

(2021) 11 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Petition No. 5652 Of 2019, Civil Miscellaneous No. 24792 Of 2019, 4509, 27731, 27732 Of 2021

Dr. Meera Sood

APPELLANT

Vs

University Of Delhi And Ors.

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21
Delhi University Act, 1922 — Section 2(g)
Andhra Pradesh Agricultural University Act, 1963 — Section 2(n)
Karnatak State Universities Act, 2000 — Section 2(8)

Citation : (2021) 11 DEL CK 0034

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : M. Dutta, Mohinder Rupal, V. Bhawani, Santosh Kumar, Bipin Kurian, Ravinder Agarwal

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM. No. 27732/2021 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 27731/2021 (for delay)

This is an application filed by the applicants / respondent Nos.2 & 3 seeking condonation of 8 days delay in filing the written submissions.

For the reasons stated in the application, the same is allowed and the delay is condoned.

Application stands disposed of.

1. The present petition has been filed by the petitioner with the following prayers: -

"It is most humbly prayed that this Hon'ble Court may graciously be pleased to allow this Petition and may issue:

a) Writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction, for quashing, setting aside the decision of the Respondent no. 2 with respect to the age of superannuation of the Petitioner being 62 years communicate to the Petitioner vide letter dated 27.03.2019 (Annexure P1) and further through letter a dated 22.04.2019 (Annexure P2) and declaring the same to be arbitrary, unjust, unreasonable, unconscionable, null and void;

b) Pass any other or such further orders which this Hon'ble Court me deem fit and proper."

2. It is contended by Mr. M. Dutta, learned counsel appearing on behalf of the petitioner that petitioner worked in respondent No.2 / Vivekananda College, University of Delhi as a Director of Physical Education ('DPE' for short) from July 17, 1981, to July 15, 1983, and further on an ad hoc basis from July 18, 1983, to August 29, 1983. Thereafter, respondent No.2 / College came out with an advertisement for the post of DPE. In pursuance to the said advertisement, the petitioner, on July 13, 1983, applied for the said post with respondent No.2 / College.

3. Consequently, the petitioner herein was appointed to the post of DPE on a permanent and substantive basis. An agreement of service dated August 30, 1983, was also executed between respondent No.2 / College and the petitioner.

4. Mr. Dutta stated that the Executive Council ('EC', for short) of the respondent No.1 / University of Delhi passed Resolution No.127 dated November 10, 1990, wherein the EC accepted the recommendation made by the Academic Council wherein the designation of DPE was changed to Lecturer in Physical Education and further described the duties and functions of Lecturer in Physical Education. The relevant portion of the Resolution is reproduced below: -

"Ref: EC Resolution no. 546 dated December 26, 1981.

The Council vide above Resolution accepted the following resolution: -

The Executive Council resolved to accept the Academic Council recommendation on the Director of Physical Education as mentioned in Item B-515.

The Council further resolved that the change of designation of Directors of Physical Education to that of Lecturers in Physical Education be processed according to the provisions contained in the Statutes and Ordinances of the University."

5. The Dy. Registrar (Colleges) vide its letter dated January 11, 1991, addressed to the respondent No.3 / Principal of the Vivekananda College, University of Delhi / conveyed Resolution No.127 dated November 10, 1990, wherein the designation of the DPE was changed to Lecturer in Physical Education. The relevant extract of the letter is reproduced below: -

"xxx xxx xxx

In pursuance to the Executive Council Resolution No. 127 dated 10.11.1990, I am directed to inform you that the recognized Directors of Physical Education in the Colleges will hereinafter be known as Lectures....."

6. According to Mr. Dutta, the petitioner received a letter dated June 24 / 25, 1998, from respondent No.3 / Principal of Vivekananda College, whereby she was informed that she had been promoted to the post of Reader under merit promotion scheme with effect from July 18, 1994. In addition, respondent No.3 vide order dated April 09 / 13, 1999, informed the petitioner that her pay has been fixed as per the revised scale of pay under the 5th Central Pay Commission vide University letter dated April 06, 1999. The pay of the petitioner, who was till then working as a Reader with respondent No.2, was further fixed by respondent No.1 / University and informed to the petitioner vide order dated January 27 / 31, 2000.

7. Mr. Dutta stated that in the year 2007, respondent No.1 / University of Delhi introduced academic courses in Physical Education at the undergraduate level with a theoretical and practical component, for which teaching, paper-setting, conducting an examination, and evaluating was to be done by the Lecturers in Physical Education in various colleges. The said academic course in Physical Education had also been introduced in respondent No.2 / College and the petitioner, who was discharging the duties of a Reader, was also designated as a teacher for teaching academic courses in Physical Education in respondent No.2 / College.

8. In addition, it is contended by Mr. Dutta that the Ministry of Human Resource Development ('MHRD', for short), Department of Higher Education, Government of India ('GOI', for short) vide its letter dated March 23, 2007, wrote to respondent No.4 / University Grants Commission ('UGC', for short) conveying its decision that the age of superannuation of all persons who were holding teaching positions as on March 15, 2007, in respect of all centrally funded institutions in higher and technical education be increased from 62 years to 65 years.

9. The petitioner has been discharging her duties on a teaching position of Reader with respondent No.2 / College since 1998 and her age of superannuation in terms of this letter of the MHRD dated March 23, 2007, became 65 years from 62 years. In compliance with the decision of the GOI dated March 23, 2007, the UGC vide its letter dated March 30, 2007, intimated the Registrar of the respondent No.1 / University the decision of the MHRD dated March 23, 2007, and directed that the said decision be communicated to all affiliated colleges of

the respondent No.1 / University.

10. It is contended by Mr. Dutta that the EC of the respondent No.1 / University in its meeting dated June 08, 2007, resolved to adopt and record the letters dated March 23, 2007 of the MHRD and the letter dated March 30, 2007 of the UGC enhancing the age of superannuation from 62 to 65 years for all teaching posts. Moreover, the decision of the GOI and the UGC was formally adopted and accepted by the EC of respondent No.1 / University and became applicable on all persons discharging duties of teaching positions as of March 15, 2007, including the petitioner.

11. The Deputy Secretary to the GOI vide his letter dated December 31, 2008, informed the Secretary of the UGC / respondent No.4 about the scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of the pay scale of Central Government employees on the recommendation of the 6th Central Pay Commission. In the said letter the Deputy Secretary further informed that there would be only three designations in respect to teachers in the Universities and Colleges namely Assistant Professors, Associate Professors and Professors. The relevant paragraph is reproduced hereunder: -

"1. General

[i] There shall only be three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors, and Professors. However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels."

In this regard, it is submitted by Mr. Dutta that as per the said direction by the GOI and recommendations made by the UGC, the nomenclature of the post of the petitioner was changed from Reader to Associate Professor.

12. Mr. Dutta stated that the recruitment roster for the teachers as of September 03, 2013, also showed the designation of the petitioner as Associate Professor. Moreover, the recruitment roster was signed by Officiating Principal of respondent No.2 / College and Liaison Officer, of respondent No.1 / University. Also, the acting principal addressing the petitioner as Associate Professor vide letter dated November 25, 2014, informed her that she has been appointed as Bursar for 2 years w.e.f. November 26, 2014, to November 11, 2016.

13. Further, the Registrar of respondent No.1 / University vide letter dated December 31, 2015, sought clarification from UGC concerning the circumstance under which a person can be treated as Associate Professor and also the age of superannuation. The UGC vide letter dated April 08, 2016, provided clarification to the queries of the Registrar. The relevant clarification provided by the UGC is reproduced hereunder: -

4. How and under what circumstances a person can be treated as Assistant Professor? Associate Professor in Physical Education?

4. If Institute has a Teaching Department in Physical Education with sufficient number of students, Institute/College may appoint Assistant Professor in the Department of Physical Education.

5. What shall be the age of superannuation of Assistant Professor/Associate Professor in Physical Education?

5. The age of superannuation of Assistant Professor/Associate Professor in Physical Education is 65 years.

14. It is submitted by Mr. Dutta that the number of students studying the elective subject in the respondent No.2 / College is substantial and the petitioner is the only regularly appointed Associate Professor in the said college and has been diligently performing her role in shaping the lives of many such latent talents of the country.

15. Mr. Dutta stated that the petitioner received a letter dated April 26, 2016, from respondent No.3 referring to the post of the petitioner as Associate Professor, whereby informing the petitioner that the petitioner was relieved from her duties as Bursar on April 30, 2016.

16. It is submitted by Mr. Dutta that the petitioner while discharging duties as an Associate Professor was informed by respondent No.1 / University vide orders dated April 10, 2017, and November 09, 2017, that she has been entrusted with the responsibility of moderating various examination papers of different semesters. Moreover, the Joint Registrar (College) of respondent No.1 / University vide letter dated May 11, 2017, informed the Principal of all the colleges of respondent No.1 / University that Physical Education as a subject may be retained in reservation roster (Teaching) if the College has Physical Education as an academic subject with sufficient number of students.

17. Mr. Dutta placed reliance upon the certificate dated May 01, 2018, issued by the Head of the Department of Physical Education and Sports Sciences addressing petitioner as Associate Professor of Vivekananda College certifying that she was involved in confidential work related to Examination of University of Delhi on April 02, 2018, April 12, 2018, and April 19, 2018, in the Department of Physical Education and Sport Sciences, Faculty of Inter-Disciplinary and Applied Sciences. Further, on December 10, 2018, a meeting of Governing Body of respondent No.2 / College was convened to discuss the matter of age of superannuation of petitioner as Associate Professor in Physical Education. The Governing Body unanimously resolved that the age of superannuation of petitioner would be 65 years. The relevant extract of the Resolution is reproduced hereunder: -

"xxx xxx xxx

Governing Body unanimously resolve that the age of superannuation Dr. Meera Sood will be 65 since she is being designated as Associate Professor in Physical Education. However, Member Secretary Dr. Hina Nadrajog dissented on the

issue..... "

18. It is stated by Mr. Dutta that respondent No.3, contrary to the decision dated December 10, 2018, taken by the Governing Body of respondent No.2 / College wrote a letter dated March 27, 2019, to the petitioner, wrongly addressing her as DPE, informed her, that she would be retiring at the age of 62 years, as DPE, on May 31, 2019. Mr. Dutta contended that such an action was against the Statute and Ordinances of respondent No.1 / University. In addition, it is also stated that as per the Delhi University Act, 1922, it is only the EC who has the power to amend or repeal any Statute after giving due opportunity of hearing to the person concerned.

19. It is stated that the members of Governing Body on coming to know about the letter dated March 27, 2019, sent by respondent No.3 to the petitioner wrote a letter dated March 30, 2019, to the respondent No.3 expressing their shock over the contravention of the Governing Body's decision by the respondent No.3. Mr. Dutta also contended that the decision of respondent No.3 to prematurely retire the petitioner at the age of 62 years instead of 65 years is in clear violation of her protected rights under Articles 14, 16, and 21 of the Constitution of India.

20. A short counter affidavit has been filed on behalf of respondent Nos.2 and 3, wherein it is stated that respondent No.2 / College had merely followed the UGC Regulations, University Statute, and Ordinances, and hence its role in the instant petition is very limited. Mr. Santosh Kumar, learned counsel appearing on behalf of respondent No.2 / College contended that the post of DPE is in a different cadre, and cannot be redesignated as Associate Professor, and any such redesignation and subsequent promotion will not align with the University's Statute, Ordinances, and UGC Regulations.

21. Mr. Kumar submitted that the College can only teach those subjects which are prescribed by the UGC as these colleges are funded by the UGC. The respondent No.2 / College does not have any Bachelors Course in Physical Education and hence it is bound by the UGC Guidelines. In addition, every college funded by UGC needs approval for the Teaching post / prescribed subject. It is further stated that there was no approval from respondent No.4 / UGC even as late as 2018 with respect to running a course in Bachelors of Physical Education in respondent No. 2 / College. Moreover, as per the UGC Regulations and University Statute, the prescribed promotional avenues for Assistant DPE is to Deputy DPE and DPE only.

22. In this regard, Mr. Kumar relied upon the judgment in the case of University of Delhi v. Raj Singh and Ors., AIR 1995 SC 336, wherein the Supreme Court has settled the law that the Regulations of UGC are binding and the respondent No.1 / University is mandated to comply with the same. Thus, until the UGC approves, such a change in nomenclature of DPE as Lecturer and prescribes for the promotion of DPE to Assistant Professor / Associate Professor the same cannot be done by the respondent No.2 / College.

23. That apart, Mr. Kumar also stated that the Department of Higher Education, MHRD, GOI, after the Ministry's letter dated March 23, 2007, had received several queries from various Universities on the issue as to whether the enhancement of the age of superannuation from 62 years to 65 years would also apply to the staff / persons who held posts / positions, equivalent to teaching positions but were not engaged in teaching. The aforesaid query had been answered by the Department of Higher Education, MHRD, GOI, vide its letter dated April 19, 2007. The relevant extracts of the said letter are reproduced hereunder: -

"xxx xxx xxx

i) The enhancement of the age of superannuation from 62 years to 65 years and the provisions for re-employment as mentioned in this Ministry's letter dated 23.03.2007 referred to above, have been made in order to overcome the shortage of teachers and is applicable only to the 'Teachers' in centrally funded institutions in higher and technical education under the Ministry of Human Resource Development, who are actually engaged in teaching classes/courses/ programmes of study in such institutions.

ii) The provisions of the Ministry's letter dated 23.03.2007 mentioned above shall not be applicable to any other categories of employees in such institutions, notwithstanding the fact that the posts they hold may be considered as 'equivalent' to teaching positions."

iii) As provided in the Ministry's letter of even number dated 23.3.2007, those teachers who are occupying teaching positions on regular employment against sanctioned posts in centrally funded higher and technical education institutions as on 15.3.2207, would henceforth retire at the age of 65 years. Therefore, the retirement age of any such regular teacher, who was actually. In position as on the crucial date of 15.3.2007, would be 65 years....."

24. Mr. Kumar further placed reliance on the Clause 8(f)(iii) of the UGC notification dated December 31, 2008, issued by the Department of Higher Education, MHRD, GOI which also stipulates the following: -

"ii. Whereas the enhancement of the age of superannuation of teachers engaged in classroom teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in-service for a longer period, and whereas there is no shortage in the categories of librarians and Directors of Physical Education, the increase in the age of superannuation from the present 62 years shall not be available to the categories of librarians and Directors of Physical Education."

25. In addition, Mr. Kumar submitted that the respondent No.1 / University vide its letter dated January 02, 2014, stated: -

"xxx xxx xxx

This has reference to your letter no. VC-13-5422 dated 22.11.2013 on the above noted subject.

I am directed to inform you that if the college has appointed a person as Director Physical Education, the said post will remain the same whether the incumbents appointed against the said post is taking classes or not. Only the incumbent who is appointed as a lecturer in Physical Education/Assistant Professor will be included in the roster of teaching."

26. Consequently, it was stated that the EC Resolution No.127 dated November 10, 1990, relied upon by the petitioner is merely a suggestion about future policy by making appropriate Statutes / Ordinances and the same will not have any legal force unless the University Statute and Ordinance are made to that effect. No amendment in appropriate Statutes / Ordinances was carried out. It is further submitted, that by the EC Resolution No.142 dated October 06, 2009, wherein the Ordinance XXVII of the University was amended in line with the circular dated December 31, 2008 as ratified by the EC on January 16, 2009, the age of retirement of DPE was fixed as 62 years.

27. Furthermore, Mr. Kumar justified his argument by stating that even in the years 2010 and 2018 when the UGC Regulations, were changed / amended the nomenclature of DPE was not changed to that of Lecturer nor any provision was made wherein the DPE could be promoted to Assistant Professor or Associate Professor nor the age of superannuation of DPE was enhanced to 65 years. As per the UGC Regulations, an Assistant Professor has to be teaching for at least 16 hours per week and an Associate Professor / Professor for at least 14 hours per week. The petitioner has never devoted such teaching hours in her career.

28. Moreover, Mr. Kumar submitted that any appointment to the post of Associate Professor / Assistant Professor has to be done as per the UGC Regulations and the University Statute, which includes issuing of advertisements, inviting applications, etc. The promotion of the petitioner as a Reader, appointment as Bursar, etc., does not create any right for the petitioner when the same does not align with the UGC Regulations, the University Statute, and Ordinances as there cannot be any estoppel against the Statute.

29. It is also submitted that the respondent No.1 / University has instructed to retire the persons appointed as DPE, on attaining the age of 62 years as per the UGC Regulations of 2010, and not to disburse their salary, beyond that age. Mr. Kumar also dealt with the submission made by Mr. Dutta on behalf of the petitioner that other colleges under respondent No.1 / University, superannuated their Associate Professor(s) in Physical Education at 65 years. Therefore, being an 'Associate Professor in Physical Education' since December 31, 2008, the petitioner would superannuate at 65 years by stating that just because some other colleges / institutions have allegedly granted the benefit of extension in the age of superannuation, erroneously, cannot be made the basis for any equity or parity. In this regard, the judgment in the case of Jitendra Singh Naruka v.

University of Delhi and Ors., W.P. (C) No. 6025/2014, wherein in paragraph 26, as relied upon by Mr. Kumar, it has been held as under: -

".... another contention raised is that some Directors of Physical Education were allowed to continue in service till the age of 65.

It is possible that this benefit was wrongly extended to the said, Ms. Sudershan Pathak. However, this would not mean that the same wrong is repeated and this error should be repeated in the case of the Petitioner. This is not what is mandated by Article 14 of the Constitution of India."

30. According to Mr. Kumar, the issue of the age of superannuation of the DPE and Librarian is no longer *res integra* as the Division Bench of this Court in *Krishan Gopal v. Union of India & Ors.*, W.P. (C) 7375/2013, held that the age of superannuation of the DPE is 62 years and no parity can be given with teaching posts. Additionally, similar issues arose in *Swarn Bhanot v. University of Delhi & Ors.*, W.P. (C) 8597/2009, and *Kanchan Saini v. University of Delhi and Ors.*, W.P. (C) 3679/2017; both these petitions were decided through a common order on March 26, 2019, wherein a Coordinate Bench of this Court dismissed the said petitions. Following the findings in the aforementioned writ petitions being *Swarn Bhanot* (*supra*) and *Kanchan Saini* (*supra*) the Coordinate Bench took a similar view in the case of *Dr. Sudhir Kumar Taneja v. University of Delhi & Ors.*, W.P. (C) 7849/2019, decided on July 22, 2019.

31. That apart, Mr. Kumar submitted that the petitioner herein had filed LPA No. 411/2019 (*Dr. Meera Sood v. University of Delhi and Ors.*) against the order dated May 22, 2019, of this Court as the interim relief was not granted to her. The Division Bench vide order dated May 31, 2019, disposed of the LPA No. 411/2019 by granting interim protection in as much as the petitioner was allowed to continue serving on the same terms and conditions till the decision of the writ petition. However, the Division Bench also clarified in the said order, that this Court shall be uninfluenced by any observation made by the Court while passing the said order which has been made purely as an interim arrangement and only on a *prima facie* opinion formed by the Court. The petitioner also moved an application, before the Division Bench of this Court in LPA No. 411/2019 for the modification of the order dated May 31, 2019. However, the same was dismissed by the Court.

32. Furthermore, an appeal, LPA No. 491/2019 was filed challenging the order dated July 22, 2019, in *Dr. Sudhir Kumar Taneja* (*supra*). Mr. Kumar stated that the counsel in *Dr. Sudhir Kumar Taneja* (*supra*) in LPA No. 491/2019 in his stay application submitted that the matter is identical to the instant writ petition W.P. (C) 5652/2019 titled *Dr. Meera Sood v. University of Delhi and Ors.* The Division Bench in LPA No. 491/2019 vide order dated July 30, 2019, allowed interim relief while recording that the issue raised is similar to the LPA No. 411/2019 and also recorded the relevant portions of the order dated May 31, 2019 in LPA No. 411/2019. It is stated that vide orders dated September 26, 2019 and December

16, 2019, the interim relief that was granted was vacated. According to Mr. Kumar, at present, there is no interim relief in the said matter and Dr. Taneja has been retired after attaining sixty-two years.

33. Mr. Kumar also relied upon the Judgement of the Supreme Court in *B. Bharat Kumar and Ors. v. Osmania University and Ors.*, (2007) 11 SCC 58, wherein it was held that it is not for the Court to formulate a policy as to what should be the age of retirement. It is to be done by the Government at its discretion. That apart, he also relied upon the judgment of the Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi and Ors.*, (2006) 4 SCC 1, wherein it was held that the appointment made in violation of recruitment rules would be a nullity. Hence, the petitioner cannot claim any relief in the present writ petition.

34. Mr. Kumar stated that the petitioner in the present petition has not challenged any Rules / Service Conditions, Guidelines / Norms of the UGC or of the respondent No.1 / University regarding the age of superannuation as 62 years. He also stated, that there is no estoppel against the Statute. In this regard, he contended that the respondent No.2 / College does not have any Bachelors' Course in Physical Education till date. Even if the course was to start, fresh substantive appointments to the post of Associate Professor / Assistant Professor would be made as per the UGC Regulations which will include issuing advertisements, inviting applications, etc. It is further stated that the petitioner is a DPE who due to some exigencies was assigned various administrative duties and responsibilities and because of this, the petitioner cannot claim that she is holding a teaching post since 1990. Moreover, merely some letters addressing the petitioner as Associate Professor, etc., were issued do not create any right for the petitioner when the same does not align with the UGC Regulations and University Statute and Ordinances which are statutory and there cannot be any estoppel against the Statute.

35. Further, Mr. Kumar submitted, the case of the petitioner that from 1981 there is no designation of DPE in college is unmerited as petitioner herself was appointed as DPE in the year 1983 and the said appointment has never been challenged by the petitioner. He seeks the dismissal of the petition.

36. In rejoinder submissions Mr. Dutta's submissions are the following: -

i. The letter from the Ministry of HRD, GOI dated March 23, 2007, would have no application to the petitioner because as of 2007, the petitioner held the position of a Reader / Associate Professor and was engaged in the teaching of the subject of Physical Education. This letter applied only to those persons occupying non-teaching posts such as librarians, stenographers, etc. In this regard, the petitioner was already holding the post that was equivalent to teaching position.

ii. The circular issued by MHRD, GOI dated December 31, 2008, is inapplicable and related to the DPEs and Librarians. It does not apply to the case of the petitioner as on the date of the circular, the petitioner was not DPE as she was holding the post of Associate Professor of Physical Education. The DPEs in

colleges were re-designated as Lecturers vide the EC Resolution of 1990. Further, the petitioner satisfies the definition of 'teacher' as set out in the Delhi University Act, 1922. The petitioner has been performing teaching duties as is evident from the timetable. He denied that EC Resolution No.127 dated November 10, 1990, is a mere recommendation and does not carry the force of law.

iii. The judgment in JS Naruka (supra) has to be understood in proper perspective, in as much as, it is related to DPE at the University level. The retirement age of DPE is different from the retirement age of an Associate Professor in Physical Education. Mr. Dutta also stated that the judgment in Swarn Bhanot (supra) does not apply because it is related to an 'Instructor in Office Stenography' and not at the level of Associate Professor. In the present case, the petitioner is at the level of an Associate Professor in Physical Education and therefore is entitled to retire at the age of 65 years.

iv. The Physical Education subject is taught as a subject in the B. A. Programme. The timetable of the petitioner also establishes that the petitioner is performing teaching functions. To establish his submission Mr. Dutta placed on record the question papers of examination in Physical Education which are taken by students every year.

v. The right to continue till 65 years of age is based on Ordinances of respondent No.1 / University and Regulations of respondent No.4 / UGC. In this regard, respondent No.2 / College has issued an Identity Card to the petitioner which mentions the designation of the petitioner as an Associate Professor. Also, the RTI query, relating to the petitioner's case, wherein respondent No.4 / UGC clearly stated that the teaching positions are entitled to enhanced retirement age to 65 years.

37. Having heard the learned counsel for the parties and perused the record, the only issue which arises for consideration is whether the age of superannuation of the petitioner is 65 years or 62 years. Suffice to state, respondent No.2 / College has decided to superannuate the petitioner at the age of 62 years and has accordingly issued communications dated March 27, 2019, and April 22, 2019, in that regard, which are under challenge. The same reads as under: -

i. Communication / letter dated March 27, 2019: -

"Ref. No.VC/2019/5289 Date: 27.03.2019

Dr. Meera Sood

Director, Physical Education

Vivekananda College

Vivek Vihar

Delhi - 110095

Dear Madam,

As per the decision taken in the Governing Body meeting held on 10.12.2018, a legal opinion was sought in respect of the superannuation date of your good self, and it is here clarified that you will be retiring at the age of 62 years as Director of Physical Education i.e. 31st May, 2019."

ii. Communication / letter dated April 22, 2019: -

"Ref No. VC/2019/324 Date: 22.04.2019

Dr. Meera Sood

Director, Physical Education and

Associate Professor in Physical Education

Vivekananda College

Vivek Vihar

Delhi - 110095.

Dear Madam,

With reference to you letter diary no. VNC/2019/257 dated 18.04.2019 & D. No.61 dated 05.04.2019, this is to inform you that the letter ref. No. VC/2019/5289 dated 27.03.2019 given to you earlier stands reiterated."

38. It was urged by Mr. Dutta that the petitioner had joined the respondent No.2 / College in the year 1983 on the post of DPE. She was thereafter designated as Senior Lecturer. Subsequent thereto as Reader by way of promotion on June 24 / 25, 1998. The post of Reader was redesignated as Associate Professor. She has been discharging the duties of a 'Teacher' as per the Regulations issued by the UGC and also the Resolutions of the respondent No.1 / University. Her retirement age is 65 years.

39. It is a conceded case of the petitioner that she was appointed as DPE in respondent No.2 / College on a permanent basis in the year 1983 and an agreement of service dated August 13, 1983, was executed between the respondent No.2 / College and the petitioner. The Resolution of the EC which has been forwarded to the College by the University vide its letter dated January 11, 1991, reads as under: -

"127. Resolved that the following Executive Council Resolution No.516 dated 26-12-81 adopted in the light of the Academic Council Resolution No.178 dated 2-11-81 regarding Directors of Physical Education be implemented and accordingly the Directors of Physical Education in Colleges be hereafter known as Lecturers."

40. It appears that the subsequent Resolution of the EC dated November 10, 1990 (at page 98 of the writ petition) has not been sent to the College by the University. The same reads as under: -

"Ref. EC. Resolution No. 546 dated 26-12-81

xxx xxx xxx

The Council further resolved that the change of designation of Directors of Physical Education to that of Lecturers in Physical Education be processed according to the provisions contained in the Statutes and Ordinances of the University."

41. The aforesaid Resolution clearly states that the change of designation of DPE to that of Lecturer in Physical Education has to be processed in terms of the Provisions contained in Statute and Ordinances of the respondent No.1 / University.

42. But Ordinance XII of the Ordinances of the respondent No.1 / University refers to the appointment of 'Teachers' in College. Clause 1A thereof reads as under: -

"1-A. Every whole-time teacher shall be engaged by a College as a member of its staff on salaries in the scales prescribed by the University for the various categories of its teachers."

43. Similarly, Clause 2A and 2B thereof reads as under: -

"2-A. Promotion of College Appointed teacher (including Directors of Physical Education) under the Merit Promotion Scheme of 1987 as accepted by the Executive Council, shall be made in accordance with the eligibility conditions and in the manner prescribed in this scheme in this behalf.

2-B. Promotion of College Appointed Lecturers as Lecturers in Senior Scale / Reader's Grade (Selection Grade / Readers / Professors) shall be made under the Merit Promotion Schemes as accepted by the Executive Council, in accordance with the eligibility conditions under the relevant scheme."

44. Similarly, Ordinance XVIII 4(5) relates to the appointment of the Librarian and the DPE in the College. The same reads as under: -

"(5) The appointment of the Librarian and the Director of Physical Education in the College shall be made by the Governing Body of the College by advertisement. The Selection Committee for recommending appointment of the Librarian and the Physical Director will be constituted as follows:

Librarian:

1. Chairman of the Governing Body or his nominee. (Chairman)
2. One University representative on the Governing Body.
3. University Librarian.
4. Head of the Department of Library and Information Science.

5. Principal of the College / Principal (Evening Classes) in case the Selection is for the evening classes.

Three members inclusive of the Chairman and University Librarian or Head of the Department of Library and Information Science of the University shall form a quorum. Director of Physical Education:

1. Chairman of the Governing Body or his nominee. (Chairman)
2. One University representative on the Governing Body.
3. Director of Physical Education of the University.
4. Principal of the College - Principal (Evening Classes) in case the selection is for the evening classes.
5. Two experts nominated by the Academic Council from out of the panel of names approved by it.
6. Director of Physical Education in the College in case of selection of additional post of Director of Physical Education.

Three members inclusive of the Chairman and an expert nominated by the Academic Council or the Director of Physical Education of the University shall form a quorum."

45. There is no stipulation either in the Statutes or in the Ordinances at least nothing has been brought to my notice which contemplates a DPE can be re-designated as Lecturer. A reading of the Ordinances referred above, clearly reveal, the appointments of Teachers and DPE are governed by separate Ordinances, without any Provision of interchangeability. So, in the absence of any Provision in the Statue or Ordinances in that regard, the petitioner could not have been designated as Lecturer. Mr. Kumar is right in stating that the Resolution of 1981, as relied upon by Mr. Dutta, was in place when the petitioner was appointed as DPE in respondent No.2 / College, but still was appointed as DPE and not Lecturer and no challenge was made by the petitioner to her appointment as DPE. I may also state here that no order has been shown to me after the receipt of the communication dated January 11, 1991, re-designating the petitioner, who was working as DPE, as Lecturer / Senior Lecturer. Much reliance has been placed by Mr. Dutta on the communication issued to the petitioner showing her designation as Reader. The reliance is misplaced as the grant of designation is not permissible under Statue / Ordinances and shall have no effect in law. Similarly, all other communications on which reliance has been placed by Mr. Dutta would not help the case of the petitioner to establish that the petitioner is a teacher in the College and entitled to the benefit of Regulations 2010 of the UGC specifying the retirement age of a teacher is 65 years. Rather, there is a Resolution No.142 of the EC of the University of Delhi dated October 06, 2009, wherein it is clearly stated that the age of retirement of the Registrar, Librarian, and DPE shall be on attaining the age of 62 years.

46. Mr. Kumar is justified in relying upon the communication dated January 02, 2014, which I have reproduced in paragraph 25 above which contemplate that if the College has appointed a person as DPE, the post will remain the same whether the incumbent appointed against the said post is taking classes or not. Only those incumbents who are appointed as a Lecturer in Physical Education / Assistant Professor will be included in the roster of teaching.

47. It is the own case of Mr. Dutta that it was only in the year 2007 that the respondent No.1 / University introduced academic course in Physical Education at undergraduate level with a theoretical and practical component for which teaching, paper setting, conducting an examination and evaluation was to be done by Lecturer in Physical Education in various colleges. In other words, there was no academic course of Physical Education in the respondent No.2 / College at the undergraduate level before 2007. If that be so, there was no reason / occasion to designate the petitioner as Senior Lecturer and thereafter promote her as Associate Professor. In fact, I find it is the stand of the respondent No.2 / College that till date the College has not introduced the academic course in Physical Education. In the absence of their being any course, there cannot be any appointment of Assistant Professor / Associate Professor etc.

48. The issue of whether the DPE is a 'teacher' within the meaning of Section 2(g) of the Delhi University Act, 1922 has been considered by the Division Bench of this Court in the case of Damayanti V. Tambay v. Union of India & Ors., W.P.(C) 7939/2011, wherein in paragraphs 26 and 27 the Court has held as under: -

"26. First question would be as to whether DPEs and Librarians can be treated as 'teachers' for all purposes and are therefore at par?

Much material is placed by Mr. Mukund and Dr. Sarabjeet Sharma, learned counsel who appeared for the two petitioners, on the basis of which it is sought to be impressed upon that the Librarians and DPEs also qualify as teachers and are not different from other teachers. We are afraid such a conclusion cannot be arrived at. UGC's letter dated 18.1.1991 to the Registrar of Delhi University only extends the benefit, which was granted to teachers, to the Library staff as well 'for the purpose of salary revision'. When a particular benefit given to one class is extended to another, that would not mean that same be treated as same class for all purposes and in every respect. It becomes clear from the pronouncements of the Supreme Court where the two classes, namely, teachers on the one hand and Librarians/DPEs on the other, came to be considered while deciding the pay parity. The Supreme Court in the case of State of M.P. Vs. Ramesh Chandra Bajpai (supra) refused to grant the claim of pay parity of DPEs with that of teachers in the following words:

"15.It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarly in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and

mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

27. Thus, the principle of 'Equal Pay for Equal Work' was not made applicable while comparing the two classes, categorically holding that there was disparity. In this process, the Supreme Court also distinguished the judgment of P.S. Ramamohana Rao (supra), which is relied upon by the petitioner, on the ground that that judgment was based on definition of 'teacher' as defined in section 2(n) of the Andhra Pradesh Agricultural University Act. Obviously, position would be different when legislature itself, by definition, accords parity between those imparting educational instructions and those imparting physical education. On this basis, even Delhi University has taken this position taking note of the definition of 'teacher' as stated in the University of Delhi Act, 1922 as per which Librarians are 'teachers' under the category of 'other persons' imparting instructions in universities or in college or hall. Likewise in State of Karnataka v. C.K. Pattamashetty (supra), the Supreme Court took into consideration the definition of 'teacher of the university' under Section 2(8) of the Karnataka State University Act. Thus, if the legislature has equated the two classes, then the status of teacher is granted to such DPEs and Librarians by the Statute. De hors that, it would be difficult to say that all such DPEs and Librarians are to be treated as teachers per se."

(emphasis supplied)

49. Further, the Division Bench of this Court in JS Naruka (supra) in paragraphs 12 to 14 has held as under: -

"12. Pursuant to the judgment dated 18th May, 2012 in Damayanti V. Tambay (Supra), an expert Committee was constituted comprising of members of the University Grants Commission, Ministry of Human Resource Development and different Universities to examine the age of superannuation of Librarians and Directors of Physical Education. The said Committee submitted a report dated 29th August, 2013, to the following effect:

? "No parity can be granted to Librarians / Deputy & Director of Physical Education Personnel with that of Assistant Professors, Associate Professors and Professors.

? There is no shortage of supply of Library and Physical education staff in Universities system as that of the teachers.

? Hence, enhancement of age of superannuation of Librarians / Deputy & Director of Physical Education Personnel from 62 to 65 years is not justified.

13. This decision of the Committee and the consequent orders passed were made the subject matter of challenge in Writ Petition (C) No.7375/2013 titled Krishan Gopal Vs. Union of India and Ors. Krishan Gopal had earlier filed Writ Petition (C)

No.7130/2011 which was disposed of by a common judgment dated 18th May, 2012 along with the Writ Petition (C) No.7939/2011 filed by Damayanti V. Tambay. The Division Bench dismissed Writ Petition (C) No.7375/2013 filed by Krishan Gopal on 18th February, 2015 referring to the earlier judgment dated 18th May, 2012 in the case of Damayanti V. Tambay (supra) and held that the Division Bench had not agreed to the stand that Librarians and the Directors of Physical Education were to be treated as 'teachers', notwithstanding that they were equated with teachers for some benefits such as pay-scales, career advancement scheme etc. The Division Bench in W.P. (C) No. 7375/2013 quoted the data which had been relied upon by the Committee and also extensively referred to the Expert Committee's opinion and their findings. The relevant portion of the said judgment dated 18th February, 2015 reads as under:

7. In compliance with the mandamus issued, a seven member committee under Chairmanship of Prof.V.S.Chauhan comprising six members being Prof.Furquan Qamar the ViceChancellor of Central University of Himachal Pradesh, Dr.Akhilesh Gupta the Secretary, UGC, Sh.Vikram Sahay the Director (Admn.), UGC, Dr.Sandeep Chatterjee the Registrar, Jawaharlal Nehru University, Sh.P.Sasikumar, the Under Secretary, MHRD and Sh.Satish Kumar the Under Secretary, WP(C)6025/2014 Page 13 of 23 UGC was constituted which gave a report that there was no reason to extend the benefit to the librarians and DPEs of enhancing age of superannuation given to teachers, and for which decision the Committee considered the data pertaining to the librarian cadre and physical education cadre at the level of the universities i.e. central universities and at the level of colleges affiliated to or the constituent colleges of the Central Universities. The data, put in a tabular form by the Committee in its opinion dated August 29, 2013 which has been challenged in the writ petitions, would be as under:-

Status of Staff in Library and

Physical Education in Universities

Sanctionedposts

Filled

Vacant

% of

vacancy

Librarian

38

19

19

50

Deputy Librarian

45

25

17

38

Assistant

187

130

57

30

Librarian

Director of

Physical Education

21

10

11

52

Dy. Director of Education

11

10

1

9

Assistant Director of Physical

Education

54

22

29

Vacancy position of Librarians in Colleges

Sanctioned posts

Filled

Vacant

% of vacancy

Govt.

145

140

5

3

Aided

279

266

13

5

Non-aided

22

22

0

0

Total

446

428

18

4

Vacancy position of DPEs in Colleges

Sanctioned posts

Filled

Vacant

% of vacancy

Govt.

74

72

2

3

Aided

163

157

6

4

Non-aided

10

10

0

0

Total

247

239

8

3

8. In para 9 of its opinion, the Committee concluded as under:-

"Having extracted the above, the Committee noted that % of vacancies mentioned in the aforesaid 2 charts in the said paper written by aforesaid authors does not lead to any conclusion of shortage of the staff in Library and Physical Education in Universities. The aforesaid chart merely (sic. nearly) gives existing % of Vacancy of different posts in Library and Physical Education Cadre in Universities which may be lying vacant for various reasons such as procedural delay in filling up the vacancies. Further, the Committee finds it difficult to accept that if a post of Library and Physical Education Cadre in Department in Universities is lying vacant, then that will lead to irresponsible conclusion of shortage supply of Library and Physical Education staff in Universities system in the country. In fact, the existing vacancy if any cannot be the Indicator of shortage of supply of manpower and in the present case it cannot be that if a post is lying vacant, then by reason of such existing vacancies only, there is a shortage of qualified Librarians and Physical Education Personnel in the University System in India. The Committee also deem it appropriate to note that so far as the issue of shortage of qualified teachers is concerned i.e. in the

backdrop of actually qualified teachers for recruitment and also the consequential impact of teacher-student ratio to be maintained in an expanding Higher Education System. However, the said parameter is not available in case of Librarians in particulars. The Committee is of the view that there is no parity between Library and Physical Educational Personnel on the one hand and Assistant Professor/Associate Professor/Professor on the other hand, claim of enhancement of age of superannuation of Library and Physical and Educational Personnel from 62 to 65 years is not justified. Accordingly, the Committee recommended that the existing age of retirement of Library and Physical Education Personnel Education should be maintained at 62 years only."

14. Thereafter, the Division Bench had observed:-

9. Though at the hearing of the writ petitions learned counsel for the petitioners and respondents once again cited the decisions reported as 1997 (5) SLR 106 P.S.Ramamohana Rao Vs. A.P. Agricultural University & Anr. (2004) 6 SCC 685 State of Karnataka Vs. C.K.Pattamashetty & Anr., (2009) 13 SCC 635 State of M.P. Vs. Ramesh Chandra Bajpai, (1983) 1 SCC 305 D.S.Nakara & Ors. Vs. UOI & Ors. and (2011) 5 SCC 305 State of U.P. & Ors. Vs. Hirendra Pal Singh, to support their rival stands concerning whether librarians and DPEs were required to be treated as teachers and made a reference to the same letters, circulars and office orders and the statute of the university, we are not noting said contentions for the reasons as regards the petitioner they are a repeat of what was argued when W.P.(C) No.7130/2011 and W.P.(C) No.7939/2011 were decided by the Division Bench on May 18, 2012 (sic. 2011) and so is the case with the arguments of the respondents. As noted above by us, the contention of the petitioners was rejected by the Division Bench concerning their claim of the status of librarians and DPEs being that of teachers, and the stand taken by the respondents was accepted."

(emphasis supplied)

50. It may be stated here that the challenge to the judgment in JS Naruka (supra) of the Division Bench of this Court is pending consideration before the Supreme Court in SLP (C) No. 007279/2017.

51. From the above conclusion of the Division Benches, it is clear that the status of the Librarian and DPE is not that of the teachers. Hence, the petitioner cannot claim any parity qua the teachers working in the University. So, the plea of Mr. Dutta that the petitioner is a teacher and as such, she cannot be discriminated against has to be rejected.

52. No doubt, the age of the teachers in terms of the Resolution of the EC of respondent No.1 / University dated October 08, 2007, has been enhanced from 62 to 65 years but the benefit thereof cannot be given to the petitioner. The aforesaid does not mean that for all purposes DPE is not equated as a teacher. For certain purposes, the DPE is equated with teacher and this aspect has been clearly held by the Division Bench of this Court in Damayanti V. Tambay (supra)

wherein in paragraph 29 it has been held as under: -

"Having clarified this, we need to address neat issues, viz., whether DPEs and Librarians can fall in the same category as teachers, for the purpose of according the benefit of increase in age of superannuation?

At the outset, we would like to clarify that this issue is addressed with limited scope in mind, namely, entitlement of DPEs and Librarians to the enhanced age of superannuation as given to teachers. Here, we find that the petitioners are able to make out an arguable case. The events recorded above would show that whenever age of superannuation of teachers has been enhanced, the same benefit has always been extended to the Librarians and DPEs. This has happened right from the 1960s, if not earlier. Further, it has happened at the instance of UGC itself which means that such benefit is extended in all universities coming within the umbrella of UGC across the country. More importantly, while doing so, the UGC as well as Universities themselves have given the justification by stating that these Librarians and DPEs are to be equated with teachers for extending the benefit of increase in age of retirement. Based thereupon, even some other benefits have been extended like merit promotion scheme in Delhi University etc. Same thing happened when the superannuation age of teachers was extended from 60 to 62 years."

53. The aforesaid conclusion has also been noted and accepted by the Division Bench in W.P. (C) 7375/2013 titled Krishan Gopal (supra) relevant paragraph is reproduced as under: -

"5. The Division Bench did not agree with the stand taken by the librarians and DPEs that in law they were required to be treated as teachers. The Division Bench highlighted that if for some benefits, such as pay scales, career advancement schemes etc. they were equated with teachers would not mean that they would become teachers. The Division Bench noted that merely because in the past benefit given to one class was extended to the other would not make the other a part of the former. The Division Bench held that teachers formed a class separate from that of librarians and DPEs. The Division Bench recognized that it was the prerogative of the executive to determine the age of retirement, but lodged a caveat. The caveat being that when the age of superannuation of a class of employees was increased, it has to be made applicable to all employees falling in the same category, as otherwise it would result in invidious discrimination. It was held that if a reason existed for two classes, given benefit to only one would be a case of invidious discrimination."

54. Having said that, in so far as DPE is concerned, in terms of EC Resolution No.142 dated October 06, 2009, the retirement age is 62 years and the petitioner having attained 62 years on May 31, 2019, has to be treated as retired on that day.

55. The reading of my above discussion is the following: -

- i. The petitioner was appointed as DPE in the year 1983.
- ii. The Resolution on which reliance has been placed by Mr. Dutta of November 10, 1990 (which refers to Resolution dated December 26, 1981) cannot be read in isolation as subsequent Resolution refers to the change of designation of DPE in accordance with the Statute or Ordinances of the University which do not permit re-designation.
- iii. That apart, the appointment of DPE is governed by Ordinance XVIII 4(5). Whereas the appointment of teachers in the University / College is governed by Ordinance XI / XII, hence the Ordinances makes a difference between the posts of DPE and Teachers, which position continues to be the same even as of today.
- iv. The age of retirement of teachers in terms of Resolution of the UGC and the Resolution of the University is 65 years but of DPE is 62 years.

56. Insofar as the judgment relied upon by Mr. Kumar in the case of Swarn Bhanot (supra) (connected petitions) is concerned, the same may not be applicable in the facts of this case. The Court was concerned with Instructors whose claim was that they should be treated at par with Lecturers. The petitioner herein being not an Instructor, the said judgment has no applicability. I may also note that the writ petition being W.P. (C) 7849/2019 titled as Dr. Sudhir Kumar Taneja (supra) was dismissed on July 22, 2019, by following the judgment dated March 26, 2019 i.e., Swarn Bhanot (supra), the same is pending consideration before this Court in LPA No. 491/2019.

57. In view of my discussion above, the issue which arose for consideration in this writ petition is decided by holding that the age of superannuation of DPE / petitioner is 62 years. The writ petition is liable to be dismissed. It is ordered accordingly. In terms of the order passed by the Division Bench on May 31, 2019, in LPA No. 411/2019, the petitioner having continued in the employment of the University beyond the age of 62 years who has given an undertaking that in case she does not succeed in the writ petition, the salary / allowances paid to her in the interregnum would be returned by her to the University or else will be deducted by the University from her retiral benefits need to be implemented by the University, either by claiming the same from the petitioner or adjusting against any benefits payable to her. No costs.

CM No. 24792/2019 (for stay)

Dismissed as infructuous.

CM No. 4509/2021 (for early hearing)

As I have already heard and decided the present writ petition, the application has become infructuous.