Before G.S. Sandhawalia & Jagmohan Bansal, JJ.

PUNJAB UNIVERSITY, CHANDIGARH AND ORS.—*Appellants*

versus

DR. INDER MOHAN JOSHI—*Respondents*

LPA No. 1104 of 2017 (O& M)

September 28, 2022

Constitution of India, Article 51, 226— Punjab University Act 1947— Punjab Re organization Act 1966—Letter Patents Appeal— Age of superannuation 60 years—Leave encashment for extended period of service beyond 60 years—Retiral benefits for extended period beyond age of 60 years—Leave encashment to be considered as part of salary—Held—There is no cut and dry, universal or straightjacket formula to conclude that leave encashment forms part of salary. It depends upon the relevant statutes, rules, regulations made thereunder—Hence, Appellant University not liable to pay on account of leave encashment for the extended period of service beyond 60 years—Also Salary cannot be deemed to include retiral benefits i.e.; gratuity, increment and determination of pension after considering extended period of service—The retiral benefits are made as per regulations, however retiral benefits for extended period of service would be paid in accordance with the final orders passed by Punjab and Haryana High Court in CWP No. 11465 of 2002 decided alongwith A.C. Julka—The present court has no authority to act as an appellant authority qua judgment passed by the coordinate division bench— Hence, petitioners are not allowed to claim any retiral benefits on account of service rendered beyond their age of superannuation—Present LPA allowed and order in CWP passed by single judge set-aside.

Held, that in view of our above findings, we hereby hold: (i) Appellant University is not liable to pay on account of leave encashment as per Panjab University Act, 1947 and Regulations made thereunder for the extended period of service. (ii) Writ petitioners are not entitled to claim any retiral benefit on account of the services rendered beyond their age of superannuation i.e. 60 years. Accordingly, appeals of appellant-University are allowed and appeals of writ petitioners are hereby dismissed.

(Para 21)

Subhash Ahuja, Advocate, *for the appellant(s)* in LPA Nos. 1104, 1132, 1176 and 1430 of 2017 and for respondent(s) in LPA Nos. 872, 873, 921 and 922 of 2017.

R.D. Anand, Advocate, *for the appellant(s)* in LPA Nos. 872, 873, 921 and 922 of 2017 and for the respondent(s) in LPA Nos. 1104, 1132, 1176 and 1430 of 2017.

JAGMOHAN BANSAL, J.

(1) By this common order, appeal Nos. 1104, 1132, 1176, 1430, 872, 873, 921 and 922 of 2017 filed under Clause X of Letters Patent, involving identical issue, are hereby adjudicated. One set of Letters Patent Appeals (LPA Nos. 1104, 1132, 1176 and 1430 of 2017) has been filed by the Panjab University, Chandigarh (for short "appellant-University) and another set of Letters Patent Appeals (LPA Nos. 872, 873, 921 and 922 of 2017) has been filed by respondents (for short "writ-petitioners").The appellant-University is claiming that learned Single Judge vide impugned order dated 15.3.2017 has wrongly extended benefit of leave encashment forthe period of service beyond 60 years and writ-petitioners are claiming that learned Single Judge has wrongly denied benefit of increments, gratuity and other retiral benefits for the said period of service beyond 60 years.

(2) The appellant is a University which has been constituted under Panjab University Act, 1947 read with Punjab Re-organization Act, 1966. Itis apt to notice that appellant-University is not a Central University. The Central Government provides funds to the appellant-University to the extent of 60% through Union Territory whereas 40% of the grant is met by State of Punjab. The University was originally created under Panjab University Act, 1947 and after coming into force Punjab Re-organization Act, 1966, the appellant acquired character of inter-state body corporate, as has been held by the Co-ordinate Bench in ***A.C. Julka and others*** *versus* ***Panjab University and others***[1].

Facts

(3) As common issues are involved in all the appeals, thus, for the sake of connivence, facts are borrowed from LPA No. 1104 of 2017 titled as"Panjab University vs. Dr. Inder Mohan Joshi".

Dr. Inder Mohan Joshi, the writ-petitioner, on 3.2.1971 joined as Teaching Assistant in Department of Chemistry, Panjab

[1] 2008 SCC Online 1374

University, Chandigarh. In 1974, he was appointed as Lecturer and thereafter in 1998, he was promoted as Professor of Chemistry.

As per Regulation 17.3 of Chapter V (A) of the conditions of service of University, the petitioner being member of teaching staff was bound to retire on attaining the age of 60 years and no extension in service could be granted. For ready reference, Regulation 17.3 is reproduced as below:-

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

(4) The service conditions of teachers of Universities are regulated/modified from time to time by incorporating notifications issued by University Grants Commission (for short "UGC") as well Government of India. The UGC while adopting 5th Pay Commission with effect from 1.1.1996 issued letter dated 24.12.1998 having title 'Revision of Pay Scales, Minimum Qualifications for Appointment of Teachers in Universities & Colleges and other measures for the Maintenance of Standards, 1998'.

Letter dated 1.1.1996 issued by UGC inter alia provided that State Governments shall implement entire scheme of revision of pay scales. Para 16 of scheme envisaged by UGC enjoined that teachers will retire atthe age of 62. However, it was open to a University to re-employee a superannuated teacher according to existing guidelines upto the age of 65 years. Para 16 of the Scheme forming part of letter dated 24.12.1998 is reproduced as below:-

> "16.0.0 **SUPERANNUATION AND RE-EMPLOYMENT** OF **TEACHERS**
>
> 16.1.0 Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.
>
> 16.2.0 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 be 62 years. No re-employment facility is recommended for the Registrars,

Librarians and Directors of Physical Education."

(5) The appellant did not implement afore-stated instructions of UGC and various members of teaching faculty of appellant-University through CWP(s) approached this Hon'ble Court seeking enhancement of their superannuation age from 60 years to 62 years.

(5.1) This Court vide interim orders allowed the petitioners to continue beyond the age of superannuation i.e. 60 years and directed appellant-University to release salary for the period petitioners rendered services beyond the age of superannuation. The interim orders dated 19.12.2003 and 12.7.2005 are reproduced as below:-

Order dated 19.12.2003

"Despite best efforts on the part of the counsel for the concerned parties to conclude the arguments, the matter is likely to take some more time before the counsel can conclude their submissions finally. In the interest ofjustice, we consider it necessary that this matter shouldbe listed after the short vacation at the earliest. Let this matter be listed for arguments on 10.01.2004.

Counsel appearing for union of India as well as for State of Punjab are specifically directed to seek clear instructions in relation to the matter in controversy. In the meanwhile we direct that the petitioners in all the cases shall be paid their salaries till 31.12.2003.

Learned counsel appearing for thepetitioners submits that in the interest of justice general direction may be issued even for release of salaries of the teachers, who are similarly situated. We do not consider it appropriate to issue a direction, however leave it to the university to decide the matter at their own level.

Order dated 17.7.2005

By order dated 19.12.2003, this Court had directed the respondents to pay the salaries of the petitioners in all the cases till 31.12.2003. A request had also been made on behalf of the non-petitioners i.e. the teachers similarly situated, who have filed the writ petitions, that they be accorded the same treatment. This Court, however, left the matter to be decided by the University at its own level. Thereafter, it appears that the matter has not been heard

substantially. In fact, a perusal of the record shows that from 29.1.2004 till 21.5.2004 the petition was ordered to be adjourned by order. Thereafter the matter appeared on a number of occasions before the Division Bench of this court but it was not taken up for hearing. An application was also filed before the Bench for preponement which came up for hearing on 23.5.2005, which was also declined. Hence, the matter came up before this Bench today.

Mr. P.S. Patwalia submits that all the petitioners are beyond the age of 60 years and the salaries had not been paid to them since 31.12.2003. They have exhausted whatever little savings they hadaccumulated during their life time. Although these petitioners are continuing to work, even though under the orders of this Court, they are not being paid any *salaries.*

Mr. Anupam Gupta, learned counsel appearing for respondents No. 1 and 2 submits that the petitioners only continue in service in view of the orderof this Court. They have no legal right to continue in service. Their salaries have been paid upto 31.12.2003 only because of the order of this Court dated 19.12.2003.The accounts of the University are subject to pre-audit. In case there is no legal sanction for the payment of any amount, the same would not be reimbursed to the University from the grants, which are received eitherfrom Union of India or Union Territory.

Having considered the entire matter, we are of the opinion that it would be wholly inequitable topermit the University to continue to take work from the petitioners without payment of the salaries. It has to be acknowledged, without: demur that the petitioners are performing vital functions in the society, as they are engaged in the profession of teaching. They deserve to be treated with dignity.

In view of above, we direct the University to release the salaries of the petitioners since 1.1.2004. We further direct that the writ petition being of an urgent nature deserves to be decided out of turn.

Adjourned to 12.8.2005.

To obviate any further application being moved by the petitioners in case the petition is not heard in the near future,

the respondents are directed to release the salaries to the petitioners each month by the stipulated date for payment of salaries to the other employees, till further orders.

Copy of this order be given dasti duly authenticated by the Special Secretary of this Court, to the counsel for the University."

(5.2) During the pendency of above writ petition, the appellant- university vide communication dated 28.10.2003 through Chairman of Department of Chemistry informed the petitioner that he is to retire w.e.f. 31.12.2003 on attaining age of 62 years. It was further communicated that he would be entitled to benefit of accrued furlough, leave encashment as mentioned in the aforesaid letter. It was further made clear that retiral benefits for the service beyond 60 years would be extended after decision of Punjab and Haryana High court in CWP No. 11465 of 2002. For the sake on convenience, extracts of letter dated 28.10.2003 are reproduced as below:-

"I am desired to inform you that Professor I.M. Joshi is to retire from the Panjab University service w.e.f. 31.12.2003 after attaining the age of 62 years and has been continuing in service beyond 60 years at his/her own risk and responsibility, subject to the decision of the Punjab & Haryana High Court in CWP No. 11465/2002 against the University regarding enhancement in the age of retirement from 60 to 62 years.

The Vice-Chancellor has sanctioned the following retirement benefits to him/her as admissible to him/her upto the age of 60 years i.e. 31.12.2001 in terms of Senate decision 27.05.2001 (Para 3):-

i. Gratuity as admissible under Regulation 15.1 and 15.2 at Pages 131-132 of P.U. Cal. Vol.1, 2000;

ii. Furlough for six month (maximum) as admissible under Regulation 12.1(B) at page 121 of P.U. Cal. Volume-1, 2000 read with Syndicate decision dated 30.08.1986 (Para 17) with permission to do business or service elsewhere during the period of furlough; and

iii. **Encashment of Earned Leave as may be due but not exceeding 300 days as admissible under Rule 17.3 at page 95 of the P.U. Cal. Volume-III, 2003.**

> The retiral benefits for the period beyond 60 years would be paid only after the decision of the Punjab & Haryana High Court. In case the Punjab & Haryana High Court decides against the teachers, he/she would not be entitled to retiral benefits for the service rendered beyond the age of 60 years."
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> [Emphasis supplied]

(6) Finally, a Co-ordinate Division Bench of this Court vide order dated 31.10.2008 disposed of bunch of 72 writ petitions. The Division Bench in ***A.C. Julka*** *(supra)* held that in the absence of any regulation framed by University, the petitioners are not entitled to continue beyond the age of 60 years. The relevant extracts from judgment in ***A.C. Julka*** *(supra)* are reproduced hereinbelow:-

> "20.....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:
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> "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."
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> 21. 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 isprescribed 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. 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 totake 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."

22. 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-13. 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 isamended."

(7) A bunch of Civil Appeals arising from orders of different High Courts came up for consideration before a three Judge Bench of Hon'ble Supreme Court in ***Jagdish Prasad Sharma and others*** *versus* ***State of Bihar and others***[2]. The primary issue before the Hon'ble Supreme Court was that whether Regulations made by UGC are having primacy over State Legislation. The Hon'ble Court vide judgment dated 17.7.2013 concluded that Regulations made by UGC are in terms of Entry66 of Union List and State Legislators have made Legislation in exercise of power conferred by Entry 25 of concurrent list. There is no Union Legislation which is contrary to State Legislation, thus, question of repugnancy does not arise. A subordinate Legislation even though made by Central Government cannot have primacy over State Legislation which is plenary Legislation. The Supreme Court considered applicability of scheme formulated by UGC which was not implemented by State in toto and accordingly, Central Government refused to compensate additional burden arising on account of implementation of scheme formulated by UGC. The Supreme Court while disposing of all the Civil Appeals concluded that

[2] (2013) 8 SCC 633

all persons who have continued to work on the basis of interim orders passed by this Court or any other Court shall not be denied the benefit of service during the said period. Para 80 of the judgment of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* is reproduced as under:-

> "80. We, therefore, see no reason to interfere with the impugned judgment and order of the Division Bench of the High Court in all these matters in the light of the various submissions made on behalf of the respective parties. The several Appeals, Writ Petitions and the Transferred Case, which involve the same questions as considered in this batch of cases, are all dismissed. However, the Appeals filed by the State of Uttarakhand and Civil Appeals arising out of SLPs(C) Nos. 6724, 13747 and 14676 of 2012 are allowed. As far as the Transfer Petition Nos. 1062-1068 of 2012 are concerned, the same are allowed and the Transferred Cases are dismissed. The Contempt Petitions are disposed of by virtue of this judgment. However, persons who have continued to work on the basis of the interim orders passed by this Court or any other Court, shall not be denied the benefit of service during the said period. The Appeals and Petitions having been dismissed, both the State Authorities and the Central Authorities will be at liberty to work out their remedies in accordance with law."

(8) As noticed, the Co-ordinate Division Bench of this Court as afore-stated, vide order dated 31.10.2008 had dismissed bunch of 72 writ petitions holding that petitioners are not entitled to continue beyond the age of 60 years. Shri D.N. Jauhar and B.K. Sharma had filed Civil Appeals No. 8113 -8117 of 2011 before Hon'ble Supreme Court, which vide order dated 20.1.2014 (Annexure P-4) disposed of appeals in terms of order in ***Jagdish Prasad Sharma's*** *case (supra).* The operative portion of order dated 20.1.2014 passed by Hon'ble Supreme Court is reproduced as below:-

> "We do not doubt the correctness or otherwise of the statement made by the learned counsel for the applicant-appellant. Accordingly, these appeals are disposed of in the same terms, conditions, observations and directions contained in the case of Jagdish Prasad Sharma (supra) i.e. CA Nos. 5527-5543 of 2013 etc."

(9) These facts confirm that writ petitioners except D.N. Jauhar

and B.K. Sharma did not challenge order dated 31.10.2008 passed by Division Bench of this Court, however, on coming to know outcome of appeals filed by D.N. Jauhar and B.K. Sharma, the writ petitioners preferred writ petition before this Court which came up for consideration before a Single Judge of this Court. The writ petitioners sought direction to appellant-University to grant all service benefits including annual increment, leave encashment, gratuity and counting of service towards pension beyond the age of 60 years. The petition was founded upon judgment of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* and order dated 20.1.2014 passed in the case of D.N. Jauhar (CA No. 8117 of 2011). Learned Single Judge noticed the chequered history of the case and vide impugned judgment dated 15.3.2017 held that writ petitioners are not entitled to benefit of gratuity, increment, pension on the basis of last pay drawn by counting their period of service during which they served on the basis of stay granted by this Court. Learned Single Judge though declined prayer of the writ petitioners qua gratuity, increment, counting the period of service for pension, however, relying upon his earlier judgment in ***Paramjit Singh Bansal*** *versus* ***Panjab University, Chandigarh and others,*** CWP No. 2873 of 2005 decided on 6.2.2017, held that if petitioners have some earned leave to their credit for the period they worked beyond the age of 60 years, they shall be entitled to encash the same subject to limitation prescribed under the Panjab University Regulation.

(10) The appellant-University has come up in appeal before this Court seeking quashing of order of learned Single Judge whereby writ petitioners are extended benefit of leave encashment and writ petitioners are seeking other retiral benefits which have been denied by learned Single Judge.

Contention of appellant-University

(11) Learned counsel for the appellant-University inter alia contended that writ petitioners were permitted to continue beyond 60 years in terms of interim orders of this Court. The writ petitions were finally dismissed which amounts to nullifying interim orders. It is settled proposition of law that if a petition is finally dismissed, the interim orders go alongwith the dismissal except to the extent it has already been implemented. The writ petitioners worked beyond the age of 60 years, thus, they were entitled to benefit of salary which appellant-University undisputedly paid. The writ petitions were dismissed on 31.10.2008 and writ petitioners opted not to assail

aforesaid judgment of this Court. There was reason for not assailing the judgment was because the writ petitioners had already worked for two years and they had already got salary for the period they worked. The Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* vide judgment dated 17.7.2013 held that persons who had worked on the basis of interim orders shall not be denied benefit of service. The two writ petitioners had filed Civil Appeals before Hon'ble Supreme Court and their appeals were disposed of in terms of judgment passed in ***Jagdish Prasad Sharma*** *(supra)*. The writ petitioners opted to remain silent from 2008 to 2016 and as soon as they came to know about orderdated 20.1.2014 of the Supreme Court in ***Basant Kumar Sharma*** *versus* ***Punjab University and others*** in CA Nos. 8113-8116 of 2011, they filed writ petitions which have been partially allowed, ignoring the fact that inthe earlier round of litigation, their writ petitions were dismissed and they have accepted the same.

The matter had already been concluded between the parties, thus, they had no right to file a fresh writ petition especially after the expiry of 8 years from the date of dismissal of their earlier writ petition. Learned counsel further contended that Learned Single Judge has mis-interpreted findings of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)*. Hon'ble Supreme Court had directed to make payment of benefit of service and had not directed to make payment towards leave enchashment. The writ petitioners, in case of doubt, could have approached Hon'ble Supreme Court and learned Single Judge had no authority to interpret the judgment passed by Hon'ble Supreme Court. He further contended that writ petitioners were entitled to salary which stands paid, thus, there is no question of making payment towards leave encashment. In support of his contention, learned counsel cited judgment of a three Judge Bench of Hon'ble Supreme Court in ***The State of Uttar Pradesh*** *versus* ***Nawab Hussain***[3] a two Judge Bench judgment of Hon'ble Supreme Court in ***Ghulam Rasool Lone*** *versus* ***State of J & K and another***[4]***,*** a Division Bench judgment of Allahabad High Court in ***Dr. Shiv Singh and others*** *versus* ***State of U.P. and others***[5], a single Judge Bench judgment of this Court ***Om Parkash*** *versus* ***State of Haryana and others***[6], a Division Bench judgment of

[3] 1977 (2) SCC 806
[4] 2009 (15) SCC 321
[5] 2013 SCC Online All. 9532
[6] 1995 (4) SCT 331

this Court in ***Umesh Kumar*** *versus* ***State of Punjab and others***[7] and a two judge Bench judgment of this Court ***Naresh Kumar*** *versus* ***State of Haryana and others***[8]**.**

Contention of writ petitioners-Teachers

(12) Per contra, learned counsel for the writ petitioners contended that learned Single Judge of this Court in ***Paramjit Singh Bansal*** *(supra)* has categorically held that leave encashment is part of salary. The judgment in ***Paramjit Singh Bansal*** *(supra)* is based upon different judgments of Hon'ble Supreme Court where it has been held that employer makes payment if an employee works inspite of entitlement of leaves and in case he does not avail leave, there is accumulation of leaves which are ultimately encashed. Thus, encashment of earned leave is part of salary.

On the question of delay and laches, learned counsel pleaded that writ petitioners did not file appeal before Hon'ble Supreme Court because it was a pan India issue and Hon'ble Supreme Court was seized of the matter qua different States. Two petitioners preferred appeals before Hon'ble Supreme Court, thus, it was not necessary for each and every employee to approach the Hon'ble Supreme Court. In ***Jagdish Prasad Sharma*** *(supra)* and ***A.C. Julka*** *(supra)* the Supreme Court opined that every person who has worked beyond the age of superannuation shall be entitled to benefit of service, and thus, a right accrued to the writ petitioners as soon as order was passed by Hon'ble Supreme Court. Thus, delay was justified and the plea was taken that the learned Single Judge has rightly entertained the writ petitions.

(13) We, with the able assistance of learned counsel for both the parties, have perused the record and heard arguments at length.

Discussion and findings

(14) The conceded position emerging from record is that as per Regulations framed by Panjab University, maximum age of superannuation of a teacher is 60 years, no extension can be granted beyond 60 years. Initially, interim orders were granted which permitted writ petitioners to continue for two years beyond the age of superannuation, however, the writ petitions were finally dismissed. Except A.C. Julka and Basant Kumar, no writ petitioner approached Supreme Court assailing judgment of this Court. The Panjab University

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[7] 1995 SCC Online P&H 1886

[8] 2004 (4) RSJ 652

is not a Central University, thus, any regulationframed by UGC which is contrary to State Legislation is having no primacy. Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* and ***A.C. Julka*** *(supra)* had directed Universities to make payment of benefit of service and has not specifically directed to make payment towards gratuity, enhanced pension, interest, additional increment or leave encashment.

(15) From the facts obtained from record and arguments of both sides, we are of the considered opinion that following questions arise for our determination:-

> (i) Whether principle of constructive res judicata is applicablein the present case?
>
> (ii) Whether the writ petition was liable to be dismissed on theground of delay and laches?
>
> (iii) Whether in the peculiar facts and circumstances of the case,leave encashment can be considered as part of salary?
>
> (iv) Whether writ petitioners are entitled to retiral benefits bycalculating the extended period of their service?

(16) Before adverting with the issues involved, it would be appropriate to look at the enunciation of law, on the issues involved, by the Hon'ble Supreme Court as well as different Courts.

Hon'ble Supreme Court passed judgment in ***Jagdish Prasad Sharma*** *(supra)* on 17.7.2013 and a Division Bench of Allahabad High Court in **Dr. *Shiv Singh*** *(supra)* after considering directions of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* concluded that petitioners are entitled for the salary but their post-retiral benefits shall be calculated on the basis of salary drawn when the petitioners attained the age of superannuation. Para 6 of the order passed in ***Dr. Shiv Singh*** *(supra)* is reproduced as below:-

> "6. In view of the above, the writ petition is disposed of with the direction that the petitioners are entitled for the salary for the period, during which they have worked in view of the interim order granted any Court or by the Apex Court even after attaining the age of 62 years but their post retiral benefits shall be calculated on the basis of salary drawn when the petitioners attained the age of superannuation, i.e. 62 years. Respondents nos. 2, 3 and 6 are directed to make the payment to the petitioners after necessary verification, within a period of two months as

> directed above from the date of presentation of the certified copy of this order in accordance to law."

A Division Bench of this Court *in* ***Ram Kumar Shastri*** *versus* ***State of Haryana and others***[9] has held that if a person is allowed to continue beyond the age of superannuation, the additional period of service is re-employment and not retention and accordingly, employee shall be entitled to superannuation benefits from the date he attains age of superannuation. Paras 4 and 5 of the order are reproduced as below:-

> 4. As per the aforesaid Rule, an employee is entitled to superannuation pension from the date he attains the age of 58 years. Note clarifies that the calculation of pensionary benefits is to be counted upto the age of 58 years irrespective of the extension in service beyond the age of superannuation.
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> 5. Learned counsel for the appellant has argued that this note was inserted by amendment in these Rules vide notification dated 15.12.2005 and, therefore, it would not be applicable in the case of the appellant who had retired earlier thereto. This was the contention raised before the learned Single Judge as well and rightly turned down stating that the note was only clarificatory in nature and it is not a provision introduced for the first time in the year2005. This becomes abundantly clear from the language of sub rule 1 of Rule 8, which was always there from the beginning and which clearly states that the employee will be entitled to superannuation pension from the date he attains the age of 58 years. When the Rule is specific i.e. The pension is to be calculated upto the age of 58 years, which is thenormal date of supernnuation, whether an employee gets extension or is re-employed after 58 years wouldbe no consequence."

A Division Bench of this Court in ***Naresh Kumar*** *(supra)* has held that writ in the nature of mandamus after 11 years of termination of services is not maintainable. This Court after noticing different judgments of Hon'ble Supreme Court held the petitioner guilty of laches and accordingly dismissed the petition.

A two Judge Bench of Hon'ble Supreme Court in ***Ghulam Rasool Lone*** *(supra)* held that petitioner cannot invoke jurisdiction after

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[9] 2012 SCC Online P&H 3335

waiting for 13 years on the ground of parity. The relevant extracts of the judgment are reproduced below:-

> 12. There cannot furthermore be any doubt that Article 14 is a positive concept. The Constitution does not envisage enforcement of the equality clause where a person has got an undue benefit by reason of an illegal act. In Panchi Devi v. State of Rajasthan [(2009) 2 SCC 589], this Court held:
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> "...Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant."
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> 13. The Court in a given case may be inclined to pass similar order as has been done in the earlier case on the basis of equality or otherwise.
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> 14. The discretionary jurisdiction under Article 226 of the Constitution may, however, be denied on the ground of delay and latches. It is now well settled that who claims equity must enforce his claim within a reasonable time.
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> .....The said principle was reiterated in S.S. Balu v. State of Kerala [(2009) 2 SCC 479] in the following terms:-
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> "17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

(17) <u>Question No. 1-Whether principle of constructive res judicata is applicable in the present case?</u>

(17.1) The writ petitioners preferred different writ petitions

seeking direction to appellant-University to implement recommendations of UGC qua enhancement of age from 60 to 62 years. A Co-ordinate Bench of this Court vide judgment dated 31.10.2018 concluded that appellant-University is not a Central University and writ-petitioners are not entitled to increase of age from 60 to 62 years as recommended by UGC. Indubitably, two writ-petitioners preferred Special Leave Petitions before Hon'ble Supreme Court which came to be disposed of in the light of earlier judgment of Hon'ble Supreme Court in ***Jagdish Prasad Sharma's*** *case (supra).*

(17.2) A Co-ordinate Bench of this Court while adjudicating aforesaid writ petitions though adjudicated question of entitlement of petitioners qua increase of age from 60 to 62 years, however, Court did not advert with question of entitlement of salary and other benefits. The reason was as simple as could be that Court came to conclusion that petitioners are not entitled to enhancement of age, thus, there was no reason to advert with question of entitlement of salary and other benefits. Various petitions from different States including two appeals from judgment of this Court came up for consideration before Hon'ble Supreme Court which concluded that teaching staff of Non-Central Universities cannot claim implementation of recommendations of UGC, thus, they cannot claim enhancement of age from 60 to 62 years. The Hon'ble Court while disposing of SLPs held that teachers would be entitled to salary. It is apt to mention here that Division Bench of this Court while disposing of the case in ***A.C. Julka*** *(supra)* didnot advert with salary, however, by interim orders dated 16.12.2003 and 12.7.2005, the appellant-university was directed to make payment of salary of petitioners of each month by a stipulated date. Under these circumstances, the writ petitioners got salary till the date of attaining age of 62 years or till dismissal of writ petition whichever was earlier. The writ petitioners before Co-ordinate Bench of this Court under interim orders continued to work as well as got their salary. It is basic principal of law that all interim orders merge with final order. It ought to be remembered that all interim orders lose its sanctity as soon as final order is passed, however, all those interim orders which have already been acted upon as well as stand implemented, are not necessarily to be recalled or nullified. The dismissal of writ petition seeking enhancement of age could culminate into depriving the teachers from their salary or it could result into recovery of salary which had already been paid. In the present case, the writ petitioners had worked under the directions of this Court and they got salary under the directions of this Court, thus, it was not possible in law as

well equity to nullify interim orders or hold that interim orders would cease to exist as soon as writ petitions were dismissed. Recalling of interim orders or holding that they cease to exist in toto would have resulted into chaos in terms of initiation of recovery proceedings against teachers who had already worked in terms of orders of this Court. The dismissal of writ petitions resulted into cessation of interim order to the extent that all teachers who had completed 60 years but not 62 years stood retired and automatically became dis-entitled to salary which they were getting in view of interim orders of this Court. The Hon'ble Supreme Court while disposing of appeals in ***Jagdish Prasad Sharma's*** *case (supra)* virtually did not create right of salary whereas it was just confirmation of interim orders of different High Courts including interim orders passed by Division Bench of this Court.

The question of applicability of principle of constructive res judicata cannot be applied mechanically and it is inevitable as well indispensable to examine facts of each case and findings recorded by the Court. In the case in hand, Division Bench of this Court adjudicated the question of entitlement of enhancement of age and Court did not adjudicate question of entitlement of employees towards salary and other benefits, for the period during which they worked, under interim orders of this Court. The question of entitlement of salary cropped up as soon as Hon'ble Supreme Court while disposing of appeals in ***Jagdish Prasad Sharma*** *(supra)* confirmed right of teachers to salary. Thus, there was new cause of action even though in the case of writ petitioners they had already got salary, therefore, the writ petitioners were entitled to file fresh writ petitions seeking payment of salary which they might have or have not received.

(18) <u>Question No. 2-Whether the writ petition was liable to be dismissed on the ground of delay and laches?</u>

The writ petitions of teachers seeking enhancement of age was dismissed on 31.10.2008 and Hon'ble Supreme Court dismissed appeal in ***Jagdish Prasad Sharma*** *(supra)* on 17.7.2013. The writ petitioners preferred writ petition seeking salary in 2014. Few writ petitions were filed in 2016. Two teachers assailed judgment dated 31.10.2008 passed by this Court before Hon'ble Supreme Court. The civil appeals of two teachers who were writ petitioners before this Court in bunch of writ petitions was disposed of 20.1.2014. In this backdrop, the writ petitioners preferred writ petitions before learned Single Judge of this Court during 2014 -2016.

In view of peculiar facts and circumstances especially in view of

our opinion that writ petitions were not hit by principle of constructiveres judicata, we are of the considered opinion that it would be unfair to conclude that learned Single Judge should have dismissed writ petitions on the ground of delay and laches. Learned Single Judge has entertained writ petitions and passed a speaking order, therefor, we find ourselves unable to agree with contention of appellant-University that there was delay on the part of writ petitioners and learned Single Judge must have dismissed all the petitions on the ground of delay and laches.

(19) **Question No. (iii): Whether in the peculiar facts and circumstances of the case, leave encashment can be considered as partof salary**?

(19.1) Learned Single Judge has held that if writ petitioners had earned leave to their credit for the period they worked beyond the age of 60 years, they will be entitled to encash the same subject to limitation prescribed under the Panjab University Regulations.

As per learned Single Judge, the writ petitioners are entitled to encashment of leave which the writ petitioners had earned during the extended period of service. Learned single Judge has further held that writ petitioners would be entitled to encashment of leave subject to limitation prescribed under Panjab University Regulations. Communication dated 28.10.2010, which is addressed to Chairman/Head of Department of Chemistry discloses that appellant-University has not released retiral benefits on account of pendency of CWP No. 11465 of 2002 before this Court whereas appellant-University has permitted encashment of earned leave as may be due but not exceeding 300 days as admissible under Rule 17.3 at page 94 of Panjab University Calendar V-III, 2003. Rule 16, 17.1, 17.2 & 17.3 of Panjab University Calendar V-III, 2003 are reproduced as below:-

> "16. An employee, who is re-employed in the interest of university service beyond the date of his compulsory retirement, may be granted leave in accordance with the terms and conditions of his reemployment. Earned leave at the credit of an employee, beyond 180/300 days, shall lapse on the date of retirement.
>
> An employee may be granted leave preparatory to retirement up to four months.
>
> An employee on retirement (or on retirement voluntarily)

shall be paid cash equivalent to such number of days of earned leave as may be decided by the Punjab Govt. for its own employees, from time to time. The case equivalent to leave salary (excluding City Compensatory Allowance and House Rent Allowance) thus admissible will be paid in lumpsum as a one time settlement for which the authority competent to sanction leave shall issue suo moto an order granting cash equivalent to leave salary on a pay drawn on the date of retirement. Provided that if an employee proceeds on leave preparatory to retirement under Rule 17.2, the benefit of payment of cash equivalent to leave salary under Rule 17.3 shall be admissible after deducting the period spent on leave preparatory to retirement.

Provided further that an employee, who have voluntarily retired or has retired on invalidism, shall be entitled to the aforesaid benefit of cash payment for the unutilised leave due, notwithstanding that as a result of it the period between date of his retirement as aforesaid and the date on which he would have retired in the normal course on superannuation exceeds the date of retirement on superannuation."

From the reading of above quoted Rules, it is quite evident that an employee is entitled to encashment of earned leave which cannot be beyond 300 days. The writ petitioners indubitably worked up to age of 60 years and during this period they earned leave which they were entitled to encash. There is nothing on record disclosing that writ petitioners either earned leave of 300 days during their original permissible period of work i.e. up to age of superannuation (60 years) or not. There may be different set of cases. There may be a case where a teacher has not earned leave of 300 days and there may be another case whether a teacher has already earned leave of 300 days in hand. Learned Single Judge has held that encashment of leave would be subject to regulations of the University. As per Regulations of the appellant-University, the maximum permissible period for encashment of leave is 300 days. There is no Regulation which permits leave beyond the age of superannuation and further encashment of the leave. In the absence of specific rule permitting leave encashmentbeyond the age of 60 years and even as per impugned judgment of learned Single Judge, the writ petitioners-teachers could not be held entitled to encashment of earned leave. Learned Single Judge has not held that writ petitioners were entitled to leave during their extended period of

service and they are entitled to encashent of earned leave. Thus, we find that the appellant-University and learned Single Judge are on the same page. There is no difference in the contention of the appellant-University as well findings of learned Single Judge. The writ petitioners during the course of arguments as well as in their pleadings have not brought into knowledge of this Court any rule/regulation/notification which made them entitled to leave during their extended period of service and further permitted encashment of those leaves. In the absence of any particular rule/regulation, we hold that writ petitioners are not entitled to encashment of leave beyond their entitlement admissible under Rule 17.3 of Panjab University Calendar V-III, 2003.

(19.2) There is another facet of the impugned judgment. Learned Single Judge while passing impugned order has relied upon its earlier judgment in ***Paramjit Singh Bansal*** *(supra)* CWP No. 2873 of 2005 decided on 6.2.2017. We have perused judgment of learned Single Judge in ***Paramjit Singh Bansal*** *(supra).* We find that learned Single Judge has held that leave encashment would form part of salary and findings of learned Single Judge are based upon judgment of Hon'ble Supreme Court in ***State of Rajasthan and another*** *versus* ***Senior High Secondary School, Lachhmangarh and others***[10] vide which Hon'ble Supreme Court has held that leave encashment is a part of the salary and covered in the wider expression 'scale of pay and allowances'. The Apex Court as noted by learned Single Judge, has held:

> "14. There is additional reason for rejecting the contention advanced on behalf of the aided private institutions and the State that encashment of leave salary is neither "pay" nor "allowances" within the meaning of Section 29 of the Act. Section 29 directs maintenance of parity in respect of "scales of pay and allowances" between same categories of employees of private aided institutions and government institutions. A closer scrutiny of the relevant provisions, quoted above, would show that the expressions "pay and allowances" in the title to the section and "scales of pay and allowances" inthe body of Section 29 have been used to give it a wider meaning so as to encompass within them "aggregate of emoluments" and "other allowances and reliefs", as per the definition of the

[10] (2005) 10 SCC 346

> word "salary" in Section 2(r) of the Act. Clause (r) in Section defines "salary" to mean the aggregate of the emoluments of an employee including "dearness allowance or any other allowance or relief". The wider definition of the word "salary" has to be read into Section 29 which directs maintenance of parity in pay and allowances of the employees of aided institutions and government institutions."

(19.3) The findings of Hon'ble Apex Court are based upon Sections 2 and 29 of Rajasthan Non-Government Educational Institutions Act, 1989 and Rules framed thereunder. The Hon'ble Court has concluded that leave encashment would form part of salary after distinguishing the judgment in ***State of Punjab*** *versus* ***Om Parkash Kaushal***[11] to hold that the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 had a restrictive meaning in comparison to the Rajasthan Act wherein the rule itself provided that except compensatory allowance salary would include aggregate of all emoluments including dearness allowance and other allowances. The Hon'ble Court interpreted different Sections of 1989 Act as well Rules made thereunder. Sections 2 and 29 of 1989 Act and Rule 51 made thereunder making it clear that salary would include leave encashment, and thus, Hon'ble Court held that leave encashment would form part of salary.

A two Judge Bench of Hon'ble Supreme Court in ***Manipal Academy of Higher Education*** *versus* ***Provident Fund commissioner***[12] held that expression 'basic wages' does not include leave encashment for the determination of employee's contribution to provident fund. The relevant extracts of judgment are reproduced as below:-

> "8. It is to be noted that in the case before the Bombay High Court the factual scenario was somewhat peculiar. There the employer was including the amount of leave encashment as emoluments for the purpose of calculating provident fund dues from the employer as well as employee's contribution. When the Employees' Union took up the issue to the Commissioner it was informed that the provision does not provide for deduction of provident fund

[11] (1996) 5 SCC 325
[12] (2008) 5 SCC 428

on leave encashment.

9. On the strength of the letter dated 3.7.1991 of the Commissioner, Hindustan Lever Ltd. decided to make provision for deduction. It was this direction of the department which was challenged by the Union. In this context the High Court has held that the Commissioner's letter/circular was illegal and leave encashment dues should be included for provident fund contribution. In fact it was the understanding of the parties over the period that leave encashment will be included in the wages.

10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.

(c) Conversely, any payment by way of a special incentive or work is not basic wages.

11. In TI Cycles of India, Ambattur v. M.K. Gurumani and Ors. (2001 (7) SCC 204) it was held that incentive wages paid in respect of extra work done is to be excluded from the basic wage as they have a direct nexus and linkage with the amount of extra output It is to be noted that any amount of contribution cannot be based on different contingencies and uncertainties. The test is one of universality. In the case of encashment of leavethe option may be available to all the employees but some may avail and some may not avail. That does not satisfy the test of universality. As observed in Daily Partap v. Regional Provident Fund Commissioner (1998 (8) SCC 90) the test is uniform treatment or nexus under-dependent on individual work.

> 12. The term 'basic wage' which includes all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the terms of the contract of employment can only mean weekly holidays, national holidays and festival holidays etc. In many cases the employees do not take leave and encash it at the time of retirement or same is encashed after his death which can be said to be uncertainties and contingencies. Though provisions have been made for the employer for such contingencies unless thecontingency of encashing the leave is there, the question of actual payment to the workman does not take place. In view of the decision of this Court in Bridge Roof's case (supra) and TI Cycles's case (supra) the inevitable conclusion is that basic wage was never intended to include amounts received for leave encashment."

In ***Kichha Sugar Company Limited through General Manager*** *versus* ***Tarai Chini Mill Majdoor Union, Uttarakhand***[13]**,** a two Judge Bench of Hon'ble Supreme Court held that overtime wages and leave encashment would not form part of expression 'wages'.

The Hon'ble Court while interpreting Section 2(b) of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has held that overtime wages and leave encashment would not be included for the calculation ofHill development allowance. The relevant paragraphs of the judgment are reproduced as below:-

> "8. In view of the rival submissions, the question which falls for our determination is as to the meaning of the expression 'basic wage'. The expression 'basic wage' has not been explained by the Government in the order granting Hill Development Allowance. It has been defined only under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Therefore, we have to see what meaning is to be given to this expression in the present context. Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 defines 'basic wages' as follows:
>
> "2. **Definitions.** - In this Act, unless the context otherwise requires, -

[13] (2014) 4 SCC 37

(a) xxx xxx xxx

(b) **"basic wages**" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordancewith the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

i) the cash value of any food concession;

ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

iii) any presents made by the employer;"

9. According to http://www.merriam- webster.com (Merriam Webster Dictionary) theword 'basic wage' means as follows:

"(1) A wage or salary based on the cost of living and used as a standard for calculating rates of pay

(2) A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime."

10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which areuniversally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. Asfor example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount received as leave

encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance. The view which we have taken finds support from the judgment of this Court in Muir Mills Co. Ltd. (supra), relied on by the appellant, in which it has been specifically held that the basic wage shall not include bonus."

(19.4) From the reading of above-cited judgments, it can be conveniently gleaned that there is no cut and dry, universal or straight jacket formula to conclude that leave encashment forms part of salary/wages. Whether leave encashment form part of wages/salary depends upon relevant statute/rules/regulations made thereunder. If the statute or regulations made thereunder specifically provide that leave encashment would not form part of salary, Court cannot hold that it would form part of salary whereas a statute or regulation made thereunder may provide that for particular period, leave encashment would form part of salary. Therefore, we are of the considered opinion that learned Single Judge has wronglyrelied upon its earlier judgment in ***Paramjit Singh Bansal*** *(supra)* while directing appellant-University to make payment towards leave encashment.

(20) <u>Question No. 4:</u> Whether writ petitioners are entitled to retiral benefits for the extended period of their service?

(20.1) In view of our findings qua encashment of earned leave, there seems no necessity to advert with question of other retiral benefits, however,we deem it appropriate to dilate on question of other retiral benefits because writ petitioners have filed LPA claiming other retiral benefits and foundation of their contentions is judgment of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra).*

(20.2) Indubitably, writ petitioners worked on the sole basis of interim order passed by this Court. They got salary as Co-ordinate Bench of this Court vide different interim orders directed the appellant-University to release salary of writ petitioners. The appellant-University was not inclined to release salary, however, this Court directed appellant-University to release salary to writ petitioners. The writ petitions came to be dismissedand in normal circumstances, it was right of appellant-University to recover payment already made to the writ petitioners, however, the appellant- University opted to restrain from initiating recovery or seek recovery rights from this Court.

(20.3) Undisputedly, the writ petitioners were not party before Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra),* thus, they

cannot blindly claim benefit extended to appellants before Hon'ble Supreme Court. We have upheld question of maintainability of writ before learned Single Judge inspite of non-challenge of orders passed by a Division Bench of this Court in the case of writ petitioners. Nevertheless, the writ petitioners by their act and conduct accepted the orders passed by a Division Bench of this Court where no right of retiral benefits was either claimed or adjudicated by this Court. The writ petitioners are precluded from claiming leave encashment by calculating the period beyond service of 60 years because they worked under the interim orders of this Court and their writ petitions stand dismissed. In view of equity and interim orders of this Court, neither appellant-University opted to initiate recovery to salary paid post date of superannuation nor this court while disposing of writ petitions made any observation. The writ petitioners are thus trying to take undue advantage.

(20.4) The right course for the writ petitioners in case of any grievance or doubt about their rights qua retiral benefits, was to seek clarification from Hon'ble Supreme Court as this Court has no right to clarify orders of Hon'ble Supreme Court. However, in view of peculiar situation and orders passed by learned Single Judge which are under challenge before us, we deem it appropriate to dwell into the issue involved and adjudicate appeals of writ petitioners.

We are of the considered opinion that expression 'salary' cannot be deemed to include retiral benefits i.e. gratuity, increment and determination of pension after considering extended period of service. The appellant-University was supposed to make retiral benefits as per their regulations. The appellant vide communication dated 28.10.2003 (Annexure P-2) categorically informed the writ petitioners that they would be paid leave encashment as per regulations of the University, however, retiral benefits for the extended period of service would be paid in the light of final order passed by Punjab and Haryana High Court in CWP No. 11465 of 2002 which was decided alongwith ***A.C. Julka*** *(supra)*. The writ petitioners never challenged the aforesaid communication and happily accepted salary for the extended period as well retiral benefits which were determined considering age of superannuation 60 years.

The writ petitioners at this belated stage cannot take a somersault and claim benefits contrary to communication dated 28.10.2003 of appellant-University as well final order passed by this Court in CWP No. 11465 of 2002 which was decided alongwith ***A.C. Julka*** *(supra)*.

It would be travesty of justice and undue advantage to writ petitioners, if they are extended retiral benefits considering their age of retirement 62 years. It would amount to indirect overruling of judgment of Co-ordinate Division Bench of this Court in ***A.C. Julka*** *(supra)*. We have no authority to act as an appellate authority qua judgment passed by Co-ordinate Division Bench of this Court in ***A.C. Julka*** *(supra)*. The writ petitioners are trying to take undue advantage of findings of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)*. From the perusal of judgment of Hon'ble Supreme Court in ***Jagdish Prasad Sharma*** *(supra)* especially in the backdrop of the fact that across the country teachers were permitted to continue beyond 60 years and basis of their continuation was interim orders passed by Hon'ble Supreme Court and different High Courts, it appears that Hon'ble Supreme Court extended benefit of salary otherwise Universities could initiate recovery proceedings as extension of service beyond 60 years was declared unjustified and without authority of law.

(20.5) A two Judge Bench of Hon'ble Supreme Court in ***State of U.P. and another*** *versus* ***Shiv Narain Upadhyaya***[14]***,*** while dealing with question of dispute of date of birth recorded in service book has held that employee would be entitled to salary for the services rendered beyond the actual date of superannuation, however, the period beyond the actual date of superannuation shall not be reckoned towards his retiral benefits. The relevant paragraph read as follow:-

> "Above being the position the High Court was clearly in error in holding that the date of birth of the respondent-employee was 1.9.1939, contrary to what has been recorded in the service book. We find that the respondent-employee had rendered service till the order dated 31.1.1991 was passed. It would not be equitable to direct refund of salary received by him upto 31.1.1991 beyond the actual date of superannuation i.e. 30.9.1990. However, the period beyond the actual date of superannuation i.e. from 30.9.1990 to 31.1.1991 shall not be reckoned towards his retiral benefits."

The ratio of law laid down by the Supreme Court is directly applicable to the facts of the present case, thus, writ petitioners are not entitled to retiral benefits for the period beyond the date of their superannuation i.e. 60 years.

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[14] (2005) 6 SCC 49

(20.6) We are further in agreement with opinion expressed by a Division Bench of Allahabad High Court in ***Dr. Shiv Singh*** *(supra)* where the Court has held that petitioners are entitled for the salary for the period, during which they have worked in view of the interim order granted by any Court or by the Apex Court even after attaining the age of 62 years but their post retiral benefits shall be calculated on the basis of salary drawn when the petitioners attained the age of superannuation, i.e. 62 years.

(21) In view of our above findings, we hereby hold:

(i) Appellant University is not liable to pay on account of leave encashment as per Panjab University Act, 1947 and Regulations made thereunder for the extended period of service.

(ii) Writ petitioners are not entitled to claim any retiral benefiton account of the services rendered beyond their age of superannuation i.e. 60 years.

Accordingly, appeals of appellant-University are allowed and appeals of writ petitioners are hereby dismissed.

Dr. Payel Mehta