applicable to taxes. The said judgment is not with regard to the interpretation of provisions of Section 62-A(2) but of Section 62-A(3) of the Act and, thus, is not relevant to the present case. It is not in dispute that on failure of the Municipal Council/Committee to comply with the order issued under Section 62-A(2) of the Act, the State Government has power to issue notification under Section 62-A(3) of the Act. In the present case, the stage of issuance of any notification under Section 62-A(3) has not arisen. The impugned notification is also not in consonance with the provision of Section 62-A(2) of the Act.

(26) For the reasons stated above, these writ petitions are allowed. The notification Annexure P-5 as well as revised bills raised for recovery of sewerage and water charges in pursuance to the notification Annexure P-5, are hereby ordered to be quashed.

R.N.R.

Before Ashutosh Mohunta & Rajan Gupta, JJ.

DR. A.C. JULKA & OTHERS,—***Petitioners***

versus

PANJAB UNIVERSITY AND OTHERS,—***Respondents***

CWP No. 8025 of 2007

31st October, 2008

Constitution of India, 1950—Art. 226—Punjab Reorganization Act, 1966-S.-72—Panjab University Act, 1947-S.31—UGC recommending increase in age of superannuation—Syndicate of PU adopting recommendation of UGC & passing a resolution to implement same—Central Government refusing to accept resolution passed by Senate of University—State of Punjab & Central Government meeting funding requirement of Panjab University—After enactment of Reorganization Act PU acquiring character of an Inter-State body corporate & cannot be termed as a Central University—Merely because appropriate Government for purposes of Panjab University Act is Central Government and as approval of

Government is required for carrying out amendments to regulations of University and for certain administrative purposes, it cannot be held that PU is a Central University—No violation of principles of natural justice—Decision of Government rejecting proposal for enhancement in age of superannuation does not suffer from Wednesbury unresasonableness—Petitions dismissed.

Held, that in view of Section 72(4), the successor States continued to have a role to play in respect of Panjab University. Even grant to the extent of 40% is met by the Punjab Government, which is a substantial share. It is, thus, clear that merely because appropriate Government for the purposes of the Panjab University Act is Central Government and as approval of the Government is required for carrying out amendments to regulations of the University and for certain administrative purposes, it cannot be held that Panjab University is a Central University. It is not possible for this Court to draw such an inference by reading into Panjab University Act what it does not intend. The provisions of the Reorganization Act have to be essentially kept in view while dealing with this question. Section 72 leaves no room for doubt that the Panjab University can at best the termed as an Inter-State Body Corporate.

(Para 18)

Further held, that Regulation 17.3 of Chapter VI(A) of the Conditions of Service of University Employees has been framed in exercise of power under Section 31(2) of the Panjab University Act, 1947. It is evident that unless Regulation 17.3 is amended and age of superannuation therein is prescribed as 62 years, the UGC recommendations would have no effect and the teaching staff will continue to retire at the age of 60 years. It appears that at various stages the matter was considered by the Syndicate and the Senate of the University. Certain resolutions were also passed for enhancing the age of retirement from 60 to 62 years and for amending Regulation 17.3 accordingly. However, it is obvious that these resolutions passed by the Senate and Syndicate of the University did not get the approval of the Government of India and thus never came into effect. There is no

doubt that for a resolution to take effect and to become a part of the regulation, it is necessary that sanction of the Government is obtained.

(Para 23)

Further held, that the fact that Punjab Government is sharing the financial burden in respect of Panjab University, is a matter of record. The Panjab University being an Inter-State Body Corporate, the Government of India rightly took into consideration that Punjab Government, which is meeting the expenditure of University to the extent of 40% had rejected the proposal for increase in age of superannuation. We do not find that this was an extraneous factor which was taken into consideration by the Government of India while arriving at decision to reject the proposal for enhancement in age of superannuation. It is, therefore, not possible to hold that the decision suffers from Wednesbury unreasonableness. The said principle would be attracted only if the decision is so outrageous or defies logic that no sensible person could have arrived at such a decision. However, there is nothing in decision which would lead to that conclusion.

(Para 32)

Rajiv Atma Ram, Senior Advocate with

Sunita Chauhan, Advocate and

G. S. Mann, Advocate, for the petitioners.

R. L. Batta, Senior Advocate with

Parveen Moudgil, Advocate,

A. K. Chopra, Senior Advocate with

Ashish Chopra, Advocate,

S.D. Sharma, Senior Advocate with

Bindu Goyal, Advocate,

Puneet Bali, Advocate,

Sudarshan Goel, Advocate,

D. S. Patwalia, Advocate,

TPS Chawla, Advocate,

S.D. Bansal, Advocate,

N. P. Mittal, Advocate,

M.L. Puri, Advocate,

P.S. Bhangu, Advocate,

D.S. Nalwa, Advocate,

B.S. Walia, Advocate,

Munish Kapila, Advocate,

BNS Sharma, Advocate,

Aman Chaudhary, Advocate,

Anu Chatrath, Advocate,

Akshay Bhan, Advocate,

O.P. Kamboj, Advocate,

Sunil Chadha, Advocate,

Ashish Aggarwal, Advocate,

Vishal Sharma, Advocate,

Sanjay Tangri, Advocate,

H.R. Mittal, Advocate,

Ms. Balwinder Kaur, Advocate,

Rakesh Gupta, Advocate,

Arun Aggarwal, Advocate, for the petitioners.

Anupam Gupta, Advocate, for Panjab University.

Charu Tuli, Senior DAG, Punjab for State of Punjab.

Rajiv Sharma, Advocate, Senior Central Government Standing Counsel and Gurpreet Singh, Central Government Counsel for Union of India.

N. R. Dahiya, Advocate for UGC.

Rajiv Anand, Advocate for intervener.

RAJAN GUPTA, J.

(1) This judgment will dispose of 72 writ petitions, i.e. CWP Nos. 8025 of 2007, 11949 & 19701 of 1998, 284, 934, 1043, 9217, 9765 & 17760 of 1999, 1907, 2170, 9692, 10864 & 10869 of 2000, 11465, 11712, 16972 & 17498 of 2002, 1720, 4000, 6580, 14759, 18007 & 19164 of 2003, 531, 1708, 3226, 8581, 11372, 14471 & 18980 of 2004, 1332, 4914, 8170,9821, 13639 &17234 of 2005, 1411, 7429, 10722, 12774, 13037, 15650, 16767 & 20096 of 2006, 2900, 4860, 7689, 12968, 13779, 15983, 17379, 17473, 19004, 19005 & 19111 of 2007, 3084, 4926, 5272, 6817, 7093, 7101, 7851, 13099, 13104, 13260, 15367, 15376, 16381, 17023, 17235 & 18589 of 2008. In these writ petitons, common question of increase in age of superannuation from 60 to 62 years and 62 to 65 years is involved. Since in all the writ petitions, the petitioners pray for the same relief, they are being disposed of by this common judgment.

(2) However, facts are being taken from CWP No. 8025 of 2007 for the purpose of deciding the issue in hand.

(3) The petitioners are serving in the Panjab University as Readers, Lecturers, Professors etc. Certain other petitioners are from the non-teaching faculty. However, all the petitioners have invoked the writ jurisdiction of this Court for increase in age of superannuation in terms of UGC recommendations and in terms of a Government of India, Ministry of Human Resource Development letter, dated 27th July, 1998 and another letter from the same Ministry, dated 6th November, 1998 wherein increase in age of superannuation of non-teaching staff has been recommended. The petitioners are aggrieved by the decision, dated 23rd July, 2002, whereby proposal for increase in the age of superannuation was rejected by the Government of India observing that 40% of the financial burden/deficit arising as a result of increase in age in superannuation had to be brone by the Punjab Government and Punjab Government having already refused to bear the burden, Government of India was not in a position to agree to the proposal. It is this letter, Annexure P-13 which has been inpugned by the petitioners.

(4) We have heard learned counsel for the parties at length.

(5) Mr. Rajiv Atma Ram, learned counsel for the petitioners has drawn our attention to the letter, dated 27th July, 1998, Annexure P-1A and to para (vi) thereof wherein the age of superannuation of University teachers has been recommended as 62 years. It is contended that the said letter has been issued by the Ministry of Human Resource Development and a copy has been sent to Vice Chancellors of all the Central Universities for implementation. He has further drawn our attention to letter, dated 6th November, 1998 in which is in continuation of the letter dated 27th July, 1998 in which the Ministry of Human Resource Development has recommended age of superannuation of non-teaching staff such as Registrars, Librarians, Physical Education Personnel, Controller of Examinations, Finance Officers and such other University employees who are treated at par with the teachers, to be 62 years rather than 60. Another letter which has been referred to, is a letter, dated 24th December, 1998 by University Grants Commission addressed to the Vice Chancellors of all the Universities and Education Secretaries. Para 16.10 thereof prescribes the retirement age of teachers as 62 years. The counsel contends that recommendations of the UGC were adopted by the University in meeting of its Syndicate on 10th January, 1999 and it was observed that recommendations contained in letter, dated 24th December, 1998 be adopted. A resolution in this respect was also passed. Thereafter, the matter was again considered by the Syndicate of the University on 19th February, 1999 and it was resolved to implement UGC letter No. F-3-1/94(PS), dated 24th December, 1998. The counsel has referred to the operative part of the said resolution which reads thus :

> "After discussion, it was decided that the decision of the syndicate under Para 2(i) (arising out of) at page 17 of the proceedings be mentioned as under :—
>
> RESOLVED : That the U.G.C. Letter No. F.3-1/94 (PS), dated 24th December, 1998 be adopted in toto :
>
> RESOLVED FURTHER : That steps be taken to change the conditions of service of teachers by amending rules and

regulations of the University and put before the next meeting of the Senate, so that the age of retirement becomes 62.

RESOLVED FURTHER : That in the interregnum and in view of the interim direction granted to similarly placed persons by the High Court, as also in view of the proposal being sent to the Senate for increase in age of retirement from 60 to 62 years, persons retiring during this period be permitted to continue at their own risk and responsibility subject to decision of the Senate and in anticipation of the approval of the Senate. Persons so retired after the age of 62 years shall not get the benefit of re-employment."

(6) Thereafter, the matter was placed before the Senate of the University on 28th March, 1999 and it was resolved that steps be taken to change the condition of service of teachers by amending Regulations of the University and Colleges so that age of retirement becomes 62 years. Thus, the Senate passed the resolution more or less in the same terms as the decision of the Syndicate. It has been further contended that the Regulation Committee in its meetings held on 7th, 14th and 15th September, 1999, recommended amendment of Regulation 17.3 and resolved that with effect from 6th November, 1998, the age of retirement of the teachers would be 62 instead of 60 years. The matter was thereafter approved by the Syndicate also in its meeting held on 18th September, 1999. The recommendation of the Regulation Committee to amend Regulation 17.3 was accepted by the Syndicate. A meeting of the Senate was held thereafter on 18th December, 1999. Learned counsel has drawn out attention particularly to the relevant extract of the said Senate meeting. It reads thus :

"XX. The recommendation of the Syndicate contained in item 21 of the agenda was read out, *viz* :

4. Amendment of Regulation 17.3 of Chapter VI (A) relating to conditions of Service of University Employees at Page 149 of PU Calendar, Volume 1, 1994.

XXX XXX XXX XXX

RESOLVED : That the above amendments, additions and deletions of the Regulations contained in letter No. S.T. 8565-8654, dated 4th October, 1999, be approved."

(7) The matter was thereafter referred to the Government of India for approval. The Panjab University Teachers Association sent representation, dated 7th May, 2001, Annexure P-7 requesting therein that necessary approval be granted by the Government of India for enhancing the age of retirement of the University Teachers from 60 to 62 years. It was stated *inter alia* in the said letter that the Panjab University was not a State University and was an Inter-State Body Corporate in terms of Punjab Reorganization Act, 1966 (hereinafter referred to be as "the Re-organization Act") and thus, necessary approval be granted by the Government of India for enhancing the age of retirement. A reference was also made to the interim orders passed by this court directing the university not to retire the teachers at the age of 60 years.

(8) The counsel has, however, contended that the proposal was ultimately rejected by the Government of India,—*vide* letter, dated 23rd July, 2002, annexed as Annexure P-13 to the writ petition. This letter is subject matter of challenge in the present writ petitions. Learned counsel has also referred to certain communications, dated 12th July, 2008, 25th June, 2008 & 26th August, 2008, annexed as annexures A1, A2, and A3, respectively with the writ petition to contend that the Panjab University was funded to the extent of 60% by the Central Government and in view of the Reorganization Act, it was to be treated as creation of a Central Act. The counsel has further referred to the Panjab University Calendar Volume-I to contend that the Panjab University has to be treated as a Central University and, therefore, the recommendations of the UGC are totally applicable to the Panjab University. A reference has been made to Section 2(b) of the Panjab University Act (hereinafter referred to as "the Act"), which is reproduced in the aforesaid University Calendar. It has been contended that for the purposes of the Act, the Government means the Central Government as per Section 2(b) thereof. Sections 4, 5, 6 & 8 have also been referred to, to contend that the University is a body corporate. In order to buttress the argument that the Panjab University is in the nature of Central University, Section 9 of the Act has been referred to which provides

that the Chancellor of the University would be appointed by the Central Government by Notification in the Gazette of India. Section 31(1) has also been referred, to, to contend that the Senate is to make regulations with the sanction of the Government and Government in view of Section 2(b) means the Central Government. The counsel has further relied on Section 33 dealing with power of the Government to require that proceedings of the University would be in conformity with the Act and Government here means the Central Government in view of the definition contained in Section 2(b). Particular emphasis has been laid by the counsel on Section 72 of the Reorganization Act. It has been contended that functioning and operation of the University would be governed by the Central Government after coming into force of the Reorganization Act. Not only this, in view of direct reference to Panjab University in Section 72(4) of the said Act, there was no room for doubt that it was for the Central Government to decide how much grant would be met by the successor States to the Panjab University. According to the counsel, in view of these provisions it was clear that the Panjab University was a Central University for all intents and purposes and thus, U.G.C. Notification was clearly applicable to it and needs to be implemented in letter and spirit. It has been further contended that Chancellor of the University was the Vice President of India which further shows that the character of the University was that of a Central University. The counsel has also contended that in the absence of a clear definition of Central University, it had to be inferred from various provisions of the Act whether the character of Panjab University was that of a Central University or not. Ultimately, the counsel has contended that in view of Section 72(4), Panjab University was definitely a centrally funded university as it was for the Centre to decide how much grant would be given by the successor State to the University. The counsel thus submits that the U.G.C. recommendation, dated 24th December, 1998, Annexure P-3 as well as the Ministry of Human Resource Development letter, dated 27th July, 1998, Annexure P-1A were clearly applicable to the Panjab University and the mandate contained therein needs to be implemented. The counsel attacked the impugned decision of the Government of India, Annexure P-13 as against the Wednesbury principle as it had taken into consideration extraneous factors such as 40% financial burden in respect of Panjab

University being met by the Punjab Government. According to the counsel, this could not be the basis for rejecting the proposal of the University Senate and Syndicate for enhancing the age of superannuation of the teachers from 60 to 62 years.

(9) The counsel also referred to Entry 66 of the Union List i.e. List-I and Entry 25 of List-III to emphasize the primacy of the Central Legislation in respect of the matters falling within Entry 66 and any corresponding State Legislation. Thus, in view of the scheme of the U.G.C. and the mandate contained in the letter of the Government of India, Ministry of Human Resource Development, the age of superannuation was bound to be 62 instead of 60 years. According to the counsel, any directive to the contrary would have to be read as otiose.

(10) Mr. Anupam Gupta, Advocate, appearing for Panjab University, Chandigarh at the outset sought to rebut the contention of the learned counsel for the petitioners to the effect that the term Central University was not defined anywhere. He referred to the Article 371(E) of the Constitution of India to state that setting up of a "Central University" in Andhra Pradesh was envisaged by the said Article. According to Mr. Gupta, apart from reference in the Constitution to the term "Central University", there could be no dispute with the proposition that Central University is a university created by a Central Act or an Act of the Parliament. He referred to Section 3(7) of the General Clauses Act to contend that the term "Central Act" was unanimous with the term "Act of Parliament". The counsel contended that the General Clauses Act could be used for interpretation of the Constitution as well. For this purpose he referred to Article 367(1) of the Constitution. The counsel took us through various legislations through which certain central universities were established. He particularly referred to Vishva Bharti University at Shanti Niketan, Jamia Millia Islamia University, Assam University, Tezpur University, North Eastern Hill University and Nagaland University to cite certain examples of central universities created by virtue of central legislation. Learned counsel drew our attention to Section 10 of The Visva-Bharti Act, 1951, which reads thus : "10. The Paridarsaka (Visitor),—The President of India shall be the Paridarsaka (Visitor) of the University". According to the counsel, in

all central legislations creating central universities, the President of India is a visitor. Learned counsel also referred to the history of the creation of the Panjab University. According to him, on enactment of the Panjab University Act, 1947, the East Panjab University Ordinance, 1947 was repealed whereafter the University has been governed by the said Act as amended from time to time. On creation of new States of Punjab, Haryana and Union Territory, Chandigarh, the Panjab University acquired the status of Inter-State Body Corporate and continued to function and operate in those areas in respect of which it was functioning and operating immediately before the appointed day. However, it would not acquire the character of a central university. According to the counsel the Reorganization statues are referable to Articles 2, 3 and 4 of the Constitution and not to any particular entry of the 7th Schedule to the constitution. He further contended that for removal of doubt Section 72(3) clearly provides that the Section would apply to the Panjab University constituted under the Panjab University Act, 1947. Thus, Panjab University would at best be an Inter-State Body Corporate and not a Central University by any interpretation or inference. The counsel also referred to Section 72(4) of Reorganization Act and contended that the said provision was only for the purposes of giving effect to the provisions of Section 72. It has been laid down therein that successor State would make such grants as the Central Government may from time to time determine. The definition of "successor State" is contained in Section 2 (m) of the Reorganization Act. Thus, learned counsel emphasized that in view of Section 72, the Panjab University was an Inter-State Body Corporate and by no stretch of imagination could be termed as a Central University. The counsel heavily relied upon a full bench judgment of this Court reported as **D.A.V. College Trust and Management Society and others** *versus* **The Panjab University, Chandigarh and another (1),** to contend that there is no provision in the Reorganization Act on the strength of which it can be said that the Panjab University had become an institution established by an Act of the Parliament after enactment of the said Act.

(11) Another limb of argument of counsel for the University is that any recommendation of a body like UGC would not be *ipso-facto*

(1) 1986 (1) SLR 596

applicable to an Inter-State Body Corporate like the Panjab University unless the same was incorporated in the Act in the shape of an amendment or an amendment in the relevant regulation. Thus, according to the counsel, it is Regulation 17.3 which provides the age of superannuation of the teachers in the university as 60 years. As amendment to the said Regulation had not been approved till date, the same could not have come into force. Any regulation framed by the Senate requires prior sanction of the Government for all matters relating to the University in view of Section 31 of the Panjab University Act and Government for this purpose means the Central Government. However,—*vide* Annexure P-13, the Central Government had refused to grant approval for amendment to Regulation 17.3 of Chapter 6-A relating to 'Condition of Service' of the university employees. Thus, despite resolutions passed by the Syndicate and the Senate adopting the UGC recommendations, the proposed increase in age could not come into force. In order to submit that approval of the Government was absolutely necessary for carrying out any amendment in the Regulations, the counsel reiterated the provisions of Section 31 of the Panjab University Act and also referred to Regulation 24 of Chapter II(A)(i) of Panjab University Calender Volume I 2005 which deals with the Senate. According to the counsel, Regulation 24 provides that the amendments and draft regulations as recommended by the Syndicate, shall be considered by the Senate. The decision of the Senate would, however, require sanction by the Government before publication in the Government Gazette.

(12) On the question whether Panjab University was a centrally funded University, the counsel submitted that 40% of the grant being met by the Punjab Government, it could not be termed as a centrally funded University.

(13) The counsel heavily relied upon two judgments of the apex court i.e. **T.P. George and others** *versus* **State of Kerala and others (2),** and **B. Bharat Kumar and others** *versus* **Osmania University and others (3),** and contended that the matter in hand had been considered

(2) 1992 Supp. (3) S.C.C. 191
(3) (2007) 11 S.C.C. 58

in the said judgments in detail. The plea that the recommendations of the U.G.C. were bound to be implemented, had been found to be untenable. The counsel further contended that no mandamus could be issued to make any amendment in any legislation. In support, the counsel relied upon judgments reported as **Union of India** *versus* **Prakash P. Hinduja and another (4),** and **Suresh Seth** *versus* **Commr., Indore Municipal Corporation and others (5).**

(14) Reference was also made to a Division Bench Judgment of this Court delivered in CWP No. 17915 of 1999 decided on 11th January, 2000 wherein the question of increase in age of superannuation of teachers employed in the universities was involved. In the said decision, similar recommendation by the UGC for increase in age of superannuation came up for consideration. However, the plea was dismissed by the Division Bench by a detailed judgment.

(15) We have given careful thought to rival contentions of the counsel for the parties.

(16) First and foremost the question whether Panjab University is a Central University has fallen for consideration of this Court. We find it necessary here to refer to Section 72 of the Reorganization Act which particularly takes into account the status of the Panjab University. The said Section reads thus :—

"(B) Section 72 of the Punjab Reorganization Act, 1966.

72(1)Save as otherwise expressly provided by the foregoing provisions of this Part where any body corporate constituted under a Central Act, State Act or Provincial Act or has, by virtue of the provisions of Part II, become an Inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may, from time to time, be issued by the Central

(4) (2003) 6 S.C.C. 195
(5) (2005) 13 S.C.C. 287

Government, until other provision is made by law in respect of the said body corporate.

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

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

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

(17) A careful reading of the above section shows that it was envisaged that a body corporate established under a Central Act, State Act or Provincial Act would become an Inter-State Body Corporate on and from the date of enactment of the Act and it would continue to function in those areas as it was functioning and operating immediately before commencement of the Act. In the instant case Panjab University, which was a creation of the State Act, namely, Panjab University Act, 1947, would be squarely governed by Section 72 (1) of the Reorganization Act, 1966, and therefore, would be an Inter-State Body Corporate. Section 72(3) further alleviates any doubt in this respect by declaring that provisions of this Section would apply to Panjab University constituted under the Panjab University Act, 1947. Sub-Section 4 of the above Section only gives a power to the Central Government to

determine the grant to be met by the successor States in respect of Panjab University. However, merely the fact that this power has been granted to the Central Government, would not lead to an interference that the Panjab University is a Central University. We are not impressed by the argument of the counsel for the petitioners that since Sub-Section 2(b) of the Panjab University Act provides that the appropriate Government for the purposes of the Act, would be Central Government, Panjab University should be deemed to be a Central University. Merely because the appropriate Government for the purpose of the Panjab University Act is Central Government and the approval of the Government is required for carrying out various functions of the University, would not, in our view, lead to a conclusion that Panjab University is a Central University. Section 72, leaves no room for doubt that Panjab University which was orginally a creation of Panjab University Act, 1947, on enactment of the Reorganization Act, would become an Inter-State Body Corporate. Section 72(4) further lays down that for the purpose of giving effect to provisions of the Section in so far as they relate to Panjab University, the successor States would make such grant as the Central Government may from time to time determine. The term "successor State" has been defined in Section 2(m) of the Reorganization Act, 1966 which reads thus :—

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

(18) Thus, in view of Section 72(4), the successor States continued to have a role to play in respect of Panjab University. Even grant to the extent of 40% is met by the Punjab Government, which is a substantial share. It is, thus, clear that merely because appropriate government for the purposes of the Panjab University Act is Central Government and as approval of the Government is required for carrying out amendments to regulations of the University and for certain administrative purposes, it cannot be held that Punjab University is a Central University. It is not possible for this court to draw such an inference by reading into Panjab University Act what it does not intend. The provisions of the Reorganization Act have to be essentially kept

in view while dealing with this question. Section 72 leaves no room for doubt that the Panjab University can at best be termed as an Inter-State Body Corporate. This precise question had arisen earlier before this court in D.A.V. College's case (*supra*), where this court held as under :—

> ".....It is true that because of the operation of Section 72 of the Punjab Re-organization Act, 1966, the Panjab University has become an inter-State Body Corporate and the Central Government has been issuing directions which had the effect of modifying the Panjab University Act, 1947, passed by the Punjab Legislature. It is also correct that after 1966, the Regulations framed by the Senate the Panjab University become law only after receiving the approval and sanction of the Central Government, nevertheless, the Panjab University remains a creature of the Panjab University Act. It was not set up under an Act of Parliament. There is no provision in the Punjab Re-organization Act on the strength of which it may be argued that after the Re-organization, the Panjab University has become an Institution established by an Act of Parliament. By conferring powers on the Central Government to make suitable modifications in the existing statutes, the nature and complexion of the State Law has not changed. The Senate of Panjab University still remains the only authority competent to frame Regulations. Simply because these regulations become law after they are sanctioned by the Central Government does not change their authorship or nature ; they still remain regulations framed by the Panjab University. The position is somewhat-akin to the Acts passed by various State Legislatures which in order to meet certain requirements of various provisions of the Constitution are reserved for the approval and assent of the President of India. After receiving such assent, such Act continue to be State Acts. They do not partake the character of Acts of Parliament or Central Legislation by the Union of India....."

(19) It is thus clear that Panjab University cannot be termed as Central University. In fact, on the date of conclusion of arguments in this case, an affidavit dated 31st October, 2008 was filed in this court on behalf of Union of India by Upamanyu Basu, Director Ministry of Human Resource Development (Department of Higher Education), New Delhi, wherein it was stated as under :—

> "4. In the meeting chaired by the Home Secretary, Government of India on 24th October, 2008, and attended by Secretaries of the Departments of Expenditure (Ministry of Finance), Education (Ministry of Human Resource Development), Legal Affairs (Ministry of Law & Justice), Officers of the Ministry of Home Affairs, Secretary, Department of Higher Education, Government of Punjab, Home Secretary, U.T. of Chandigarh, Finance Secretary U.T. of Chandigarh and Vice Chancellor, Panjab University, the deliberations have amply clarified that the *Punjab University does not come under the category of Central University/Centrally Funded Institution.* It can only be termed as an *Inter-State University,* where the only other State now involved was the Union Territory of Chandigarh. Further, as regards the finding of the Panjab University, being an Inter-state University, Central Government stepped in on behalf successor states to share the funding responsibilities along with Panjab University."

(20) Thus, it is clear that the Union of India also took a clear stand before this court that Panjab University cannot be termed as a Central University or Centrally Funded Institution. Even otherwise, as discussed above, it is not possible to hold otherwise as intepretation of Section 72 of the Reorganization Act clearly leads to the same conclusion. Most of the instances of central universities cited before us such as Shanti Niketan, Jamia Millia Islamia etc. show that same are creation of Central Legislation. However, Panjab University is originally a creation of Panjab University Act, 1947. We thus hold that Panjab University after enactment of Reorganization Act acquired the character of an Inter-State Body Corporate and cannot be termed as a Central University. Thus the contention that Ministry of Human Resource

Development, Government of India letter dated 27th July, 1998, Annexure P-1A, is applicable to Panjab University being Central University, is devoid of force and is rejected.

(21) We may here briefly deal with the argument regarding the Panjab University being a centrally funded Institution. In this context, it has come on record that in respect of Panjab University, 40% of the grant is met by the State of Punjab. The Central Government provides funding to the extent of 60% through the Union Territory. According to the affidavit filed by the Union of India before this court, operative para whereof has been reproduced above, the Central Government only stepped in on behalf of the successor states to share the funding responsibilities. The term 'Successor State' as definded in Section 2 (m) of the Reorganization Act in relation to State of Punjab means State of Punjab or Haryana and includes the Union in relation to the Union Territory of Chandigarh. At present the State of Punjab is meeting the funding requirements of the Panjab University to the extent of 40% and the Union to the extent of 60%. It is nobody's case before this court that financial burden in respect of Panjab University is being borne exclusively by the Central Government. No other definition of the term 'centrally funded Institution' has been shown to us. In this background, it is not possible to hold that the Panjab University is a centrally funded University. The argument that Panjab University was a centrally funded University, was pressed into service only to seek implementation of the UGC recommendations to enhance the age of retirement in respect of Central Universities and centrally funded Institution. However, we are of the view that Panjab University cannot be termed as a centrally funded Institution as the U.T., Chandigarh through Union is meeting 60% of its expenditure and rest 40% burden is being borne by the State of Punjab. This fact was taken into account by the Government of India while the impugned letter, Annexure P-13 was issued. While rejecting the proposal for enhancement in age from 60 to 62 years in view of the UGC recommendations, it was observed in the letter Annexure P-13 as under :—

> "We have examined the above proposal in consultation with UGC and Government of Punjab. The proposals have been rejected by the Government of Punjab in totality. Given

> the fact that 40% of the financial burden/deficit arising as a result of approval of the above proposal is to be borne by the Punjab Government, Government of India is not in a position to agree to above proposals."

(22) The next question which arises before this court is whether the Government of India letter, dated 27th July, 1998, Annexure P-1A, letter, dated 6th November, 1998, Annexure P-2 and the UGC Circular, dated 24th December, 1998, Annexure P-3, need to be implemented being binding in nature. While dealing with the question of implementation of these letters/circular, we feel the necessity of examining whether any such recommendation would have effect without the same being incorporated in the statutes governiing the university. In respect of Panjab University, there is a particular regulation which prescribes the age of superannuation of the teaching staff as 60 years. Regulation 17.3 of chapter VI (A) of the Conditions of Service of University Employees reads thus :

> "17.3. All whole-time members of the teaching staff, as defined in Regulation 1.1 of Chapter V(A), shall retire on attaining the age of 60 years and no extension in service shall be granted."

(23) The above regulation has been framed in exercise of power under Section 31 (2) (e) of the Panjab University Act, 1947. It is evident that unless Regulation 17.3 is amended and age of superannuation therein is prescribed as 62 years, the UGC recommendation would have no effect and the teaching staff will continue to retire at the age of 60 years. It appears that at various stages, the matter was considered by the syndicate and the Sente of the University. Certain resolutions were also passed for enhancing the age of retirement from 60 to 62 years and for amending Regulation 17.3 accordingly. The said resolutions have been reproduced in the foregoing paras while noticing the submissions of counsel for the petitioners. However, it is obvious that these resolutions passed by the Senate and Syndicate of the University, did not get the approval of the Government of India and thus never came into effect. There is no doubt in our mind that for a resolution to take effect and to become a part of the regulation,

it is necessary that sanction of the Government is obtained. In this respect Section 31 (1) of the Panjab University Act is relevant which reads thus :

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

(24) This Section makes it clear that sanction of the Government is required to make regulations in respect of matters pertaining to the University. The Government as defined in Section 2 (b) of the Act means the Central Government. However, in the instant case, the Central Government refused to accept the resolutions passed by the Senate of the University as is evident from a reading of the impugned letter dated 23rd July, 2002, Annexure P-3. Therefore, the question of any amendment being carried out in Regulation 17.3 did not arise. The regulation as it stands on date on the statute-book of the University provides the age to be 60 years and the same would continue to be so unless the regulation is amended. An incidental question which arises is whether a mandamus can be issued by this court directing the Government and the University to amend the relevant statute for increasing the age of superannuation of the University teaching and non-teaching staff. In our view, carrying out an amendment to a statute is a legislative function and falls purely within the domain of the legislature.

(25) In ***Prakash P. Hinduja's case*** *(supra),* the Supreme Court observed as under :—

> ".....30. Under our constitutional scheme Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In **Supreme Court Employee's Welfare Assn.** *versus* **Union of India** SCC (para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the

delegated authority of a legislature power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority....."

(26) Even while dealing with the rule making power of the executive, the apex court in **Mullikarjuna Rao and others** *versus* **State of A.P. and others (6),** reversed the direction given by the Central Administrative Tribunal for amendment of the rules and held as under :—

"It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the constitution and cannot even indirectly require the executive to exercise its rule-making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution.

(27) Similar was the view taken by the apex court in ***Suresh Seth's case*** *(supra),* wherein it was held as under :—

"5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a member of the

(6) AIR 1990 S.C. 1251

> Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of poeple to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In **Supreme Court Employee's Welfare Assn.** *versus* **Union of India** (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercise a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be aksed to enact a law which it has been empowered to do under the delegated legislative authority....."

(28) We are thus of the considered view that no mandamus can be issued by this Court to carry out necessary amendment in Regulation 17.3 which prescribes the age of the superannuation of the teachers of the Panjab University as 60 years.

(29) As regards submission of the counsel for the petitioners in respect of Entry 66 in List-I and Entry 25 in List-III, we do not feel the necessity to go into that question as we are not dealing with any legislation in respect of age of superannuation. It is nobody's case before as that the UGC recommendations contained in Circular dated 24th December, 1998 are in exercise of any statutory authority. During the course of argument, we put a pointed question to counsel for UGC whether circular issued by the UGC was in exercise of any statutory provision. The answer to this question was, however, in the nagative. Even the letters dated 27th July, 1998, Annexure P-1A issued by the Ministry of Human Resources Development, Government of India and letter dated 6th November, 1998, Annexure P-2, are merely communications and cannot be said to be binding nature. The counsel for the UGC drew our attention to the origianl letter No. F.1-22/97-

U.I dated 27th July, 1998, sent by the MInistry of Human Resources Development, Government of India to the Education Secretaries of all States/Union Territories. He emphasized that the said letter had given an option to adopt and implement the scheme contained therein and was not binding in nature. It was not mandatory by the Government of India to implement the scheme. We thus feel that it will not be necessary to examine the relevance of the letters Annexure P-1A dated 27th July, 1998, Annexure P-2 dated 6th November, 1998 and Circular issued by UGC dated 24th December, 1998, Annexure P-3 in the light of Entry 66 in List-1 and Entry 25 in List-III, as these communications cannot be said to be legislative in nature or for that matter issued pursuant to any statutory provision. The commmunication No. F.1-22/97-U.I. dated 27th July, 1998 was examined by the apex court in **B. Bharat Kumar's case** (supra) wherein the Supreme Court held as under:--

> "**13.** The situation is no different in the present case also. The very language of the letter dated 27th July, 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 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."

(30) The court also referred to Entry 66 in List-I and Entry 25 in List-III and held as under:--

> "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 of 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 legislation, or as the case may be a policy decision under Article 73 of the Constitution, they would have to be read as they appear and a plain reading is good enough to show that the Central Government or as the case may be UGC also did not introduce the element of compulsion *vis-a-vis* the State Government and the universities. We, therefore, do not find any justification in going to the entries and in examining as to whether the scheme was binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary."

(31) While delivering the aforesaid judgments, the apex court also examined the ***T.P. George's case*** *(supra),* relied upon by the counsel for the University and approved the judgment delivered therein.

(32) The last submission of counsel for the petitioners Mr. Atma Ram that the decision Annexure P-13 was against the Wednesdbury principle as it had taken into consideration extraneous factors such as 40 percent financial burden in respect of Panjab Univeristy being met by Punjab Government, is also unacceptable. The fact that Panjab Government is sharing the financial burden in respect of Panjab University, is a matter of record. The Panjab University being an Inter-State Body Corporate, the Government of India rightly took into consideration the fact that Punjab Government, which is meeting the expenditure of University to the extent of 40 percent, had rejected the proposal for increase in age of superannuation. We do not find that this was an extraneous factor which was taken into consideration by the Government of India while arriving at decision to reject the proposal for enhancement in age of superannuation. It is, therefore, not possible to hold that the decision Annexure P-13 suffers from Wednesbury

unreasonableness. The said principle would be attracted only if the decision is so outrageous or defies logic that no sensible person could have arrived at such a decision. However, there is nothing in decision, Annexure P-13 which would lead to that conclusion. Thus, this argument does not find favour with this court.

(33) Mr. Chopra, Senior Advocate while appearing for some of the petitioners made an impassioned plea towards the conclusion of arguments that teachers had acquired experience of several years and had become adept in their profession. The students will thus stand to loose as they will not be able to benefit from vast teaching experience of the teachers, if they are retired at the age of 60. We are unable to accept this submission of the learned counsel as this argument would be available even if a teacher is sought to be retired at the age of 62 years. Thus, there would be no end if this line of reasoning is accepted. In our considered view, some age of superannuation has to be prescribed. Undoubtedly, due to increase in life expectancy, the age of superannuation may change over a time. However, this is not a function of this court. In fact, it is outside its domain. It is a policy matter to be considered by the legislature or the executive keping in view various factors such as increase in life expectancy, financial burden on the exchequer, need to infuse fresh blood in the teaching streams and other relevant issues. These issues, however, are within the purview of the policy framers and not this court.

(34) We thus find ourselves unable to agree with the submissions of the petitioners and do not find it a fit case for quashing the order dated 23rd July, 2002, Annexure P-13 or to issue a mandamus to direct the respondents to allow the petitioners to continue upto the age of 62 years, in view of the reasons enumerated in the foregoing paragraphs. For the same reasons, the plea of the non-teaching staff for enhancement in age of retirement and is rejected. The prayer in certain petitions for increasing the age of retirement from 62 to 65 years thus automatically goes.

(35) All these writ petitions are, therefore, dismissed.

R.N.R.