a teacher to continue in service on re-employment basis till the end of the academic year. Provided that such re-employment shall not be granted to a teacher beyond the date on which he attains the age of 65 years. 6.4 A re-employed teacher shall not be eligible to be appointed as Chairperson of a Centre or Dean of a School or for any other administrative assignment such as Dean of Students, Chief Proctor, Provost, etc.
---	---

34. The effect of 1993 amendment of Clause 6 of Academic Ordinance was to reduce the age of retirement of University teachers to 60 years (per Clause 6.1), which is not applicable to the Petitioner by virtue of Clause 7. Originally Clause 6 did not have sub-clauses like present one viz. 6.1, 6.2, 6.3 and 6.4. This apart, the language of original Clause 6 is now altered. Expressions/words “shall continue in service” occurring in original Clause 6 is changed to “shall retire from service” in amended Clause 6.1. Amendment also introduces word/expression “superannuation” per Clause 6.2, 6.3 for the first time, which was not originally there, apart from deleting

the word “confirmed” from Clause 6, which was originally there. Besides this, original expression “Age of retirement” was to be found in the title or heading of the statute only. Now, word/expression “retire” is right in Clause 6.1. Original Clause 6 uses an expression/phrase “ex-cadre appointment”. Now this phrase is deleted and instead an expression/phrase “re-employ a teacher”, “re-employment” is inserted (per Clause 6.2 and 6.3).

35. The Petitioner submits that the 1993 amendment to Clause 6 of Academic Ordinance of JNU Act, 1966, relating to conditions of service of University appointed teachers is *ultra vires* the JNU Act, its Statutes and Ordinances. It is also violative of the petitioner’s Fundamental Rights under Articles 14, 16, 19(1) (g) and 21 of the Constitution of India. The said amended Academic Ordinance relating to conditions of service vide Res. No.5.6/EC/4.10.1993 is flagged hereto and marked as Annexure P-14 pp.114-117.”

23. A reading of paras 32 to 35 of the writ petition show that petitioner except indulging in semantics is doing nothing else. By amending Clause 6 of Academic Ordinance in 1993 it is not as if the service conditions have been amended to the detriment of the petitioner. Even as per the unamended Clause 6 the age of retirement was 60 years and as per the amended Clause 6 the age of retirement remained at 60 years. As per unamended Clause 6 there was an entitlement of re-employment of three years and which entitlement is continued in terms of Clause 6.2 of the amended Clause 6 of the Academic Ordinance. As per the unamended Clause 6 the entitlement of a teacher to continue was till the maximum period of 65 years and which also continues by virtue of Clause 6.3 of the amended Clause 6 of the Academic Ordinance. Bar some language changes in reality

there is almost no substantial change in the consequences of the unamended Clause 6 and the amended Clause 6 of the Academic Ordinance of the respondent no. 4/employer/Jawaharlal Nehru University. The fact that petitioner himself admits that there is no substantial and effective change in the unamended and the amended Clause 6 becomes clear from para 34 of the writ petition, which has been reproduced above, and which para only seeks to make out a mountain of a mole hill out of minor changes in the language of unamended Clause 6 and amended Clause 6, but which language changes have no bearing and effect to the main three aspects of ordinary age of retirement of 60 years, re-employment being granted for a period not exceeding three years in the first instance and that finally the maximum age for re-employment shall not be beyond 65 years of age. Petitioner therefore by pleadings contained in paras 32 to 35 of the writ petition is only seeking to plead an imaginary cause of action, and which really does not exist.

24. In view of the aforesaid discussion, it is seen that the writ petition, with all its prayer clauses, is barred by the principles of *res judicata*, inasmuch as, the same issues have been decided not once but twice earlier. Petition is also barred by delay and *laches*. Petitioner, therefore, cannot seek retirement at the age of 65 years. Petitioner also

cannot claim appointment to the post of Professor/Appadorai Chair as prayed in this writ petition and which issue has been decided against him in two earlier writ petitions being W.P. (C) Nos. 6107/2000 and 911/2007. The petitioner has made a very lame attempt to plead a new cause of action in paras 32 to 35 of this writ petition but such pleadings show no different or fresh cause of action for seeking the relief of petitioner being retired only at the age of 65 years and not earlier. In any case, the doctrine of constructive *res judicata* also stares the petitioner in his face.

25. Since the petitioner is found to be indulging in and is habitual of unnecessary repeated litigations, although the issues argued and urged have achieved finality, the only way to stop the petitioner from indulging in repeated litigations is to impose costs upon the petitioner. Although, the facts of the present case require that in view of wastage of valuable judicial time of this Court, and unnecessary expenditure to the employer/JNU, the writ petition must be dismissed with costs of at least Rs. 2,00,000/- with Rs.1,00,000/- being payable to the Prime Minister's National Relief Fund and Rs.1,00,000/- to the employer/JNU, however, considering that the petitioner was a teacher in JNU, this writ petition is dismissed with costs of only Rs.60,000/-, out of which Rs.30,000/- shall be paid to the respondent no.

4/employer/JNU and costs of Rs.30,000/- being deposited with Friendicoes, No. 271 & 273, Defence Colony, Flyover Market, Jangpura Side, New Delhi-110024. Costs be paid in six weeks failing which the same can be recovered as per law.

MARCH 03, 2017

VALMIKI J. MEHTA, J

AK/ib/Ne

