

**In the High Court of Jharkhand at Ranchi**

**W.P.(S) No.363 of 2010  
With  
W.P.(S) No.286 of 2010  
With  
W.P.(S) No.5943 of 2010  
With  
W.P.(S) No.5260 of 2010  
With  
W.P.(S) No.4966 of 2010  
With  
W.P.(S) No.5804 of 2010  
With  
W.P.(S) No.4886 of 2010  
With  
W.P.(S) No.6275 of 2010  
With  
W.P.(S) No.6009 of 2010  
With  
W.P.(S) No.6391 of 2010  
With  
W.P.(S) No.6367 of 2010  
With  
W.P.(S) No.6015 of 2010  
With  
W.P.(S) No.5971 of 2010  
With  
W.P.(S) No.6206 of 2010  
With  
W.P.(S) No.6209 of 2010  
With  
W.P.(S) No.6210 of 2010  
With  
W.P.(S) No.6236 of 2010  
With  
W.P.(S) No.6250 of 2010  
With  
W.P.(S) No.6268 of 2010  
With  
W.P.(S) No.5531 of 2010  
With  
W.P.(S) No.4860 of 2010  
With  
W.P.(S) No.2538 of 2010  
With  
W.P.(S) No.6073 of 2010  
With  
W.P.(S) No.5946 of 2010  
With  
W.P.(S) No.5858 of 2010  
With  
W.P.(S) No.5765 of 2010  
With  
W.P.(S) No.5792 of 2010  
With  
W.P.(S) No.3718 of 2010  
With  
W.P.(S) No.4575 of 2010  
With  
W.P.(S) No.4886 of 2010**

1.Dr. Maheshwar Tiwary  
2.Mr. Shashi Kishore Narayan..Petitioners[ W.P.(S) No.363 of 2010]

1. Mr. Awadh Kishore Singh  
2. Dr. Thakur Narayan Prasad Sinha  
3. Dr. Mahendra Prasad Singh  
4. Mr. Muzaffar Balkhi  
5. Mr. Sureshwar Mahto  
6. Mr. Dharendra Prasad Mehta  
7. Mr.Jagarnath Singh.....Petitioners [ W.P.(S) No.286 of 2010]

Dr.Subhash Pd. Srivastava...Petitioner [ W.P.(S) No.5943 of 2010]

1. Dr.Anil Kumar Trehan  
2. Dr. Shiw Narayan Sah....Petitioners [ W.P.(S) No.5260 of 2010]

Mr. Nityanand Choudhary...Petitioner [ W.P.(S) No.4966 of 2010]

Chitra Sinha.....Petitioner [ W.P.(S) No.5804 of 2010]

1. Dr. Ichha Purak  
2. Dr.Neena Narendra Kumar  
3. Dr.(Mrs.) Radha Kumari Sahu...Petitioners[W.P.(S) No.4886/2010]

Dr. Ashok Kumar Yadav.....Petitioner [ W.P.(S) No.6275 of 2010]

Dr.Sudhanshu Kumar Verma..Petitioner [ W.P.(S) No.6009 of 2010]

Prasanna Kumar Pradhan....Petitioner [ W.P.(S) No.6391 of 2010]

Mrs. Jyoti Bhatia ..... Petitioner [ W.P.(S) No.6367 of 2010]

Prof.(Dr.) Anant Prasad Sahu...Petitioner [W.P.(S) No.6015 of 2010]

Prof.(Dr.)Devendra Kumar Singh.Petitioner[W.P(S) No.5971 of 2010]

Dr. (Mrs.) Bhagwati Prasad..... Petitioner [W.P.(S) No.6206 of 2010]

Nipendra Chandra Sinha..... Petitioner [W.P.(S) No.6209 of 2010]

Bhagwati Prasad Sinha..... Petitioner [W.P.(S) No.6210 of 2010]

Mala Rani Guru..... Petitioner [W.P.(S) No.6236 of 2010]

Kumar Naresh Sinha..... Petitioner [W.P.(S) No.6250 of 2010]

Dr. Subh Narayan Singh..... Petitioner [W.P.(S) No.6265 of 2010 ]

1.Dr. Urmila Singh  
2.Dr. Lal Mani Prasad.....Petitioners [W.P.(S) No.5531 of 2010]

Udit Narayan Lal..... Petitioner [W.P.(S) No.4860 of 2010]

1. Md. Islam  
2. Somar Sahu  
3. Jai Prakash Singh  
4. Akhauri Gupalji Saha  
5. Mrs. Sureka Prasad .....Petitioners [W.P.(S) No.2538 of 2010]

1.Dr. Paras Nath Roy  
2. Barun Prasad Choudhary... Petitioners [W.P.(S) No.6073 of 2010]

Sumedha Tripathi..... Petitioner [W.P.(S) No.5946 of 2010]

Dr. Purushottam Ram..... Petitioner [W.P (S) No.5858 of 2010]

Dr. Junun Singh..... Petitioner [W.P.(S) No.5765 of 2010]

Manju Pandey..... Petitioner [W.P.(S) No.5792 of 2010]

Dr. Viveka Sadashiv..... Petitioner [W.P.(S) No.3718 of 2010]

Umeshwar Pandey..... Petitioner[W.P.(S) No.4575 of 2010]

1. Dr. Ichha Purak
2. Dr.Neena Narendra Kour
3. Dr.(Mrs.) Radha Kumari. Petitioners[W.P.(S) No.4886 of 2010]

### V E R S U S

The State of Jharkhand through Principal Secretary,  
Human Resource Development Department,  
Ranchi and others.....  
Respondents

**CORAM: HON'BLE MR. JUSTICE R.R.PRASAD**

For the Petitioners: M/s. Sohail Anwar, Sr. Advocate, Rajiv Ranjan,  
O.P.Tiwary, Abhay Kumar Mishra, Altaf Hussain,  
Saurav Arun, Neha Prashant, Abhisekh Sinha,  
Richa Sanchita, Dr. S.K..Pandey, Nagendra  
Tiwary, Sanjay Kumar Tiwary, Tapas Kabiraj,  
S.K.Ughal and Debesh Krishna

For the Universities : Sr.S.C.III, Sr. S.C.II, G.P.IV, M/s.A.K.Mehta,  
Sanjay Piprawall, R.K.Sahi and Mrs. Indrani  
Sen Choudhary

For the U.G.C : Mr. J.P.Gupta

For the Union of India:M/s. Ashok Singh and T.N.Mishra

10.1.11. The common question involved in this batch of cases is as to whether University Grant Commission Regulation dated 30.6.2010 is binding upon the State Government/State Universities so far it relates to enhancement of the age of the teachers of Universities from 62 to 65 ?

The background of the mater which led to filing of all these writ applications is that consequent upon revision of pay scale of the Central Government employees on the recommendation of 6<sup>th</sup> Central Pay Commission the Ministry of Human Resource Development, Department of Higher Education, Government of India on the recommendation of the University Grant Commission

(hereinafter referred to as 'the U.G.C') formulated a scheme whereby pay of the teachers and equivalent cadres of the Central Universities and Colleges was revised with effect from 1.1.2006 with a stipulation that the Central Government would bear the additional expenses to the extent of 80% whereas 20% expenses is to be borne by the State Government which decision was communicated by the Ministry, vide its letter dated 30.12.2008 to the Secretary, University Grant Commission, New Delhi. Under the scheme, the said revision of pay is to be extended to the Universities, Colleges and other Higher Educational Institutions coming under the purview of the State Legislation provided the State Government wishes to adopt and implement this scheme, subject to the terms and conditions stipulated therein. Subsequent to that, the U.G.C, vide its letter dated 27.2.2009 made request to the State Government to adopt the said scheme as formulated under letter dated 31.12.2008 with respect to revision of pay as well as enhancement of the age of superannuation. The State of Jharkhand, vide its resolution dated 10.10.2009 [Annexure 6 to W.P.(S) No.363 of 2010] took a decision to implement the scheme for revision of the pay scale with effect from 1.1.2006 with a stipulation that expenses would be borne by the State Government to the extent of 20% whereas Central Government would bear the expenses to the extent of 80%. Subsequently, Ministry of Human Resource Development, Department of Higher Education, Government of India, vide its letter dated 11.5.2010 intimated to the State Government that payment of central assistance for implementing the scheme would be subject to condition that the entire scheme of revision of pay scale together with all conditions to be laid down by the U.G.C by way of regulation and other guidelines shall be implemented by the State Government and Universities and Colleges as a composite scheme without any modification. Soon thereafter U G.C in exercise of power under Section 26(i)(e) and (g)

of the University Grant Commission Act, 1956 formulated a regulation named as **U.G.C Regulations (on minimum qualification for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standard in higher education) Regulation, 2010** for giving effect to of the scheme formulated under the aforesaid letter dated 31.12.2008 by the Central Government by every University established or incorporated by or under Central Act, Provincial Act or State Act, every institution including constituent or affiliated college recognized by the Commission. The said letter dated 31.12.2008 which forms part of the regulation does stipulate about the enhancement of the age of superannuation from 62 to 65. In spite of that, when State Government or the different Universities did not take any decision in the matter of enhancing the age of superannuation from 62 to 65, these writ applications were filed on behalf of the petitioners who are either University Professors, Professor-Reader, Lecturer in different department of different colleges constituent units either of Ranchi, Binoba Bhabu, Nilambar and Pitambar, Kolhan or Siddhu Kanhu University and have not attained age of 62 years before 30.6.2010 for issuance of a writ in the nature of mandamus for directing the State to enhance the age of superannuation of the teachers of the Universities from 62 to 65 years. In course of pendency of these writ applications, the State of Jharkhand took a resolution as contained in memo no.1188 dated 20.11.2010 whereby recommendation with respect to revision of the pay was accepted but at the same time Government refused to enhance the age of superannuation from 62 to 65 years. The said order in some cases has also been sought to be quashed.

Before advertng to submission advanced on behalf of the parties, certain facts upon which the parties have based their cases may be taken notice of. In this regard, it be stated that the Central

Government for implementation of the standardization of the education and implementation of the pay revision formulated a scheme under letter dated 31.12.2008 whereby under at clause 8(f) stipulation was made to enhance the age of teachers of the universities from 62 to 65 years which reads as follows:

8(f): Age of Superannuation:

- (i) *In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational 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-Chancellor of the Central Universities from 65 to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority ( Visitor in the case of Central Universities).*

Then clause 8(p) speaks about the applicability of the regulation which reads as under:

8(p): Applicability of the Scheme:

- (i) *This scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the institutions Deemed to the Universities whose maintenance expenditure is met by the U.G.C. 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 U.G.C in this behalf. Universities implementing this Scheme shall be advised by the U.G.C to amend their relevant statutes and ordinance in line with the U.G.C Regulations within three months from the date of issue of this letter.*
- (i) .....
- (ii) .....
- (iii) .....
- (iv) This scheme, may be extended to Universities, Colleges and other higher

educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions:

- (a) *Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty per cent) of the additional expenditure involved in the implementation of the revision.*
- (b) *The State Government opting for revision of pay shall meet the remaining 20% (twenty per cent) of the additional expenditure from its own sources.*
- (c) *Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.01.2006 to 31.03.2010.*
- (d) *The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 01.04.2010.*
- (e) *Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 01.01.2006.*
- (f) *State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).*
- (g) *Payment of Central assistance for implementing this Scheme is also subject to the conditions that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the U.G.C by way of Regulation and other guide lines shall be implemented by State Governments and Universities and Colleges coming under their*

*jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above.*

On conjoint reading of the aforesaid clauses what comes out is that if the State Government wishes to adopt and implement the Scheme, then Scheme is to be adopted as a whole so as to be entitled itself to have assistance of 80% of the additional expenditure involved in the implementation of revision of pay.

The Central Government again reiterated its stand of adoption of the Scheme as composite one, vide its letter dated 11.5.2010 wherein clause (iv) and (vii) read as follows:

*Clause (iv): Thus, as per the terms and conditions of the Ministry's letter dated 31.12.2008, the State Governments are required to implement the scheme as a composite one, including the age of superannuation (mentioned in paragraph 8(f) of the Ministry's letter dated 31.12.2008) together with all the conditions specified or to be specified by the University Grants Commission (U.G.C) by Regulation and other guidelines.*

*Clause (vii) : It is provided in paragraph 8(p)(v) and (f) of this Ministry's letter dated 31.12.2008, that the State Governments taking into consideration other local conditions may also decide in their discretion to introduce scales of pay higher than those mentioned in this Scheme. This implies that State Governments cannot take modifications lowering the pay package prescribed by this Ministry. Also after adoption of the Central Scheme as a composite package the State Government shall be required to furnish detailed calculations in support of its claim for central assistance, in the enclosed proforma.*

Subsequently, the Schemes as framed under the aforesaid letter were formulated by the U.G.C by framing regulation named as **U.G.C Regulations (on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010.**

The clause 1.2, 2.1.0 and 2.3.1 reads as under:

*Clause 1.2: They shall apply to every university established or incorporated by or under a Central Act,*



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

*Clause 2.1.0: The revised scales of pay and other service conditions including the age of superannuation in Central universities and other institutions maintained and/or funded by the University Grants Commission (U.G.C) shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education) as contained in Appendix -1.*

*Clause 2.3.1: The revised scales of pay and age of superannuation as provided in clause 2.1.0 above, may also be extended to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and the MHRD letter No.F.1-7/2010-U II dated 11.5.2010 with all the conditions specified by the U.G.C in these Regulations and other Guidelines.*

It was submitted by Mr.Sohail Ansar, Senior counsel and also by Mr. Rajiv Ranjan as well as other counsel appearing for the petitioners that the State Government/University is now bound to accept all the directions/recommendations made under letter dated 31.12.2008 which form part of the Regulation and it would not be open for the State Government to accept one part of it and to disown other part of it e.g. to accept that part which relates to revision of pay and not to accept that part of the directive which relates to enhancement of the age from 62 to 65 years as has been done in this case by the State of Jharkhand.

Further it was submitted that University Grants Commission, Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Schedule 7 of the Constitution whereas Jharkhand State University Act has been enacted by the State Legislature in exercise of its power under Entry 25 of List III wherein the provision under Section 67 of the Jharkhand State University Act does

stipulate the age of superannuation of teachers as 62 years which is in conflict with the Regulation which now forms part of the Central Legislation i.e. University Grants Commission Act and as such, Central Legislation in view of the provision as contained in Article 254(1) of the Constitution of India will have preference over the State Legislation and hence the State Legislation to the extent of repugnancy would be deemed to be void. Consequently, age of superannuation of the teachers of the universities would stand as 65 years.

Dr. J.P.Gupta, learned counsel appearing for the U.G.C by drawing attention of clauses of the scheme particularly framed at clause 8(p)(v) submitted that the scheme formulated by the U.G.C is a voluntary one and it is upto the State Government to accept or not to accept its recommendation.

Mr. A. Allam, senior counsel appearing for the State of Bihar, Mr. Mehta and also other counsel appearing for the Universities by referring to clause 8(p)(v) would submit that the scheme as formulated by the Central Government with respect to revision of pay and enhancement of age and other matters under letter dated 31.12.2008 is certainly voluntary in nature as the said clause 8(p)(v) speaks that it is up to the State Government to adopt the scheme or not to adopt it.

In this respect, learned counsel points it out that similar situation as is existing presently had arisen earlier also when the Central Government had enhanced the age of the teachers of the Central University, vide its letter dated 27.7.1998. with certain terms and conditions but the State University when refused to implement it, the matter came before the Hon'ble Supreme Court in a case of **Bharat Kumar and others vs. Osmania University and others** [(2007) 11 SCC 58]. In that case, the Hon'ble Supreme Court having taken into account the import of the letters did clearly hold

that the scheme is voluntary one and it is up to the discretion of the State Government to adopt the scheme or not to adopt the scheme.

They would further submit that formulation of the service conditions of the University teachers including the determination of age of superannuation is the subject matter of the State legislation as the same would fall within Entry 25 of List III under which Jharkhand University Act has been enacted wherein under Section 67, the age of superannuation has been prescribed as 62 years and as such, unless any amendment is made in the said section or that is held to be void or ultra vires, age of the superannuation would be considered to be 62 years in spite of directive given under regulation framed by the U.G.C for enhancing the age of the teachers from 62 to 65 years as it would be beyond the competence of the U.G.C to make a legislation in the field, i.e. Entry 25 of List III which is a subject matter of the State legislation.

In this regard it was further submitted that in view of the stand of the U.G.C as has been put forth on behalf of the counsel appearing for the U.G.C that the scheme itself is voluntary one, the stand taken by the petitioners that the schemes formulated by the U.G.C are to be accepted by the State mandatorily gets shattered.

Coming to the first point relating to the scheme being voluntary or mandatory or that it is to be accepted in part or be accepted as whole, reference may be made again to clause 8(p)(v) which certainly speaks that it is upto the State Government to adopt and implement the scheme but taking into account the terms and conditions attached to the said clause 8(p)(v) it would appear that if the State Government wishes to adopt and implement this scheme, it has to adopt the scheme accepting the terms and conditions as laid down in clause (a) to (g). One of the conditions as laid down in clause (g) of clause 8(p)(v) is that if the scheme is to be adopted by the State Government, it has to be adopted as composite one. That

stand of the Central Government was reiterated further in clause (iv) of the letter dated 11.5.2010 and ultimately, those schemes relating to revision of pay and enhancement of age was formulated as regulations which were framed in exercise of power conferred under clause (e) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 and the scheme formulated under the aforesaid two letters form part of the regulation. As per clause 2.1.0, the revised scales of pay and other service conditions including age of superannuation in central universities is to be implemented strictly in accordance with the decision of the Central Government. Further clause 2.3.1 does stipulate that the said scheme relating to revision of pay and other service conditions including enhancement of age would be applicable to the universities of the State and the scheme is to be adopted as composite one. Thus, no option is left with the State to accept one part of the scheme, i.e. revision of pay as is the case here and not to accept the directive relating to enhancement of age from 62 to 65 years. It is not open for the State Universities/State Government to accept only the recommendation relating to revision of pay and to have 80% grant on account of additional burden without accepting other directives as on account of failure to accept all recommendation of U.G.C the University/State Government in terms of the clause 3 of the regulation would reap consequences whereby it would be debarred from getting Central Government.

So far decision rendered in a case of ***B. Bharat Kumar and others vs. Usmania University*** is concerned, the Hon'ble Supreme Court having considered the language of the letter dated 27.7.1998 did hold that the scheme is voluntary and as such, it is not binding on the State. It also held that it is the matter between the State Government on one hand and the U.G.C on the other and it would be for the U.G.C to extend the benefit of the scheme or not to extend the

same depending upon the satisfaction about the attitude taken by the State Government in the matter of implementing the scheme. While holding so, the Court also took notice of the fact that the said letter did not have any legislative impact, obviously for the reason that no such regulation as is there in the present case had been formulated at that time. The formulation of the scheme now makes hail of difference as the regulation framed becomes part of the University Grants Commission Act which has been legislated by the Parliament in terms of the Entry 66 of the List I of Schedule 7 of the Constitution of India whereas Jharkhand State University Act has been legislated under Entry 25 of List III. Entry 66 of List I and Entry 25 of List III of the 7<sup>th</sup> Schedule of the Constitution of India reads as follows:

Entry 66 List I:

*“66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institution”*

*“25. Education including the technical education, medical education and University, subject to the provisions of Entry 63, 64, 65 and 66 of List I; Vocational and Technical training and Labour Training:.*

On conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover, the same is subject to Entries 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does entrench upon the legislative field of entry 66 of List I of 7<sup>th</sup> Schedule of the Constitution of India that piece of legislation in view of Article 254(1) of the Constitution of India can be held to be invalid. Now therefore, it has become necessary to examine as to whether any legislation with respect to service condition of the university teachers particularly with respect to age of superannuation can be subject matter of legislation by the Parliament under Entry 66 of List I of 7<sup>th</sup> Schedule of the Constitution of India.

The Hon’ble Supreme Court at various occasion has occasioned to deal with this kind of issue. One such case is of **State**

***of Tamil Nadu vs. Adhiyaman Educational & Research Institute [(1995) 4 SCC 104]*** wherein the Court has laid down the law in following terms:

“ 41. What emerges from the above discussion is as follows:

*(i) The expression ‘coordination’ used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean education. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make ‘coordination’ either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.”*

The interplay of Entry 66 List I and Entry 25 List III was again examined by a Constitution Bench in a case of ***Preeti Srivastavs (Dr.) vs. State of M.P [(1999) 7 SCC 120]*** in the context of lowering of standard by the State for admission to a post graduate course in a medical college and it was held that the State cannot while controlling education in the State impinge on standards in institutions for higher education, because this is exclusively within the purview of the Union Government. While considering the question whether norms for admission have any connection with the standard of education and that they are only covered by Entry 25 of List III, it was observed that any lowering of the norms for admission does have an adverse effect on the standard of education in the institution of higher education. The standard of education in institution depend on various factors like (i) caliber of teaching staff (ii) proper syllabus design to achieve high level of education in a given span of time (iii)

student – teacher ratio (iv) equipment and laboratory facilities (v) caliber of student admitted (vi) adequate accommodation in the institution (vii) standard of examination held including the manner in which paper are set and examined and evaluation of the practical examination done.

It was pointed out that education involves a continuous interaction between the teachers and the students. The base of teaching, the level to which teaching can rise and the benefit which the students ultimately receive depend as much on caliber of the students as on the caliber of the teachers and the availability of the adequate infrastructural facilities.

Apart from the aforesaid proposition laid down by the Hon'ble Supreme Court in the case of ***Preeti Srivastavs (Dr.) vs. State of M.P*** (supra), the Hon'ble Supreme Court again in a case of ***Prof. Yashpal and another vs. State of Chhattisgarh and others [(2005) 5 SCC 420]*** has observed : *“The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List the whole gamut of the University, which will include teaching quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on, will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standard in institution for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standard are maintained in institution for higher education or research through out the country and also uniformity in standard is maintained”*.

Once the proposition as has been laid down by the Hon'ble Supreme Court in the aforesaid two decisions, there would be hardly any substance in the objection raised on behalf of the State and the

Universities that any legislation with respect to enhancement of age of the teachers from 62 to 65 years would be beyond the competence of the Central Government to make any legislation under Entry 66 of List I as the age seems to have been enhanced to attract eligible person to have teaching career and thereby the students would be getting more experienced teachers which would certainly raise the standard of teaching which proposition can fairly and reasonably be comprehended. At this stage, I may refer to a case of ***Check Post Officer vs. K.P.Abdulla and Bros [(1970) 3 SCC 355]*** wherein it has been held that entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an area beyond.

Thus, in view of the proposition laid down by the Hon'ble Supreme Court as referred to above, stipulation made under the regulation regarding enhancement of the age from 62 to 65 years cannot be said to be an encroachment of the field of the State Legislature. That being the situation, age of superannuation prescribed under Section 67 of the Jharkhand University Act framed under Entry 25 of List III of the Constitution of India being in conflict with the regulation so far it relates enhancement of the age from 62 to 65 would be void and inoperative in terms of Article 254(1) of the Constitution of India. Accordingly, order as contained in Memo No.1188 dated 20.11.2010 refusing to extend the age from 62 to 65 is hereby set aside.

Thus, in view of the conclusion arrived at just hereinabove and also conclusion that scheme formulated by way of regulation is



to be adopted a composite one, the age of superannuation of the petitioners would stand extended to 65 years. As a consequence whereof the petitioners who was in service but was made to retire on 30.6.2010 or thereafter on attaining the age of 62 years would be entitled to the benefit of extended age of superannuation as a result of which they are to be taken back in service with continuity and all consequential benefits.

Thus, all these writ applications are allowed.

**(R. R. Prasad, J.)**

ND/