

(1997) 02 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 87 and 291 of 1993, 2139, 3152, 4201 and 4308 of 1994, 185, 431, 787, 807, 1297 and 2099 of 1995 and 1670, 2228, 2455 and 4500 of 1996

P.S. Tomar

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Municipal Corporation Act, 1957 — Section 98

Citation : (1997) 2 AD 692 : (1997) 66 DLT 449

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Dinesh Agnani, S.K. Khurana and Sudha Srivastava, for the Appellant;

Judgement

Devinder Gupta, J.

(1) The question arising for determination in these petitions is the legality and validity of the decision No. 2344/GW/Corpn. of the Commissioner, Municipal Corporation of Delhi dated 6.7.1992 passed in exercise of his powers u/s 490(2) (b) of the Delhi Municipal Corporation Act, 1957 (hereinafter) referred to as "the Act" as conveyed through Order No. D/177/Gen/ Edn./92 dated 13.7.1992.

(2) It is not in dispute that the petitioners, had they continued as Assistant Teachers, Physical Education Teachers or Head Masters, would have continued to remain in service up to the age of 60 years but on the basis of the impugned circular they were retired on attaining the age of 58 years, in accordance with the provisions of Fundamental Rule 56(1), since on the date of retirement they had been holding the posts of School Inspector, Senior School Inspector, Assistant Education Officer, Deputy Education Officer etc.

(3) It is alleged that under the respondent in the Education Department, there are separate cadres. In the teaching cadre the lowest post is that of an Assistant

Teacher of junior most level. The next post is that of a Teacher and then the Headmaster. Promotions thereafter is to the post of School Inspector, then to Senior School Inspector, Assistant Education Officer, Deputy Education Officer and the Director. The parallel post running in the same cadre on Physical Education side is that of a Physical Education Teacher. Promotion from that post is to the post of a School Inspector (Physics Education) and then to Assistant Education Officer. Both cadres run parallel to each other. Pay scales of Teacher and Physical Education Teacher is the same, i.e. Rs. 1,240.00 - 2,000.00 . For the post of School Inspector and School Inspector (Physical) the grade of pay is Rs. 2,000.00 - 3,500.00 and for those of ? Senior School Inspector and Senior School Inspector (Physical) the same is Rs. 3,000.00 , 4,500.00 . Besides supervisory work the School/Senior School of Inspector (Physical) had to do teaching work as well.

(4) In the year 1970 Middle and Higher Secondary Schools were transferred to the Delhi Administration. Staff of the Middle and Higher Secondary Schools was also transferred to the Delhi Administration. With a view to protect the service conditions of the teaching staff working under Municipal Corporation of Delhi, whose services were transferred to Delhi Administration, Resolution No. 127 was passed by Municipal Corporation of Delhi on 12.5.1970. The age of retirement of teachers and officers in the Education Department of the Corporation was 60 years. This age limit was retained for the staff being transferred. It is the petitioners' case that all the staff in the Education Department, which got transferred to Delhi Administration, the same was retired on attaining the age of 60 years. Government of India through its letter dated 18.1.1973 and also approved that the employees transferred by the Corporation to Delhi Administration may be retained up to the age of 60 years. Pursuant to the said resolution and decision not only the teaching staff even supervisory staff e.g. School Inspector/Senior School Inspector and School Inspectors (Physical) were given the benefit of service up to the age of 60 years.

(5) It is further the case of the petitioners that notwithstanding its own Resolution, which showed that the entire cadre in the Education Department was treated as Teaching Cadre, the respondent sought to discriminate between Teachers doing class teaching and Teachers who were promoted as School Inspectors. The former were allowed to continue in service up to the age of 60 years while the latter were sought to be retired on attaining the age of 58 years.

(6) In 1984 one Smt. Sheila Puri had filed a writ petition. She was Headmistress when the School was taken over by the Directorate of Education, Delhi on 15.7.1957. On 2.9.1960 she was promoted as an Inspector of Schools Along with four others and her case was that as per Clause 7 of Resolution No. 127 of 1970 she was to retire at the age of 60 years. The said Resolution stated : Age Limit for retirement : The present age-limit for retirement of the Officers, teachers and the other employees in the Municipal Corporation is 60 years. This age-limit of 60 years may be retained after absorption provided the Government of India

accords their approval." It was the case of Smt. Sheila Puri that as a part of this Resolution persons, who were to be observed in the Delhi Administration were named and since she was absorbed she was to retire at the age of 60 years. The writ petition was contested by the respondent. Its case was that the retirement age of persons employed in the Municipal Corporation is not 60 years but 58 years. The Fundamental Rules applicable to persons working in the Central Government were also made applicable to the employees of the Municipal Corporation. Reliance was also placed by the respondent on Resolution No. 666 of the Corporation passed on 6.11.1978, which stated:

"RESOLVED that as proposed by the Commissioner in his letter No. 4444/C & C dated 26.9.78 and recommended by the Standing Committee vide its Resolution No. 440 dated 12.10.1978, approval to the modification in Condition No. 7 of the service condition of teachers, officers and other employees transferred to the Delhi Administration Along with schools w.e.f. 1.7.1970 be accorded to the extent that the age limit for retirement of Officers and other employees will be 58 years and in case of teachers and Class Iv servants it will be 60 years."

(7) It was contended that since Sheila Puri was Inspector of Schools, she was an officer of the Corporation and not a Teacher and would superannuate at the age of 56 years. In the light of the contending position taken by Smt. Sheila Puri and the respondent a Division Bench of this Court allowed Smt. Sheila Puri's petition on 22.5.1985, which decision is reported as Sheila Puri Vs. Municipal Corporation of Delhi, . In the said decision, it was held that the word "Teacher" means a person in the teaching profession and the entry of such persons into service would normally be in lower grades. They would be promoted from Assistant Teachers to Teachers and then Vice Principals, Principals or Headmasters and so on. They would then be promoted to the post of Inspector and there may be further posts like Senior Inspector and so on. The very concept of an Inspector is to see that teaching is conducted in accordance with some standard practice and the progress of studies is a desired. Therefore, an Inspector or Inspectors must, Therefore, be a teacher. Such a person does not cease to be a teacher by becoming an Inspector and Inspector's job is not that of looking after the upkeep of the school but to see that the teaching is done properly. The Court held that in this view a person would remain a teacher even after promotion. No doubt Resolution No. 666 stated that officers would retire at the age of 58 years and teachers at 60 years. Presumably by "officer" was meant "non-teachers" employed in other branches of the Corporation. There was a difference between the administrative line in the Corporation and the teaching line. The Court preferred to hold that Smt. Sheila Puri would continue to be a teacher inspite of being promoted to the post of School Inspector. The real meaning of Resolution No. 666 was held to be that persons employed on teaching side in the Education Department of Municipal Corporation of Delhi will have a retirement age of 60 years whereas others will have a retiring age of 58 years.

(8) It is stated that the respondents challenged the decision of this Court in Smt.

Sheila Pun's case and the judgment was upheld by the Supreme Court. Till such time the impugned circular was issued, on the (sic) of other petitions were decided by this Court holding that a person, who had joined as a Teacher in School, even if promoted as an Inspector will retire on attaining the age of 60 years and not 58 years. It is the petitioners' case that in order to overcome the decision, rendered by this Court the impugned circular was issued, main purport of which seems to nullify the ratio of the decision in Smt. Sheila Puri's case or to undo what had been done, namely, to discriminate between Teachers and Inspectors. Under the impugned circular, it is stated that all Assistant Teachers, Headmasters, Physical Education Teachers, on promotion to the posts of School Inspector, School Inspector (Physical Education), Senior School Inspector, Assistant Education Officer etc. are sought to be retired at the age of 58 years. In case they intend to continue in service up to the age of 60 years, they are required to seek reversion to the post of Assistant Teacher, Teacher, Headmaster or Physical Education Teacher and in that eventuality will have to forego the pay and allowances attached to the posts held on promotion. Such reversion can be sought by exercising option at least six months prior to the date of attaining 58 years, failing which the incumbent is to retire on attaining the age of 58 years. All other incumbents holding the posts of School Inspector and above, by reason of the direct recruitment to the said posts and who had not worked as Assistant Teacher, Teacher or Head Master in the Municipal Corporation of Delhi are to retire on attaining the age of 58 years. The circular further provides that all School Inspectors, Senior School Inspectors, Assistant Education Officer, Deputy Education Officer etc. shall also retire at the age of 58 years.

(9) The challenge to the circular is on the ground that the same is illegal and arbitrary. Respondent is bound by Resolution No. 12 of 1970. The later Resolution No. 666 was interpreted by the Division Bench of this Court in Smt. Sheila Pun's case. The respondent could not have by an administrative order, conveyed through circular dated 13.7.1992, taken away a right, which had accrued in petitioner's favour, on the interpretation of Smt. Sheila Pun's case that a person does not cease to be a Teacher by merely becoming an Inspector. The effect of the impugned order is to undo a judicial decision, which is not permissible. The impugned order is otherwise harsh. A person, who had been promoted, in case would like to continue till the age of 60 years has to forego the pay and allowances of the promotional posts and is made to retire as a Teacher in lower pay scale with less pay thereby, affecting the pensionary rights also.

(10) The petition is vehemently opposed by the respondent by pleading that the impugned circular has validly been passed by the Commissioner exercising the powers of the Corporation u/s 490(2)(b) of the Act and the same is not challengeable on any of the grounds urged by the petitioners. The effect of the circular is prospective. It is stated that Smt. Sheila Pun's decision did not preclude the Corporation to pass appropriate orders defining the service conditions, which also includes the tenure of service. The circular clarifies that a teacher would retire at the age of 60 years but in case of promotion to the

separate and different cadre of an Inspector, like other officers of the Corporation he will retire on attaining the age of 58 years as provided in F.R. 56(a). An option is also given, which can be exercised, six months prior to the attaining the age of 58 years, by a teacher, if promoted to the cadre of Inspector. In case, he would like to continue till the age of 60 years, only on exercise of such an option he can continue till the age of 60 years but will have to revert back and hold the post last occupied in the teaching line, namely, either as a Headmaster or Physical Education Teacher, as the case may be. Neither the order is arbitrary, nor harsh or inequitable.

(11) We have heard learned Counsel for the parties and been taken through the record.

(12) Decision of this Court in Smt. Sheila Pun's case was challenged by the respondent by filing SLP to Supreme Court. On leave being granted the case was not decided on merits but on concession. The submission made on behalf of the Counsel for the petitioners that the decision of this Court was approved cannot be accepted. Decision of the Supreme Court is reported as Municipal Corporation of Delhi Vs. Sheila Puri, . An application for intervention was also filed by ten employees of the Education Department of the Delhi Administration seeking leave to support the judgment of this Court, during the pendency of the appeal in Smt. Sheila Pun's case. By the time the decision was taken by the Supreme Court, Smt. Sheila Puri had already retired from service on attaining the age of 60 years. Undertaking was given on behalf of the Municipal Corporation of Delhi in the Supreme Court that irrespective of the result of the appeal. Municipal Corporation will extend the benefit of upper age of retirement of 60 years to Smt. Sheila Puri, as directed by the High Court. It was subject to this reservation that leave was granted to clarify the legal position, not with reference to Smt. Sheila Puri, but at large so as to provide guidelines to the employers and employees. The Supreme Court, taking note of the affidavit filed in Smt. Sheila Puri's case by the Joint Secretary (Education) of the Delhi Administration on 25th November, 1988, took decision on such concession and not on merits. In the affidavit position, which was clarified was that the original age of retirement of teacher and supervisory staff of Delhi Administration was 58 years but the same had been raised to 60 years and since there was no posts of Inspector in the Education Department of the Delhi Administration, the age of employees transferred from the Municipal Corporation was kept, according to Clause (7), indicated to be 60 years, as the age of retirement. In view of this concession the Supreme Court disposed of the matter. In para 6 the Court observed :

"IN view of the conceded position the age of retirement of teachers and supervisory staff of the Delhi Administration is 60 years; for those who came on transfer from the Municipal Corporation to the Delhi Administration it is also 60 years in view of the resolution of the Corporation as accepted by the Government of India in its letter dated 18th of January, 1973. This being the position the High Court was right in holding that the respondent was entitled to continue in service

till she attained the age of 60 years."

(13) In view of the above position, on the scope of the dispute between the parties as to what was the proper age of retirement, the Supreme Court declined to allow the application for intervention filed on behalf of the employees of the Education Department of Delhi Administration.

(14) A bare reading of the judgment of the Supreme Court suggests that the reasonings of this Court that a Teacher on promotion to the post of Inspector will continue to be termed as Teacher or that the post of Inspector is also akin to a Teacher were neither approved, nor gone into. The Supreme Court decided the case only on the stand taken in the affidavit and on the basis of the concession given. Thus, it cannot be said that the decision of this Court that whether an Inspector's job was akin to a Teacher or that a Teacher on being promoted to the cadre of the supervisory staff of an Inspector will continue to remain as a Teacher, was approved by the Supreme Court. The question remained open and alive.

(15) After decision in Smt. Sheila Puri's case the respondent-corporation continued issuing orders, retiring all those, who were in the teaching line and had been promoted as Inspector, at the age of 58 years and not the age of 60 years. The result of the same was that such orders, on being challenged by filing petitions in this Court were set aside by this Court on following the decision in Smt. Sheila Puri's case. Banwari Lal Sharma and two others had also filed such petitions. The same were disposed of by a common order passed on 27.2.1989 in Cw 1880/86, Banwari Lal Sharma v. M.C.D. All of them had been working as Teachers and had been promoted as Inspectors. They were sought to be retired at the age of 58 years and had challenged the action of the respondent. Following the ratio in Smt. Sheila Puri's case that a School Inspector or Inspector was a teacher, relief was granted. This decision was challenged by the respondent by filing Special Leave Petitions (C) Nos. 5719,5766 and 7946/89. The Supreme Court on 18.7.1989 disposed of the three . petitions for Special Leave to Appeal by a common order in Municipal Corporation of Delhi v. Lakshmi Verma, Hari Krishan Sharma and Banwari Lal Sharma, with the following observations:

"COUNSEL for the petitioners states that the respondents in each of these appeals have since retired at the age of 60 years and, Therefore, the question of superannuation whether it is 58 or 60 need not be gone into. We, however, feel that the question may be left open and the decision in Sheila Pun's case should not be held against the management in all such cases. We accept the submission of the learned Counsel and keep the question open without expressing any opinion. With these observations, the petitions are dismissed."

(16) Yet in another petition Km. Kanta Sharma v. Municipal Corporation of Delhi, Cw 2270/88 decided on 3.7.1989, relief was granted by this Court to the petitioner therein, who had been promoted from the post of Headmaster to that

of a School Inspector on relying upon the decisions of this Court in Smt. Sheila Pun's case and also in Banwari Lal Sharma's case. Municipal Corporation of Delhi challenged the said decision by filing SLP (Civil) 13386/80 On 17.7.1990 the SLP was dismissed observing that no ground is found for reconsideration of the decision in Smt. Sheila Pun's case.

(17) The cumulative effect of the above narration suggests that the Supreme Court left the question open without expressing any opinion on merit and further observing that the decision in Sheila Pun's case should not be held against the respondent.

(18) The impugned order/circular dated 13.7.1992 reads : The Commissioner, Mcd exercising the powers of the Corporation u/s 490(2)(b) of the Dmc Act, 1957 vide decision No. 2344/GW/Corpn. dated 6.7.1992 has approved the following proposals :

(I) The age of retirement of all School Inspectors, Sr. School Inspectors, Asstt. Education Officers, Deputy Education Officers and Director shall be regulated in accordance with provisions of Fr 56(a) of the Fundamental Rules without any exception.

(II) All Assistant Teachers/Headmasters who subsequently hold the posts of School Inspector, Senior School Inspectors, Assistant Education Officers, Deputy Education Officers and Director by reason of their promotion shall also retire on attaining the age of 58 years in accordance with the provisions of Fr 56(a) of the Fundamental Rules and if any of the incumbents holding any such posts intends to continue in service up to 60 years, he/she shall have to seek reversion to the post of Asstt. Teacher/Headmasters and shall have to forego the pay and allowances attached to the post held by him/her on promotion. Such reversion shall have to be sought at least 6 months prior to his/her attaining the age of 58 years failing which he/she would retire on attaining the age of 58 years in accordance with Fr 56(a) of the Fundamental Rules.

(III) All incumbents who hold the posts of School Inspector and above by reason of his/her direct recruitment to the said post and who have not worked as Assistant Teacher/Headmaster in the Municipal Corporation while issuing the above Order exercised the powers vested in him under Clause (b) of Sub-section (2) of Section 98 of the Act shall also retire on attaining the age of 58 years in accordance with Fr 56(a) of the Fundamental Rules."

(19) Tn 490 of the Delhi Municipal Corporation Act, which authorises the Commissioner, during the period when Corporation is dissolved, to exercise all powers and duties conferred and imposed upon the Corporation by or under the Act. Section 98 of the Act authorises the Corporation to make Regulations amongst others to provide for the tenure of office and other conditions of service of officers and other employees of the Corporation. There is no limit imposed in the Act upon exercise of such powers. Otherwise also under service jurisprudence conditions of service do include there in the tenure of service.

Prescribing of the age of superannuation is fully covered in Section 98 of the Act. The Supreme Court in *State of Punjab Vs. Kailash Nath*, , in para 7 of the judgment also held the age of superannuation, in the normal course, to be falling under the term "conditions of service". It was held :

"IN the normal course what falls within the purview of the term "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scales, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or pre-mature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings."

Thus, there is no manner of doubt that the Commissioner, who exercised the power of Corporation was fully authorised to pass the impugned order. Only its effect has to be seen now.

(20) Fixing of retirement age by the Corporation or by the Commissioner, exercising powers of the Corporation, under the powers vested in him, cannot be said to be Arbitrary. In *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, , it was held that there are precedents for fixing retirement age either at 55 or reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognised norms of employment planning, it would be possible to say that the policy is irrational. Reduction in the age of superannuation is permissible and cannot be challenged.

(21) Assuming that the petitioners on the ratio of *Smt. Sheila Pun*'s case expected or had reasonable expectation that they would be retiring at the age of 60 years, they can still continue to remain in service but subject to one condition. In case they want to continue till the age of 60 years will have to go back after the age of 58 years to work either as a Teacher/Head Master or Physical Instructor, as the case may be and then on retirement at the age of 60 years would be entitled to draw less pension, on the basis of the last pay drawn, either as Teacher/Headmaster or Physical Instructor or in case they would not exercise the option would stand retired at the age of 58 years, they would be entitled to draw pension on the basis of higher pay scale of the promotional post of Inspector. There is nothing irrational in such a policy. Termination of the service of an employee on account of his reaching the age of superannuation does not in any manner amount to removal from service and there being a provision in the Act for fixing the tenure of employment, it cannot be said that the Commissioner acted arbitrarily in clarifying the stand of the Corporation as regards the tenure of service or the age of superannuation of Teachers and other officers, which include Inspectors, Senior Inspectors, Deputy Directors etc.

(22) In addition to the direct recruitment the other mode of filling up of the

supervisory posts is promotion from amongst the Head Masters and from the post of Physical Education Teacher to the post of Inspector Physical Education.

(23) In case the Commissioner was authorised to make Regulations or make any amendment to the Regulations in the conditions of service of employees of the Corporation, which also includes the tenure, there is no reason why effect thereto cannot be given from the date when such a decision is notified, which in this case is 133.7.1992. It appears that the necessity arose for the respondent-corporation to make clarification, after relief had been granted by this Court on following the decision in Smt. Sheila Pun's case and a direction had been issued in a similar matter by the Central Administrative Tribunal in R.S. Sisodia v. The Administrator/Lt. Governor, Union Territory of Delhi (OA No. 2005/89 decided on 29.1.1990 followed by another decision in Oa 153/90 decided on 8.2.1990 - Dr. Sita Rant Sharma v. Union of India. In R.S.S. Sisodia's case directions were issued to the Delhi Administration to give option to those, who had been promoted from the rank of Principal to the Administrative side as Assistant Director, Deputy Director or Education Officer either to retire at the age of 58 years or to revert back to the stream from which promotion had been made. The directions issued read :

"WE are, however, of the view that if this relief cannot be granted to all those promoted officers to the rank of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director who come from the rank of Principal of a school under the Delhi Administration, they must be given an option to revert back as Principals in Schools and continue till the age of superannuation/retirement viz. 60 years. It goes without saying, if they exercise the option of reversion, they would be entitled to the pay, allowances and pension commensurate to the rank of principal. They will not be entitled to the pay and allowances of the higher promotional posts. It is, however, made clear that during the period they held the promotional posts, they would be entitled to pay and allowances of the post. We further direct that the applicant in the present case will also be asked to exercise his option as to whether he would like to revert as Principal and if he gives his option to do so, he would be reposted as Principal and continued till the age of 60 years."

The question before the Tribunal was about the date of superannuation of Dr. Sita Ram Sharma, who was employed as a Deputy Director of Education in the Directorate of Education, Delhi Administration. He had reached the age of 58 years on 31.1.1990. A plea was taken that the rule prevalent in the Directorate of Education for retiring officers like Education Officers, Assistant Directors etc., who came from the rank of a Principal of a school would not apply to him since all teachers were to retire at the age of 60 years. Contention of Dr. Sita Ram Sharma was turned down in view of the earlier directions given in R.S.S. Sisodia's case. The decision of the Tribunal was not interfered with when further appeal was filed by Dr. Sita Ram Sharma to the Supreme Court. (Sic.) Inspector, Deputy Education Officer, Education Officer etc. Having accepted the promotional

post and having enjoyed and derived the benefits as Officers in the Corporation, they cannot now complain of discrimination on the ground that they would not have the benefit of retirement at the age of 60 years and had they remained Teachers and but for the promotion they are being retired at the age of 58 years. Respondent by issuing the impugned circular in all fairness by giving an option to the petitioners and the like that in case they want to have the benefit of retirement at the age of 60 years they will have to revert back in the same stream where the age of superannuation is 60 years. In case they want to enjoy the pensionary benefits of the higher post or of promotional post, where pay scales are higher, in that case they will have to retire at the age of 58 years. Similar submission of discrimination made was turned down by the Supreme Court in Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others, , Life Insurance Corporation of India (Staff) Regulations (1960) were under consideration. Case of the employee therein was that since he had been recruited originally into Class III post, he would have had the benefit of retirement at the age of 60 years had he remained in that post and that the said benefit cannot be denied to him on his promotion to Class I category. The age of retirement for Class I post therein was 58 years. The claim was turned down by the Supreme Court holding that having accepted the promotion along with higher benefit flowing from it he cannot contend that he had been prejudicially affected by the conditions relating to age of retirement applicable to Class I officers.

(24) In the instant case also the petitioners could have declined promotion to the Higher posts as officer in the Corporation, namely. Inspector, Senior Inspector etc. Having accepted promotion, not grievance later on can be made that retirement age of 58 years is prejudicial. Moreover, an option was available that in case they wanted to continue till the age of 60 years, they could have gone back as Teachers, Headmasters etc.

(25) Case of the petitioner who were recruited as Physical Education Teachers based upon a plea that they continue to remain as Teacher despite the fact that they were promoted as School Inspectors (Physical Education) has to be turned down keeping in view the Recruitment Regulations for the post of Physical Education Teachers, School Inspectors (Physical Education) and Senior School Inspector (Physical) wherein qualifications for the three posts is different. In the case of Physical Education Teacher it is Higher Secondary School Certificate or Certificate of Physical Education from recognised Institution whereas for School Inspector it is the degree of a recognised University or a Bachelor's degree in Physical Education with five years experience in the field of Physical Education and for the post of Senior School Inspector (Physical) it is M.A. with Diploma or Degree in Physical Education or five-years experience as School Inspector or a Post-graduate degree in Physical Education. The post of Physical Education Teacher is not in the same cadre. Mode of recruitment for the post of Inspector Physical Education is not solely by promotion but direct as well as promotion but possessing requisite qualification for the post.

(26) In a recent decision the Supreme Court held that inspecting staff of Education Department governed by statutory rules are not at par with the teaching staff of the Government Schools. The decision is reported as State of West Bengal and others Vs. Gopal Chandra Paul and others etc.,, .

(27) It is an admitted position that there is no provision in the statutory rules or regulations for interse transfer of inspecting staffer the teaching staff. Teaching staff and inspecting staff are two distinct and independent services and are two separate streams. Qualifications, mode of recruitment and service conditions are separate. Cadres are different. Inspecting Staff in Corporation is entirely to look after the inspection of schools while teaching staff is required to impart education to the students. Fundamental Rules expressly prescribe the maximum age of Superannuation of 58 years to all Municipal employees excluding an expected class or classes, and teachers being one of such classes, Therefore, an Inspector being a distinct cadre, by no stretch of imagination can it be taken that Inspectors or Senior Inspectors or Deputy Education Officers will fall in the exception of the Fundament tal Rules and bring in it the class of a teacher.

(28) The mere fact that service regulations do make provision for promotion of Head Masters or Physical Instructors to the post of Inspector as one of the mode of recruitment will not make any difference. It is one of the benefits available and the petitioners having availed of that benefit of promotion cannot now turn round and say that they continue in the same stream. Reference may be made to another dedsion of the Supreme Court in State of Madhya Pradesh Vs. Hari Datt Sharma, . Employee therein was holding the post of Deputy Director when he was promoted as Joint Director in Social Welfare Department. On completion of the age of 58 years, a decision was taken to retire him. Even according to the rules, age of retirement in the Department was 58 years excepting for teachers who were to continue in service till the age of 60 years. Reliance was placed by the employee upon the Explanation to the rules, explaining the term "Teacher" and his case was that initially he was appointed for the purpose of teaching in an education institution run by the Government. He was entitled to continue in service up to the age of 60 years although later on he was holding a non-teaching post. Employee therein was recruited to the post of Superintendent in a Deaf, Mute and Blind School .It was held to be a non-teaching post since duties to the said post were supervisory in nature and not teaching. Having accepted the post of Inspector of Schools and derived benefit it was held that he cannot complain of discrimination .In view of that above discussion we do not find any force in the petitions, which are dismissed, with no order as to costs.