A B. BHARAT KUMAR AND ORS.

v.

OSMANIA UNIVERSITY AND ORS.

MAY 9, 2007

B [H.K. SEMA AND V.S. SIRPURKAR, JJ.]

Service Law:

College and University teachers—Age of superannuation—Lecturers, Professors, Readers, Librarians, Physical Education Teachers etc, were serving in different private colleges which were enjoying the grant-in-aid by the Government—They filed writ petitions in which the common prayer was that their age of superannuation which was hitherto 58 or 60 years, as the case may be, should be raised to 62 years—They relied on a University Grants Commission (UGC) Notification on revision of pay scales—The State Government issued an order for implementation of the UGC pay scales to the teachers and agreed to implement the said scheme insofar as the salaries were concerned—The said order, however, stated that the Government had decided that there should be no change in the age of superannuation as existing now and it shall be retained at 58 years for the college teachers and 60 years for the universtiy—The High Court dismissed the writ petitions filed by the teachers—Held: The scheme was voluntary and it was up to the State Government to accept or not to accept the scheme–Again even if the State Government accepted a part of the scheme, it was not necessary that the entire scheme as it was had to be accepted by the State Government—The scheme itself gives discretion to the State Government to accept it or not to accept it—If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not to increase it to 60 or as the case may be 62, it was perfectly justified in doing so.

The appellants were serving in different private colleges which were enjoying the grant-in-aid by the Government. They were serving in the capacities as Lecturers, Professors, Readers, Librarians, Physical Education Teachers etc. Their common prayer in the writ petitions was that their age of superannuation which was hitherto 58 or 60 years, as the case may be, should be raised to 62 years. The petitioners relied on a University Grants

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Commission (UGC) Notification on revision of pay scales. The State Government issued an order for implementation of the UGC pay scales to the teachers and agreed to implement the said scheme insofar as the salaries were concerned. The said order, however, stated that the Government had decided that there should be no change in the age of superannuation as existing now and it shall be retained at 58 years for the college teachers and 60 years for the university teachers. The High Court dismissed the writ petitions relying upon the judgment of this Court in *T.P. George's* case. Hence the appeal.

Dismissing the appeals, the Court

HELD:1. The scheme was voluntary and it was up to the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the scheme, it was not necessary that the entire scheme as it was had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the University Grants Commission (UGC) to increase the age of superannuation. [Para 14] [181-F, G]

T.P. George v. *State of Kerala,* [1992] Supp. 3 SCC 191; *O.P. Singla* v. *Union of India,* [1984] 4 SCC 450; *Manikal Majumdar* v. *Gouranga Chandra Dey,* [2005] 2 SCC 400; *Chandrika Prasad Yadav* v. *State of Bihar,* [2004] 6 SCC 331; *Dove Investments (P) Ltd.* v. *Gujarat Industrial Investement Corporation,* [2006] 2 SCC 619, *Prof. Yashpal* v. *State of Chattisgarh,* [2005] 5 SCC 420; *The Gujarat University* v. *Krishna Ranganath Mudholkar,* [1963] Supp. 1 SCR 112; *State of T.N.* v. *Abhiyaman Educational and Research Institute,* [1995] 4 SCC 104 and *Dr. Preeti Srivastava* v. *State of M.P.,* [1997] 7 SCC 120, referred to.

2. The communications even if they could be heightened to the pedestal of a legislation or as the cas 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 the UGC, also did not introduce the element of compulsion *vis-a-vis* the State Government and the Universities. Therefore, there is no justification in going to Entry 66 in List I and Entry 25 in List III of the Constitution of India 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. [Para 15] [181-H; 182-A, B]

A **3. Once the scheme suggested that it was left to the "wish" of the State Government, there will be no point in trying to assign the unnatural meaning to the word "wish". Similarly, there would be no point in going into the interpretation of the word "gamut" and to hold that once the State Government accepted a part of the scheme, the whole scheme had to be accpted, as such would be an unnecessary exercise. [Para 16] [182-C, D]**

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4.1. Here is a case where there is no legislation. Even if the scheme is taken to the higher pedestal of a policy statement under Article 73 of the Constitution, the scheme itself suggests being voluntary and not binding and the scheme itself gives discretion to the State Government to accept it or not

C **to accept it. [Para 18] [182-G; 183-A]**

T.P. George **v.** *State of Kerala,* **[1992] Supp. 3 SCC 191 and** *Prof. Yashpal State of Chattisgarh,* **[2005] 5 SCC 420, referred to.**

4.2. In the present case, there is no legislation for being considered.

D **Where the scheme itself gives the discretion to the State Government and where the State Government uses that discretion to accept a part of the scheme and not the whole thereof, it would be perfectly within the powers of the State Government not to accept the suggestion made by the scheme to increase the age of superannuation. [Para 18] [183-B, C]**

E **5. It is again reiterated that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so one would be tralling into the dangerous area of the wisdom of the Legislature. If the State Government in its discretion, which is permissible to it under the scheme, decides to restirct the age and not to increase it to 60 or as the case may be**

F **62, it was perfectly justified into doing so. [Para 19] [183-C, D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6686-6689 of 2003.

From the Final Judgment and Order dated 23.04.2001 and 09.02.2001 of

G the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P. Nos. 11396 of 2000, 3206, 26171 of 1999 and W.P. No. 24578 of 1998 respectively.

WITH

C.A. Nos. 6668-6678, 6684, 6685, 6690, 6691 & 6679-6683 of 2003.

H H.S. Gururaja Rao, K. Maruthi Rao, K. Radha, Anjani Aiyagair, S. Usha

Reddy, D. Mahesh Babu, Harishanker G. (for Lawyer's Knit & Co.), P. Vinay Kumar, D. Bharthi Reddy, Rajeev M. Roy, Rajeev K. Virmani, T.V. Ratnam, G. Ramakrishna Prasad and Suyodhan Byarapaneni for the appearing parties. A

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Several writ petitions came to be filed in the High Court raising a common issue regarding the superannuation age. All the petitioners were serving in different private colleges which were enjoying the grant-in-aid by the Government. They were serving in the capacity as Lecturers, Professors, Readers, Librarians, Physical Education Teachers, etc. Their common prayer in the writ petitions was that their age of superannuation which was hitherto 58 or 60 years, as the case may, should be raised to 62 years. For this they all commonly relied on a communication No.F.1.22/97-U.I dated 27.7.1998. The claim made by the petitioners was that firstly the decision of the Government of India was mandatory and binding vis-'-vis the colleges/ universities. This was all the more reiterated in the backdrop that the Central Government was providing financial assistance to the State Government in implementing the scheme of revision of pay scales. It will be better for us to quote the whole letter dated 27.7.1998 since the same happens to be the main and by far the only basis for the prayers made in the writ petitions (unfortunately, the copies of the writ petitions have not been filed before us though there are several appeals): B C D E

> "Sub: Revision of pay scales of teachers in Universities and colleges following the revision of pay scales of Central Government employees on the recommendations of Fifth Central Pay Commission:
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> Madam/Sir,
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> I am directed to say that in fulfillment of the constitutional responsibility for consideration, determination and maintenance of standards in higher education, the Central Government and the University Grants Commission (UGC) have taken, from time to time, several measures. As a part of these efforts, the Central Government has revised the pay scales of teachers in Central Universities and Colleges thereunder in order to attract and retain talent in the teaching profession. A copy of the letter addressed to the UGC giving details of the revised scales of pay and other provisions of the scheme of revision of pay scales is enclosed.
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> 2. In discharging its constitutional responsibility, the Central

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Government has decided to continue to provide financial assistance to the State Governments who wish to adopt and implement the Scheme of revision of pay scales subject to the following terms and conditions:

(a) The Central Government will provide financial assistance to the State Governments which have opted for these revised pay scales to the extent of 80% of the additional expenditure involved in the implementation of the revision.

(b) The State Government will meet the remaining 20% of the expenditure from their own sources.

(d) The financial assistance, indicated above, would be provided for the period from 1.1.1996 to 31.3.2000.

(e) The entire liability on account of revision of pay scales, etc., of university and college teachers would be taken over by the State Governments w.e.f. 1.4.2000.

(f) The Central assistance would be restricted to revision of pay scales in respect of only those posts which were in existence and filled up on 1.1.1996.

3. The State Governments, after taking local conditions into consideration, may also decide in their discretion, to introduce scales of pay different from those mentioned in the scheme, and may give effect to the revised scales of pay from January 1, 1996, or a later date. In such cases, the details of the modifications proposed either to the scales of pay or the date from which the scheme is to be implemented, should be furnished to the Government of India for its approval and, subject to the approval being accorded to the modifications, Central assistance on the same terms and conditions as indicated above will be available to the State Governments for implementation of the scheme with such modifications, provided that the modified scales of pay are not higher than those approved under the scheme.

4. The payment of Central assistance for implementation of the Scheme is also subject to the condition that the entire scheme of revision of pay scales, together with all the conditions to be laid down in this regard by the UGC by way of Regulations, is implemented by the State Governments as a composite scheme without any modification except to the date of implementation and scales of pay as indicated above.

5. It shall be necessary for the Universities and Managements of colleges to make necessary changes in their statutes, ordinances, rules, regulations, etc., to incorporate the provisions of this scheme.

6. The detailed proposal for implementation of the scheme on the lines indicated above, may kindly be formulated immediately and sent to the Department of Education in the Ministry of Human Resources Development for examination so that Central assistance to the extent indicated above can be sanctioned for the implementation of revised scales of pay.

7. Anomalies, if any, in the implementation of the scheme may be brought to the notice of the Department of Education in the Ministry of Human Resource Development for clarification.

8. The scheme applies to teachers in all Universities (excluding Agricultural Universities) and colleges (excluding Agricultural, Medical and Veterinary Science Colleges) admitted to the privileges of the Universities."

2. The petitioners also relied on a UGC notification on revision of pay scales bearing No.1-3-1494(PS) dated 24.12.1998. This was a communication from the Secretary, University Grants Commission along with the whole scheme. Few other letters like Letters dated 22.9.1998 and 6th November, 1998 were also relied upon and lastly a consolidated statement sent by the Ministry based upon the above mentioned three letters was also heavily relied upon. From that consolidated statement our attention was invited to the following para No.(vi):

"(vi) Age of superannuation (Annexure I)

The age of superannuation of university and college teachers, Registrar, Librarians, Physical Education personnel, Controller of examination, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, 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 upto the age of 65 years (Annexure I & III)."

3. In short initially the claim of some of the writ petitioners was entirely

A based on this material for the extended age of superannuation upto 62 years. The things did not stop here.

4. On 29.6.1999 the State of Andhra Pradesh passed the GOMS 208. This was mainly for implementation of the UGC pay scales to the teachers and others covered in the aforementioned consolidated statement and the letters B mentioned above. The State of Andra Pradesh agreed to implement the said scheme in so far as the salaries were concerned. This position obviously was taken after formation of a committee of five experts which is clear from para (iv) of the GOMS 208. The committee submitted the report to the State Government after making an indepth study of the issues relating to C implementation and had made a report to the Government on 30.4.1999. It is on the basis of this report that the aforementioned GOMS 208 came to be issued. Para 5 of the GOMS is as under:

> "5. After careful consideration of the Revised UGC scales and the suggestions of Government of India, and the recommendations of the D five member committee, as mentioned in para 4 above, the State Government of A.P. have decided to extend the Revised UGC Scales of pay, to the Teachers, Librarians and Physical Education Personnel in the Universities and Colleges in the State, as shown in the Schedule to this order."

E The rest of GOMS is not material as it pertains to the other conditions subject to which the revised pay-scales were awarded. However, para 14 of the GOMS suggests that the service conditions like recruitment and qualifications, selection procedure career advancement, teaching days, work load, code of professional ethics, accountability, etc., shall be as indicated in the Appendix to the order. The Appendix however, to the chagrin of the petitioners, suggested F the age of superannuation also. The relevant para is as under:

> "15. *Superannuation and Re-employment of Teachers:*
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> (1) The University Grants Commission has recommended superannuation age as 62 years uniformly for the teachers in Universities G and colleges. At present, in the State of Andhra Pradesh, the age of superannuation is 58 for the college teachers and 60 for university teachers. After considering the issue at great length and keeping in view that if this issue to enhance the age of superannuation to 62 years is agreed to, it will have repercussions and adverse implications H regarding announcement of the age of retirement of the State employees

A also, the Government have decided that there should be no change in the age of superannuation as existing now and it shall be retained at 58 years to the college teachers and 60 years for the university teachers.

(2) It is open to a university or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC upto B the age of 65 years.

(3) Age of retirement of Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would also C continue to be 60 years. No re-employment facility is provided for the Registrars, Librarians and Directors of Physical Education."

It is this para which infuriated the petitioners. Though some of the petitioners had rushed to the court prior to the passing of the GOMS, other batch of writ petitions came to be filed where they also challenged the GOMS 208 and more D particularly para 15 of the Appendix which has been quoted above. The writ petitioners who had filed the writ petitions earlier to this date did not even bother to amend the writ petitions and introduce a challenge to this GOMS in their writ petitions. Strangely enough, however, while filing the Special Leave Petitions challenging the impugned judgments, we find a challenge E having been made to the GOMs in the body of the SLPs. However, at the High Court stage it was treated as if all the writ petitions had challenged GOMS 208 because the same was an outcome of the aforementioned three letters to which we have already referred to earlier.

5. The High Court took the view that this matter was squarely covered F by the judgment of this Court in *T.P. George & Ors.* v. *State of Kerala,* [1992] Suppl. 3 SCC 191 against the petitioners. The High Court, more particularly relied on one paragraph in that judgment which is as follows:

"However, the court viewed that age of retirement fixed at 55 years in the case of teachers of affiliated colleges is too low. It is only after G a teacher acquires several years of teaching experience that he really becomes adept at his job and it is unfortunate if the students have to lose the benefits of his experience by reason of any unduly early age of retirement. However, it is not for the court to prescribe the correct age of retirement but that is a policy function requiring H

considerable expertise which can properly be done by the State Government or the State Legislature of the Universities concerned. It is hoped that some time in near future, the State Government will be able to consider the question and determine the age of retirement as it best thinks fit."

In that judgment this Court had sealed a mark of approval on the aforementioned observations of the impugned judgment of the Division Bench of the Kerala High Court:

"Though clause 26 of the scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvements in providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated March 13, 1990 is to implement the UGC scheme including revision of scales of pay in relation to teachers in Universities including Kerala-Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges, and qualified Librarians and qualified physical Education Teachers with effect from January 1, 1986, subject however to the express condition that in so far as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the State Government having accepted the UGC scheme, and as the scheme provides for a higher age of 60 years, once the State Government accepted the scheme, all the clauses of the scheme become applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore, the State Government had the discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the scheme. Subject to the one condition, namely, in so far as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted, the scheme in the modified form, the teachers can only get the benefit which flows from the scheme to the extent to which it has been accepted by the State Government and the concerned universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they

have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the scheme. It is for the University Grants Commission to extend the benefit of the scheme or not to extend the benefit of the scheme depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on one hand and the University Grants Commission on the other. Teachers of the private institutions concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation, to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

In view of this all the writ petitions came to be dismissed by two separate judgments. These judgments have now fallen for consideration in these appeals.

6. Shri Gururaja Rao, learned Senior Counsel appearing on behalf of the appellants contends firstly that the High Court erred in relying upon the judgment of this Court in *T.P. George's* case (supra). According to the learned counsel, the judgment has ceased to apply in view of the subsequent developments. Learned counsel secondly urged that the language of the letter dated 27.7.1998 itself suggested that it was not open for the State Government or as the case may, the other educational institutions like Universities and Colleges to ignore the letter, especially the suggestion therein that the retiring age should be 62 years. In this the learned counsel laid a great stress on the term "wish" used in that letter and suggested that the term should not be interpreted to suggest any discretion being left with the State Government regarding the scheme to be implemented. Learned counsel also claimed that the scheme, if at all chosen to be implemented, had to be implemented as a composite scheme since the whole scheme is contained in a single document which was plain and unambiguous. Relying on the decision of *O.P. Singla* v. *Union of India,* [1984] 4 SCC 450 it was urged that when a rule or section is a part of an integral scheme, it should not be considered or construed in isolation because doing so would result in some inter-related provisions becoming otiose or devoid of meaning. Relying on *Maniklal Majumdar* v.

A *Gouranga Chandra Dey,* [2005] 2 SCC 400, the learned counsel suggested that in order to ascertain the meaning of a clause, the court must look at the whole statute as what precedes and what succeeds and not merely the clause itself. There are number of other authorities referred to by the learned counsel like *Chandrika Prasad Yadav* v. *State of Bihar,* [2004] 6 SCC 331, *Dove Investments (P) Ltd.* v. *Gujarat Industrial Investment Corporation,* [2006] 2 B SCC 619 which suggest that whether the statute would be directory or mandatory would depend upon the scheme thereof.

7. Referring to the letter itself, the learned counsel further suggested that considering the language therein, it was clear that it did not leave any C discretion with the State Government with in respect to the scheme as a whole. Referring to paragraphs 4 and 5 of the letter, the learned counsel suggested that there was a clear suggestion to the Universities and Managements of Colleges to make necessary changes in their statutes, rules, regulations, etc., to incorporate the provisions of the scheme and these directions in para 5 were mandatory in nature and, therefore, the Universities D and the State Government had no other option but to give effect to the scheme as a composite scheme. Learned counsel laid a great stress on the terminology "shall be necessary" and "to make necessary changes". Learned counsel took us through the whole letter paragraph by paragraph and insisted that the scheme suggested by the University Grants Commission (UGC) was E not only mandatory but was also binding *vis-a-vis* the Universities and the States and, therefore, it was essential that the retirement age was bound to be increased to 62 or as the case may be 60 years.

8. We were also taken through Entry No.66 of the Union List and it was tried to suggest that the letter or the as case may be, the scheme was in the F nature of a legislation, a Central legislation that would be binding against the States and the statutes of the State contrary to it to that extent would have to be read as otiose. Learned counsel also made a reference to the subsequent letter dated 6.11.1998 and more particularly the subsequent developments and wanted to read therefrom that the superannuation age was bound to be 62 years or as the case may be 60 years.

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9. In so far as the decision in *T.P. George's* case (supra) is concerned, the counsel very heavily relied on the judgment of this Court in *Prof. Yashpal and Anr.* v. *State of Chattisgarh & Ors.,* [2005] 5 SCC 420 and for that purpose also argued the scope of Entry 66 from List I as against Entry 25 of H List III. It was the contention of the learned counsel that *Yashpal's* case

expressly overrules the law laid down in *T.P. George's* case (supra). For impressing upon us the importance of Entry 66 of List I which was required to be harmonized with Entry 25 of List III, the learned counsel took up through the celebrated judgment of this Court in *The Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar & Ors.*, [1963] Supp. 1 SCR 112. In that the learned counsel further urged that the whole gamut of University which include teaching, etc., will not come within the purview of the State Legislation on account of the specific nature of determination of standards in institutions for higher education being in the Union List for which Parliament alone is competent to legislate. Learned counsel, therefore, taking the analogy further suggests that the scheme which was being handed down by the Central Government was binding as a Central legislation. Learned counsel also took us through another celebrated decision of this Court in *State of T.N.* v. *Abhiyaman Educational and Research Institute,* [1995] 4 SCC 104. Even the other celebrated decision in *Dr.Preeti Srivastava* v. *State of M.P.*, [1999] 7 SCC 120 which was referred to in *Yashpal's* case was heavily relied upon by the counsel. In short the main stay of the argument was that the University Education which was higher education and shall be covered by Entry 66 of List I, and therefore, the recommendations made by the UGC were binding as against the State Government and the Universities and the conflicting States statutes to that extent stood overruled. It was tried to be suggested that the Government of India's letter calling upon the State Governments in implementing the scheme is the result of the exercise of the executive powers under Article 73 of the Constitution of India with respect to Entry 66 of List I and, therefore, such a decision of the Central Government was binding on the State Government and the Universities as the subject pertains to the Union List. It was also suggested that the State Government in GOMS 208 dated 26.6.1999 had accepted the partial implementation of the scheme and such partial implementation was not permissible in view of the categorical directions contained in paragraph 4 of the letter dated 27.7.1998. To the same effect, more or less are the written submissions by other appellants in other appeals.

10. The State of Andhra Pradesh, however, took a clear stand that a mandamus cannot be issued to the State Government on the basis of current letter written by the Director of UGC. It is pointed out that the language of the letter was clear enough to suggest that the scheme was voluntary in nature. It was pointed out that it was nowhere suggested in the letter that the State Governments were required to implement the contents of the letter. Learned counsel heavily relied on the decision in *T.P. George's* case (supra)

A and pointed out that that case clinched the issue against the appellants. It was also pointed out by the learned counsel for the other respondents that the language of the letter or for that matter subsequent letters and the scheme was clearly suggesting that it would be voluntary on the part of the State Government to accept or not to accept the scheme. There was no question of the scheme being in the nature of a legislation or order or a policy decision. B Learned counsel further argued that even if it was a policy decision, the scheme itself suggested that it was voluntary and dependent upon the "wish" of the State Government to implement the scheme or not. It was, therefore, impermissible to attribute different meanings and to read something in the scheme which is not there. The other counsel also pointed out that the C appellant had utterly failed to show as to how the judgment in *T.P. George's* case was not applicable to the present case or for that matter stood overruled by *Yashpal's* case. It is in this background that we have to consider the matter.

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

12. We would, therefore, first examine as to whether the two Division Benches have rightly relied upon the said judgment held against the appellants. We have examined the judgment in extenso. This is also a case where the UGC had floated a scheme in 1986 which was framed by the Central Government E pursuant to the Mehrotra Committee Report. In that scheme there was a Circular dated 17.6.1987 addressed by the Ministry of Human Resource Development, Department of Education to the Education Secretaries of all the States, UTs and it was clearly mentioned therein that the adoption of the scheme was voluntary and the only result follow from the State Government F not adopting the scheme might be that the State Government may not get the benefit of the offer of reimbursement from the Central Government to the extent of 80% of the additional expenditure involved in giving effect to the revision of pay-scales as recommended by the scheme. Therefore, the factual situation was almost identical as in the present case. This Court approved specifically a paragraph in the Kerala High Court judgment which we have G already quoted earlier in this judgment in para 5. In that the Kerala High Court had specifically rejected the contention that the State Government having accepted the UGC scheme and as the scheme provided for the higher age of 60 years, the clause of the scheme regarding age of retirement also would become applicable. The Kerala High Court had specifically further observed H that the UGC scheme did not become applicable as it was not obligatory for

the Government and the Universities to follow the same. The Kerala High Court read a discretion in the State Government to accept or not to accept the scheme.

13. The situation is no different in the present case also. The very language of the letter dated 27.7.1998 suggests that the scheme is voluntary and not binding at all. Further it is specified in the judgment of the Kerala High Court that the teachers had no right to claim a specific age because it suggested in the scheme which scheme was itself voluntary and not binding. The Court clearly observed that "the appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation". The Court therein observed that it is a matter between the State Government on the one hand and the University Grants Commission on the other and it would be for the University Grants Commission to extend the benefit of the scheme or not to extend the same depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the scheme. It was lastly clearly observed that as long as the State Government has not accepted the UGC's recommendations to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years.

14. Inspite of our best efforts, we have not been able to follow as to how the judgment of the Kerala High Court, which has been approved by this Court is, in any manner, different from the factual situation that prevails here in this case. It is for that reason that we have extensively quoted not only the aforementioned letter dated 27.7.1998 but also the subsequent letters and the further policy statement. Plain reading of all these is clear enough to suggest that the scheme was voluntary and it was upto the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the scheme, it was not necessary that all the scheme as it was, had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation.

15. Once we take this view on the plain reading of the scheme, it would be necessary for us to take stock of the subsequent arguments of Mr.Rao regarding Entry 66 in the List I *vis-a-vis* Entry 25 in List III. In our opinion, the communications even if they could be heightened to the pedestal of a

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 B binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary.

16. Much debate was centered around the interpretation of the words "wish" and "gamut". In our opinion it is wholly unnecessary and we have C merely mentioned the arguments for being rejected. Once the scheme suggested that it was left to the "wish" of the State Government, there will be no point in trying to assign the unnatural meaning to the word "wish". Similarly, there would be no point in going into the interpretation of the word "gamut" and to hold that once the State Government accepted a part of the scheme, the whole scheme had to be accepted by the same as such would, in our opinion, D be an unnecessary exercise.

17. In view of the plain and ambiguous language of the scheme, there would be no necessity on our part to attempt any interpretation. For the same reasons we need not consider the argumets based on the decisions in *O.P. Singla, Maniklal Majudar, Chandrika Prasad Yadav & Dove Investments* as E they all pertained to principles of interpretation which exercise would have been necessary for us only if the language was ambiguous. It is also not necessary for us to extensively consider *Dove Investment's* case as from the plain language of the scheme itself we find that it is not a mandatory scheme in the sense being binding against the State Governments.

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18. For the similar reasons we do not see as to why the judgment in *T.P. George's* case is not applicable to the present case. A very serious argument was raised by the learned counsel that the judgment stood overruled by *Yashpal's* case. We do not think so. *Yashpal's* case was on entirely different issue. There the controversy was relating to a legislation creating number of G universities. The question there was as to whether the State Government could create so many universities and whether the legislation creating such universities was a valid legislation, particularly in view of the fact that the subject of higher education was covered under Entry 66 of List I. Such is not the subject in the present case. Here is a case where there is no legislation. Even if we take the scheme to the higher pedestal of policy statement under H

Article 73 of the Constitution, the scheme itself suggests to be voluntary and not binding and the scheme itself gives a discretion to the State Government to accept it or not to accept it. If such is the case, we do not see the relevance of the *Yashpal's* case in the present matter. Once this argument fails, the reference to the other cases which we have referred to earlier also becomes unnecessary. In our considered opinion all those cases relate to the legislative powers on the subject of education on the part of the State Government and the Central Government. In the present case we do not have any such legislation for being considered. Where the scheme itself gives the discretion to the State Government and where the State Government uses that discretion to accept a part of the scheme and not the whole thereof, it would be perfectly within the powers of the State Government not to accept the suggestion made by the scheme to increase the age of superannuation.

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

20. When we see the writ petitions which were filed before the High Court, number of them have not even challenged the subsequent Resolution GOMS 208 dated 26.9.1999. Therefore, all the challenges were made in a haphazard manner without even bothering to put the proper challenge. Again nobody even challenged the constitutionality of the said Resolution to suggest that there was a conflict between the said GOMS and any Central legislation as covered by Entry 66 of List I. What was being examined in *Yashpal's* case was regarding the validity of the State Legislation particularly when it was in conflict with the Central Legislation though it was purported to have been made in Entry 25 of the Concurrent List which in effect encroaches upon legislation including the supporting legislation made by the Centre under Entry 23 of the Concurrent List to give effect to Entry 66 of the Union List. This Court had held the same to be void and inoperative. Since there is no conflict in the present case whatsoever either apparent or latent, as such there is no question of invalidating the said GOMS which has been challenged only in few of the writ petitions. Even after the said GOMS came on the anvil, the petitioners who had filed the writ petitions earlier have never bothered to

A amend their writ petitions so as to challenge the said GOMS. However, we leave it at that particularly when we have taken the view that there has been no conflict between any of the Central Legislation or for that matter its policy and the said GOMS or the policy of the State Government displayed from the same. A great stress was laid on para 33 in *Yashpal's* case. We have absolutely no quarrel with the proposition laid therein. In that paragraph this Court B expressed that the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of the specific entry on coordination and determination of standards in institutions for higher education C or research and scientific and technical education being in the Union List for which Parliament alone is competent. There can be really no dispute with this proposition but in the first place there is nothing here to suggest that the Parliament has legislated over any such subject and that the State Government's any legislation is in conflict with any such legislation made by the Parliament. Further it is clear from the letter dated 27.7.1998 that it is expressly left to the D discretion of the State Government to implement or not to implement the policy. Once there is no question of any conflict we do not think that would have the effect of overruling the *T.P. George's* case. Further, merely because in Yashpal's case the observation are about the gamut of the University it does not necessarily mean that the State Government will not be able to E decide the age of retirement particularly where it has the discretion to do so as also the legislative powers. We must hasten to add that no provision of any Act has been challenged in these writ petitions. All that the plea of the appellants in the original writ petitions was that the State Government must implement the UGC recommendations of the scheme and it was rightly found to be untenable.

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21. In short we are of the opinion that the appeals have no merit and must be dismissed. They are accordingly dismissed. The parties to bear their own costs.

V.S.S. Appeals dismissed.

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