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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.01.2014

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W.P.(C) 8011/2009

NOOR MOHAMMAD AND ANR.

..... Petitioners

versus

UOI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr C. Mukund, Ms Firdouse Qutb Wani, Ms Ekta Bhasin & Mr Abhilash Attri, Advs. for petitioner no.1

For the Respondents: Mr Amitesh Kumar, Adv. for Resp. No.2/ UGC.
Mr M.A. Siddiqui, Mr Varun & Mr Rohit, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CM No. 485/2014 (u/s 151 of CPC by Resp. No.3/ JMI)

1. This is an application moved on behalf of respondent no.3/ Jamia Milia Islamia (JMI) to seek vacation of the interim order dated 08.08.2013. By virtue of the interim order dated 08.08.2013, petitioner no.1 has continued in service beyond his usual age of superannuation, which is 62 years. I am informed that, petitioner no.1 reached the age of 62 years on 31.08.2013.

2. The facts, in this writ petition need not be gone into in detail since the issue raised in the present writ petition has been dealt with extensively by a Division Bench of this court in a batch of writ petitions; the lead writ petition being: WP(C) No. 7130/2011, titled: *Krishan Gopal vs Union of India & Ors.* The judgment, in the said writ petition, along with the

connected writ petition, being: WP(C) No. 7939/2011, titled: ***Damayanti V. Tambay vs Union of India & Ors.***, was delivered on 18.05.2012.

2.1 The issue in those writ petitions, broadly, was: whether Librarians and Directors of Physical Education are at par with the teachers, with respect to claim for age enhancement. This writ petition is confined to Directors of Physical Education. The Division Bench vide its judgment dated 18.05.2012, on this aspect of the matter, in ***Krishan Gopal's*** case made the following observations:

“.....24. As a fortiori, it also becomes the prerogative of the Government to enhance the age of superannuation. Furthermore, while doing so, it is again the prerogative of the Government/employer to increase the age of superannuation in respect of certain categories of employees only. However, it would be with one caveat. When age of superannuation is increased in respect of a particular class of employees, then it has to be made applicable to all employees falling in the same category as otherwise it would result in invidious discrimination. Thus, if certain categories of employees who belong to same class are left out, they can legitimately make grievance and question the decision of the Government on the ground that it amounts to hostile discrimination and is thus violative of Article 14 of the Constitution.

25. In the instant case, Government has increased the age of superannuation of teachers from 62 to 65 years but have not done so for Librarians and DPEs.

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 is mine)

3. Thus sum and substance of the observations extracted above, to my mind, is that, there is no parity unless the Act, which governs the employees, confers such a parity. This is how the Division Bench understood the judgment of the Supreme Court in the case of **P.S. Ramamohana Rao vs A.P. Agricultural University & Anr. (1997) 8 SCC 350.**

3.1 Therefore, while examining the issue as to whether there was parity in respect of teachers on one hand and Librarians and Directors of Physical Education on the other hand, in those matters, i.e., in **Krishan Gopal’s** case and **Damayanti V. Tambay’s** case, the Division Bench examined the validity of the decision reached by the respondents based on the reasons supplied by them.

3.2 This aspect of the matter has been noticed by the Division Bench in paragraph 32 of the said judgment. The reasons, which the respondents advanced (which were noticed by the Division Bench), to deny parity to Librarians and Directors of Physical Education, were as follows:

“..... (i) To attract eligible persons to the teaching career and to retain teachers in service for a longer period;

(ii) The enhancement is intended for teachers engaged in classroom teaching to attract eligible persons to career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period.....”

4. Having regard to the reasons supplied by the respondents and the material supplied by the petitioners in those cases, the Division Bench was persuaded, albeit based on the data made available from internet by the petitioners, that the rationale provided by the respondents, would need a deeper scrutiny. It appears that the data provided by the petitioners seemed to demonstrate, at least tentatively, that there was shortage, as in the case of teachers, in respect of Librarians and Directors of Physical Education, as well. It is in this context that the following directions were issued by the Division Bench, which are contained in paragraph 34 of the judgment:

“...34. These writs are disposed off with the direction that the matter shall be considered and fresh decision shall be taken within a period of two months from today. In the meantime, the petitioner in W.P. No.7130/2011, who is continuing in service by virtue of interim orders, shall be allowed to continue. Fate of the other petitioner in W.P. No.7939/2011 shall depend upon the fresh decision taken....”

(emphasis is mine)

5. Since the decision of the Division Bench dated 18.05.2012, much water has flown. Pursuant to the directions issued, the University Grants Commission (UGC) appointed a Committee, which deliberated upon the matter and returned its findings. The findings of the Committee are the subject matter of a minuted report dated 29.08.2013. The Committee examined two issues, which are referred to in paragraph 5 of the report.

“1. Whether Librarian/ Deputy Librarians and Director of Physical Education are at par with “teachers” or “teachers involved in classroom teaching”.

2. Whether there is any shortage of Librarian/ Deputy Librarian and Director of Physical Education.”

6. The Committee’s examination, persuaded it to come to the following conclusion in respect of the aforesaid two issues. For the sake of convenience, the relevant findings are extracted hereinbelow.

“.....7. Thus the Committee proceeded to examine the parameters as to whether there is a parity between Librarian/ Deputy Librarian/ Director of Physical Education on the one hand and teachers i.e., Assistant Professor/ Associate Professor/ Professor on the other hand. The Committee also examined the method of recruitment, function, nature of duty and responsibilities etc. of Deputy Librarian/ Librarian/ Director of Physical Education and that of teachers i.e. Assistant Professor/ Associate Professor/ Professor, a perusal of the provisions contained in the UGC Regulations 2010 makes it apparent that minimum qualification prescribed for the Librarian/ Deputy Librarian/ Director of Physical Education etc. are not comparable with that of Assistant Professor. However, the Committee also noted that there is no similarity in the function, nature of duty and responsibilities of Librarian/ Deputy Librarian/ Director of Physical Education on the one hand and Assistant Professor/ Associate Professor on the other hand. The Committee noted that Librarians – Direct Physical Education whether totally classified as “Technical” up to V Pay Commission and they remain as non-vacation staff to support the teaching and learning process but the Librarian and Physical Education Personnel have never been treated and accorded the status of teacher and having not been involved in actual teaching in class rooms. Thus, the Committee is of the view that no parity that can be granted to Librarians and Physical Education Personnel with that of teachers.

8. The Committee proceeds to examine the issue no. 2 regarding shortage of Librarian/ Deputy Librarian/ Director of

Physical Education in the country so as to claim enhancement of age of superannuation from 62 to 65 years. The Committee noted that the data produced by Librarian before the Hon'ble Court is from the view expressed in a paper titled Teachers in Universities and Colleges – Current Status Regarding Availability and Service Conditions authored by Chadha G.K., Sudhanshu Bhushuan, Murlidhar in which Para 5, the following has been mentioned:-

Status of Staff in Library and Physical Education in Universities

	Sanctioned	Filled	Vacant	Vacant %
Librarian	38	19	19	50
Deputy Librarian	45	28	17	38
Assistant Librarian	187	130	57	30
Director of Physical Education	21	10	11	52
Dy. Director of Physical Education	11	10	1	9
Asstt. Director of Physical Education	76	54	22	29

Vacancy Position of Librarians and DPE's in Colleges

	Librarians				DPE's			
	No. Of Colleges	Sanctioned	Vacant	% Vacant	No. Of Colleges	Sanctioned	Vacant	% Vacant
Govt.	135	145	5	3	67	74	2	3
Aided	260	279	13	5	154	163	6	4
Non-aided	17	22	0	0	10	10	0	0
Total	412	446	18	4	231	247	8	3

9. 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 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 (sic irresistible) conclusion of shortage supply of Library and Physical Education staff in Universities system in the country. In fact, the existing vacancy of any post cannot be the indicator of shortage of supply of manpower and in the present case it cannot be said 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 back drop 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 particular. 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 Educational Personnel from 62 to 65 years is not justified. Accordingly, the Committee recommended that the existing age of retirement of Library and Physical Educational Personnel which includes Librarian, Deputy Librarian etc. and Director of Physical Education should be maintained at 62 years only.”

(emphasis is mine)

7. The sum of the aforesaid deliberation is that, according to the Committee, there is no parity as between the teachers and the Librarians and/or the Directors of Physical Education. The Committee has also come

to the conclusion that the data presented by the petitioners before the court which seemed to indicate that there was shortage qua Librarians and Directors of Physical Education, could not be relied upon as it was only indicative of vacancies and, was not therefore an indicator of shortage of qualified Librarians and Directors of Physical Education.

8. Apparently, this decision of the Committee, I am informed by Mr Amitesh Kumar, learned counsel for the UGC, was placed before the Chairperson of the UGC. The copies of the relevant notes have been shown to me in court. The Chairperson appears to have approved the decision of the Committee on 25.09.2013.

8.1 I had asked Mr Amitesh Kumar to examine this aspect of the matter in view of the objections raised by Mr Mukund, learned counsel for petitioner no.1, at the hearing held on 15.01.2014. Therefore, in so far as the UGC is concerned, there is acceptance of the decision taken by the Committee constituted by it.

8.2 Mr Mukund, learned counsel for petitioner no.1, however, today, for the first time, raised yet another objection with regard to the decision of the UGC, which is, that, it was ratified by the Central Government.

8.3 Mr Amitesh Kumar says that there is no such requirement as a matter of law. He, however, has placed on record a copy of letter addressed to the Ministry of Human Resource and Development, Government of India, dated 27.09.2013; which informs the Central Government of the aforesaid development and, places a copy of the final minutes of the report of the Committee set up for the said purpose by the UGC; before it.

8.4 Based on this, Mr Amitesh Kumar says that information with regard

to the decision qua parity has been given to the Central Government, way back, in September, 2013.

8.5 Mr Amitesh Kumar, in my view, correctly points out in this connection, as a matter of fact, that the authority of UGC to take decision in this behalf flows from the UGC Regulations, 2010, framed by the UGC, under Section 26 of the UGC Act, 1956.

8.6 Mr Amitesh Kumar has drawn my attention to the relevant Regulation, which is clause 8(f)(ii) [sic 8(f)(iii)] of Appendix I attached to the said Regulations, which deals with the age of superannuation. The said clause reads as follows.

“...8. Other terms and conditions

XXXX

(f) Age of Superannuation:

XXXX

(ii) [sic (iii)] Whereas the enhancement of age of superannuation for teachers engaged in class room 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 sixty two years shall not be available to the categories of Librarians and Directors of Physical Education...”

8.7 It is submitted by Mr Amitesh Kumar that this very provision was challenged by the petitioners in *Krishan Gopal's* case.

8.8 It is noted that the challenge to the said provision was repelled by the Division Bench. Therefore, this argument, quite frankly, is an after-thought.

9. Having regard to the aforesaid circumstances, I am of the view that

there is, as a matter of fact, a complete whittling down of a prima facie case in favour of the petitioners, at this juncture. There is also no balance of convenience, presently, in favour of petitioner no.1. Therefore, the interim order dated 08.08.2013, deserves to be vacated. It is ordered accordingly.

10. The application is, accordingly, disposed of.

WP(C) 8011/2009

11. Having vacated the interim order, I am of the view that there may be several aspects of challenge which the petitioner no.1 may like to advance vis-a-vis the decision of the Committee of the UGC dated 29.08.2013, as approved by the UGC, which he may like to put forth in a fresh writ petition. As liberty was given by another Division Bench which subsequently heard the matter in the case of *Krishan Gopal* in WP(C) No. 7130/2011 and other connected writ petitions, I intend to give the same liberty to petitioner no.1. The writ petition is disposed of with a direction that petitioner no.1, if he so desires, may assail the decision of the Committee, as approved by the UGC, albeit in accordance with law.

12. The petition is, accordingly, disposed of.

13. Dasti.

RAJIV SHAKDHER, J

JANUARY 23, 2014

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