

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : February 18, 2015*

+ **W.P.(C) 7375/2013**

KRISHAN GOPAL Petitioner

Represented by: None

versus

UNION OF INDIA & ORS Respondents

Represented by: Ms.Sagari Dhanda, Advocate for R-3
Mr.V.Sudeer, Advocate with
Mr.Alvin, Advocate for UGC

W.P.(C) 9/2014

DR. M.M.A ANSARI Petitioner

Represented by: Mr.Naushad A.Khan, Advocate with
Mr.Ekram Ali Ansari, Advocate

versus

JAMIA MILLIA ISLAMIA & ORS Respondents

Represented by: Mr.M.A.Siddiqui, Advocate for R-1
Ms.M.S.Gupta, Advocate with
Ms.Mrinalini S.Gupta, Advocate with
Ms.M.Chatterjee, Advocate for R-3
Mr.V.Sudeer, Advocate with
Mr.Alvin, Advocate for UGC

W.P.(C) 393/2014

RAMA NAND VASHISTA & ORS. Petitioners

Represented by: Mr.Praveen Kumar Rai, Advocate
with Mr.Hemal Kr.Sheth, Advocate

versus

THE UNION OF INDIA & ORS. Respondents

Represented by: Mr.Kunal Punj, Advocate for
Mr.Ajay Digpaul, CGSC for UOI
Ms.Beenashaw Soni, Advocate with
Mr.Amit Bansal and Ms.Seema,
Advocates for R-3

Mr.V.Sudeer, Advocate with
Mr.Alvin, Advocate for UGC

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The above captioned writ petitions are the second innings played by the players; the first innings was played when W.P.(C) No.7130/2011 Krishan Gopal Vs. UOI & Ors. and W.P.(C) No.7939/2011 Damayanti V.Tambay Vs. UOI & Ors. were disposed of by a Division Bench of this Court on May 18, 2011, requiring the respondents to constitute a Committee and consider the matter afresh pertaining to the age of superannuation in the cadre of Librarians and the cadre of Physical Education in the universities and colleges to which grant was disbursed by the University Grants Commission, for the reason vide notification dated December 31, 2008, issued by the Ministry of Human Resource Development, the Government of India, apart from revising the pay scales of the teachers in Central Universities, enhanced the age of superannuation and restricted the said benefit to teachers who were engaged in classroom teaching. As per the Union of India, Central Universities and its constituent or affiliated colleges were finding it difficult to attract talent for classroom teaching and thus one incentive could be a longer tenure. The age of superannuation of teachers, staff in the librarian cadre and physical education cadre was 62 years. It was enhanced to 65 years for those teaching in the classrooms.

2. Librarians and those in the physical education department were aggrieved. Krishan Gopal and Damayanti V.Tambay, one working as a Deputy Librarian and other as a Director of Physical Education in Jawahar Lal Nehru University, a Central University being funded by UGC, filed the

two writ petitions.

3. The learned Judges of the Division Bench which pronounced the decision on May 18, 2012 noted a letter dated January 18, 1961 written by UGC to the Registrar of various Central Universities concerning revision of salary scales of librarians in which the soul of the matter was the importance of treating professionally qualified library staff to be treated as academic staff for the purpose of pay parity, on which the argument founded was that since 1961 the library staff and the academic staff were treated as teachers. The Division Bench noted that P.C.Mukherjee Committee considered whether librarians should be treated as teachers in the university, and the desirability of amending the definition of '*teacher*' to include the library staff. The Division Bench noted the work done by the Committee to gather material wherefrom the term '*instruction*' needed to be defined more broadly and teaching not to be conceived as restricted to a classroom alone. The Division Bench noted a letter dated December 15, 1982 written by the Ministry of Education on the subject of upgradation in the salary scale of librarians and those in the physical education department of the Central Universities and Colleges affiliated to it. The Division Bench noted a UGC letter dated December 14, 1983 concerning extension of Merit Promotion Scheme to the cadre in the physical education department to bring them at par with teachers concerning the Merit Promotion Scheme. The Division Bench noted the argument that librarians were treated as academic staff in the category of '*non-vacation*' sub-category. The Division Bench noted a decision of the Executive Council of the University of Delhi dated January 30, 1984 recognizing librarians as teachers. The Division Bench noted a letter dated March 16, 1992 addressed by UGC to the Registrar of Pondicherry University that librarian cadre be treated as teaching cadre. The Division Bench noted a UGC circular dated March 03, 2007 on the subject

of Career Advancement Scheme approving age of superannuation of teachers being increased from 60 years to 62 years and same benefit being accorded to the library staff. The Division Bench noted that the Government of NCT of Delhi, for school teachers had passed an order on January 21, 2011 of library cadre be equated with the teaching cadre.

4. The Division Bench noted the law declared in 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. The Division Bench noted various statutes and sections of Jawahar Lal Nehru University which were relied upon in order to show that teachers, librarians and DPEs, though in different cadres, were treated as the same class.

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

in invidious discrimination.

6. The Division Bench lastly focused on the reason given to justify enhancing the age of superannuation of those teaching in classroom and the policy behind the decision. The reason given was that Central Universities and Colleges affiliated to it or its constituent colleges were not attracting talent resulting in sanctioned posts not being filled up and lying vacant. The Division Bench noted that an arguable case was made out by librarians and DPEs because they had shown some figures to the Court to predicate a stand that in the Central Universities and Colleges affiliated thereto or constituent colleges thereof posts of librarians and DPEs were not being filled up due to the same reason i.e. talented people not opting to take employment. The Division Bench noted that the justification i.e. the rationale for the policy to enhance the age of superannuation of teachers to 65 years was that the longer tenure of service would attract talent. Since the respondents could not show to the Court that similar survey was done for librarians and DPEs, the writ petition was disposed of issuing a direction that the matter would be considered afresh. Needless to state in view of the fact that the mandamus issued was premised on the finding by the Court that no survey had been conducted concerning shortage of DPEs and librarians, it would be an integral part of the mandamus that the fresh decision would look into this aspect and for which the data concerning number of sanctioned posts, number of posts filled up, number of vacant posts and the reason for the vacancy if any found was to be identified.

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 Vice-Chancellor 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, 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

	Sanctioned posts	Filled	Vacant	% of vacancy
Librarian	38	19	19	50
Deputy Librarian	45	25	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 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 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 of 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.:”

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, 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.

10. The only argument we need to deal is concerning paragraph 9 of the decision taken by the Expert Committee on August 29, 2013, which has recognized vacancies in different posts of librarians and DPEs lying vacant in universities, but has concluded that therefrom the conclusion drawn by the librarians and DPEs that this was due to shortage of suitable persons who were not finding the jobs attractive enough did not logically follow; observing that there could be various reasons such as procedural delay in filling up the vacancy.

11. The argument of learned counsel for the petitioners was that on the

logic of the committee, to hold that the argument of the petitioners did not logically lead to the conclusion arrived at by the petitioners, the conclusion arrived at by the Committee suffered from the same vice. To put it pithily, the argument was that it was obligatory upon the Committee to find the reason for vacancies not being filled up and if it found that the reason for the vacancies not being filled up was the posts not being found attractive by suitable candidates, being bound by the law declared by the Division Bench, that if for a particular reason a benefit is extended to a class of persons only, it would be a case of invidious discrimination not to extend the same benefit to another class if the reason was common; to have extended the benefit.

12. At first blush the argument appears to be attractive for the reason the Committee could not leave the matter in a state of flux by recognizing that there were vacancies unfilled but opining that there could be various causes thereof, one of them could be procedural delays in filling up the vacancies. It could well be that people were not finding the job attractive.

13. We have reproduced hereinabove the data considered by the Committee, correctness whereof is not disputed by the petitioners.

14. As regards vacancy position of the posts in the cadre of librarians and that of DPEs in colleges is concerned, we find that the unfilled posts in the cadre of librarians in colleges established by the Government, colleges aided by the Government and non-aided colleges, is only 18 out of 446 sanctioned posts; 428 being filled up. The percentage of vacancies is 4%. For DPEs, of the sanctioned 247 posts, 239 are filled up. 8 are vacant and the percentage of vacancies is 3%.

15. Pertaining to the University level appointments for the library staff, we find that the vacancy position is 30% in the post of Assistant Librarian, 38% in the post of Deputy Librarian and 50% in the post of Librarian. In the Department of Physical Education at the University level, the vacancy

position is 29% in the post of Assistant Director of Physical Education, 9% in the post of Deputy Director of Physical Education and 52% at the level of Director of Physical Education.

16. One wonders as to why this is happening. But one thing is clear. At the level of the colleges enough talent is being attracted and we take note of the fact that in every department at any point of time 3% to 4% vacancies exist because of the time lag between the holder of a post superannuating and the process of empanelment to fill up the vacancy being completed.

17. The data at the level of the university may show a multiplicity of reasons why similar posts are lying vacant at the level of the university, but in a matter of policy the Court cannot indulge in a micro analysis. As long as at the macro level the decision maker has applied the mind, the Court has to adopt the hands off approach, because as recognized by the Division Bench of this Court in its judgment dated May 18, 2012, age of superannuation of employees is within the discretion of the executive.

18. We dismiss the three writ petitions but without any order as to costs.

CM No.19/2014 in W.P.(C) 9/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 18, 2015

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