

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

Judgment delivered on : March 27, 2015.

+ **W.P.(C) 3405/2014 & CM APPL. NO.7016/2014**

GOVERNMENT OF NCT OF DELHI Petitioner

Through: Mr. Sushil Dutt Salwan & Ms.
Latika Dutta, Advocates

versus

BINATA NAHA Respondent

Through: Ms. Indrani Ghosh, Advocate

AND

+ **W.P.(C) 3426/2014 & CM APPL. NO.7044/2014**

GOVERNMENT OF NCT OF DELHI Petitioner

Through: Mr. Sushil Dutt Salwan & Ms.
Latika Dutta, Advocates

versus

ANITA BHATIA Respondent

Through: Ms. Indrani Ghosh, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. By this common order, we propose to decide these two writ petitions separately preferred by the petitioner/Government of NCT of Delhi assailing the order dated 27.03.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) in Original Application (*in short 'OA'*) Nos.

2130 & 2131/ 2013 respectively, whereby the learned CAT has allowed these OAs preferred by these respondents.

2. Both these respondents were occupying the post of Supervisor Physical Education (*in short 'SPE'*) at the time of their supeannuation. Before reaching to their superannuation, both these respondents gave their representations for re-employment for another period of two years in terms of the Notification dated 29.01.2007 read with Notification dated 27.01.2012 issued by the Directorate of Education, Govt. of NCT of Delhi and General Administration Department, Govt. of NCT of Delhi. This request of the respondents was declined by the Competent Authority and feeling aggrieved by the decision taken by the Competent Authority, the respondents approached the learned CAT to seek direction for their re-employment as per the Notifications dated 29.01.2007 and 27.01.2012.

3. The learned CAT after placing reliance on the decision of this Court in *Sheila Puri v. M.C.D., (1985) 9 DRJ 180 (DB)* and *Sushma Nayar v. Managing Committee Delhi Public School, Mathura Road & Ors., AD (VII) Delhi 246* and some other decisions of this Court on the subject, reached the conclusion that various judgments of this Court have already settled the issue that a supervisory level post within the teaching community will also include the post of a teacher and hence the benefits

of extension of two years should also be accorded to these respondents. Allowing the OAs filed by these respondents, the learned CAT directed the petitioner to grant re-employment to them as per Notifications dated 29.01.2007 and 27.01.2012 and issue necessary orders accordingly within a period of 15 days from the date of receipt of the order. Feeling aggrieved by the said common order dated 27.03.2014, the petitioner has filed the instant two writ petitions.

4. Assailing the legality, validity and correctness of the order dated 27.03.2014, Mr. Sushil Salwan, the learned counsel for the petitioner-Government of NCT of Delhi straneously contended that the learned CAT without meticulously examining the facts and circumstances of the cases of these respondents, found them entitled to get the benefits of re-employment in terms of Notifications dated 29.01.2007 and 27.01.2012, and based on the legal issue settled in this regard in some of the judgments of this Court with special emphasis on the decisions of this Court in the two cases of *Sheila Puri (supra)* and *Sushma Nayar (supra)*. Mr. Salwan further argued that the learned CAT failed to appreciate the fact that both these respondents retired from the post on 31.03.2013 and the same being an administrative post was not covered in the said Notifications dated 29.01.2007 and 21.01.2012 therefore, the

benefits of the same can not be extended to such post to grant re-employment for another period of two years. The learned counsel further argued that once the cadre itself changed from teaching to administrative cadre, then by mere fact that before entering the administrative cadre the incumbent was a teacher, the benefits of the Notification dated 29.01.2007 could not be extended to such administrative post. The learned counsel also submits that the respondents have not disputed the fact that on the said post they were not discharging any duties of a teacher whether full time or part time or at some intervals. The learned counsel also submitted that as per the definition of a 'teacher' provided under Section 2(w) of the Delhi School Education Act, 1973, the same includes the head of the School and not any administrative post. The learned counsel also placed reliance on Rule 59 (2) (xxv) of the Delhi School Education Rules, 1973 which clearly provides devotion of at least 12 periods in a week for a teacher to teach the pupils. The learned counsel also invited attention of this Court to Rule 4 of F.R 9, where the 'cadre' has been defined as the strength or a service or a part of a service sanctioned as a separate unit.

5. On the applicability of the decision in the case of *Sheila Puri (supra)* and *Sushma Nayar (supra)*, Mr. Salwan submitted that the

decision of the Division Bench of this Court in the case of *Sheila Puri (supra)* was challenged by the MCD by filing a Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court kept the legal issue open and alive. The Hon'ble Supreme Court in the said SLP had decided the case only on the basis of the stand taken by the Joint Secretary, Administration, Delhi Education in his affidavit to the extend concession given in the case of the respondents therein. The learned counsel thus submitted that the legal issue whether job of an Inspector was akin thereof to a teacher or whether a teacher on being promoted to the cadre of Supervisory Staff of Inspector will continue to remain a teacher was not accorded any approval by the Hon'ble Supreme Court in the said SLP preferred by the MCD rather the question remained open and alive.

6. To buttress the above submissions, Mr. Salwan placed reliance on the judgment of this Court in the case of *P.S. Tomar v. M.C.D., 66 (1997)*, wherein the Division Bench of this Court while dealing with a similar issue in depth examined the decision of the Supreme Court in *Sheila Puri (supra)* and after placing reliance on the decision of the Hon'ble Supreme Court, took a view that the Supreme Court left the legal issue open and alive. The learned counsel also invited attention of this

Court to para 15 of the said judgment in *P.S. Tomar (supra)*, wherein the reference has been made to the common order in three similar SLPs being *MCD v. Lakshmi Verma, Hari Krishan Sharma and Banwari Lal Sharma*, whereby the Apex Court held that the decision in *Sheila Puri (supra)* should not be held against the management in all such cases and the question may be left open without expressing any opinion. The learned counsel thus strongly urged that these respondents cannot get any benefit of the decision of this Court either in the case of *Sheila Puri (supra)* or *Sushma Nayar (supra)*, as indisputably, these respondents were occupying the administrative post of SPE which is a non teaching post and is in a different cadre. The learned counsel also invited attention of this Court to Circular dated June 09, 1975 issued by the Directorate of Education, SPE Branch, Delhi delineating the nature of duties to be performed by SPE. Based on the above submissions, the learned counsel submitted that these respondents, prior to reaching the age of superannuation were occupying the post of SPE, and therefore, the services rendered by them were purely of administrative nature and of a different cadre, and the same cannot be equated with the job of a teacher and therefore, they are not entitled to the benefit of the said two notifications whereunder the benefits of re-employment has been

extended by the Government only to teachers and Vice Principal/ Principal and not any other category. Reliance was also placed by the learned counsel on the following judgments:

- i. *P.S Tomar v. Municipal Corporation of Delhi* 1997 (66) DLT 449
- ii. *Sushma Nayar v. Managing Committee, Delhi public Schol, Mathura Road & Ors.* 2009(7)AD(D)246
- iii. *Sheila Puri v. Municipal Corporation of Delhi* 1985(9) DRJ180(DB)
- iv. *Charanjit Singh Nischal v. Municipal Corporation of Delhi* 2003 (106) DLT 691
- v. *MCD v. Giri raj Sharma* 2010(10)AD(D)1
- vi. *Dr. Shiva Ditta Juneja v. Dir. Of Edu. & Anr. W.P(C)* 1835/2011 decided on 27.05.2011.
- vii. *Jawahar Singh Tomar v. Dir. Of Edu. & Anr. W.P(C)* 4017/2010 decided on 23.12.2011
- viii. *in the case of State of West Bengal & Ors. v. Gopal Chandra Paul & Ors.,* 1995 Supp. (3) SCC 327.
- ix. *Amrit Kumar Sarin & Ors. v. State GNCTD W.P(C)* 7792/2010 decided on 23.12.2011
- x. *Dharam Singh v. Chief Secretary & Ors. W.P(C)* 4703/2011 decided on 08.07.2011
- xi. *GNCTD & Ors. v. Mithilesh Swami W.P(C)* 2677/2012 decided on 08.04.2013.

7. Opposing these contentions, Ms. Indrani Ghosh, the learned counsel for the respondents submitted that the decision in ***Sheila Puri (supra)*** and ***Sushma Nayar (supra)*** cases, was upheld by this Court vide its judgment dated 28.08.2009 in LPA No.415/2009, dismissing the challenge raised against the decision. The learned counsel thus submitted that the legal issue is no more *res integra* and therefore, the learned CAT has rightly placed reliance on various decisions of this Court including

the cases of *Sheila Puri (supra)* and *Sushma Nayar (supra)* to extend the benefit of the said two notifications in favour of the respondents. The learned counsel further argued that the respondents had started their career as a teacher and even their existing post involved supervision of Schools and therefore, they would remain teacher even if they were not teaching students. The learned counsel also argued that the post of Vice Principal in Government School is analogous to the post of SPE as can be seen from the Recruitment Rules for the post of Vice Principal which clearly excludes PGT (Physical Education) or PGT (Administrative Cadre) for promotion to the said post. The learned counsel also argued that for promotion to the post of SPE, all other categories of teachers have been excluded except the Post Graduate Teachers (Physical Education) while maintaining the same Recruitment Rules on all other aspects. The learned counsel thus argued that having placed this sub post analogous to the post of Vice Principal, it cannot be said that they cannot draw parity with the post of Vice Principal in Government School. Based on these submissions, the learned counsel argued that these respondents are entitled to the benefit of Notifications dated 29.01.2007 and 27.01.2012 and the same cannot be denied to them simply because from the feeder cadre they were promoted to the post of Supervisor (Physical Education).

In support of her submissions, the learned counsel placed reliance on the judgments:

- i. *Raghubir Singh Sharma v. Municipal Corporation of Delhi* 1992(48) DLT 47
- ii. *Charanjit Singh Nischal v. Municipal Corporation of Delhi* 2003 (106) DLT 691
- iii. *Suraj Bhan Chauhan v. Municipal Corporation of Delhi* 2004 (109) DLT 633
- iv. *Dr. Jagpal Singh Dalal v. State of Punjab* CWP No. 20258 of 2008.
- v. *Municipal Corporation of Delhi v. Smt. Sheila Puri* (1989) 1 SCC 227

8. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the impugned order, judgments cited by both the sides and the material placed on record.

9. Respondent – Anita Bhatia was initially appointed as LDC in the year 1974 in Rattan Devi Arya Senior Secondary School, Krishna Nagar, Delhi – 110051 (Government Aided School) and was promoted to the post of Junior Physical Education Teacher w.e.f. 6.10.1979 in the same school. She worked as a Senior Physical Education Teacher w.e.f. 1.12.1980 to 27.3.1997 at Government Girls Senior Secondary School, Bhola Nath Nagar, Shahdara, Delhi. She was thereafter promoted to the post of Post Graduate Teacher, Physical Education w.e.f. 27.3.1997 to 23.6.2008 at Govt. Girls Senior Secondary School No.1, Kalkaji, New

Delhi. From here she was promoted to the post of Supervisor, Physical Education (Gazetted Post) with effect from 23.6.2008 to 31.3.2013 in the Directorate of Education, District South, C Block, Defence Colony, New Delhi.

10. The other respondent – Ms. Binata Naha in W.P. (C) No. 3405/2014 was initially appointed as Senior Physical Education Teacher on 31.12.1979 and was promoted as PGT (Physical Education) on 16.8.1996 and thereafter to the post of Supervisor (Physical Education) w.e.f. 13.3.2007. She worked on this post till her superannuation on 30th November 2012.

11. Both these respondents, who had reached the age of superannuation on the respective posts, through their respective representations sought re-employment till they attain the age of 62 years in terms of notifications Nos. F.30-3(28)/Co-ord/2006/689-753 and F.32(8)/2011/SB/Edn.136-155 dated 29.01.2007 and 27.01.2012 respectively, issued by the Government of NCT of Delhi, Directorate of Education. The said representations filed by these respondents were rejected by the petitioners on the premise that these two notifications have been issued by the Directorate of Education, GNCT of Delhi for re-employment of teachers up to the level of PGT and Vice Principal and Principal, respectively, up to the age of 62 years and

there are no orders to give benefit of the same on the post of Supervisor (Petitioner) on attaining the age of superannuation at 58 years.

12. Feeling aggrieved by the said decision taken by the petitioners, the respondents herein approached the learned CAT by preferring two separate OAs. Vide order dated 27th March 2014, the learned CAT took a view that various decisions of this court have already settled the issue that a supervisor level post within the teaching community will also be counted as the post of a teacher and hence the benefit of extension of two years should be accorded to these respondents as well. The learned Tribunal thus allowed the Original Applications filed by these respondents and directed the petitioners to grant re-employment to these respondents in terms of notifications dated 29.1.2007 and 27.1.2012, respectively, within a period of 15 days from the date of receipt of this order. Aggrieved by the decision of the learned CAT, the petitioners have filed the instant petitions.

13. Before we deal with the various contentions raised by counsel representing both the parties, let us first reproduce the aforesaid two notifications, benefit of which the respondents seek to claim. The extract of Notification No.F.30-3(28)/Co-Ord/2006/689-753 dated 29.01.2007 read as under:-

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI, DIRECTORATE OF EDUCATION, OLD
SECRETARIATE, DELHI*

*No. F.30-3(28)/Co-ord/2006/686-753 Dated: 29th January
2007*

NOTIFICATION

In pursuance to Cabinet Decision No.113, dated 4.9.2006 conveyed vide letter No. F.3/3/2004-GAD/CN/20491-502, dated 8.9.2006, the Lieutenant Governor, Government of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers upto PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years or till clearance from Government of India for extending retirement age is received, whichever is earlier. The terms and conditions of re-employment are being notified separately.

*By order and in the name of
The Lt. Governor of the National Capital Territory of Delhi.*

*Sd/-
(MADHUP VYAS)
Joint Secretary (Education)”*

14. The extract of Notification No. F.32(8)/2011/SB/Edn.136-155 dated 27.01.2012 read as under:-

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI, GENERAL ADMINISTRATION DEPARTMENT
(SECRETARIATE EDUCATION, BRANCH) ROOM NO. 223,
OLD SECTT. DELHI*

No. F.32(8)/2011/SB/Edn.136-155

Dated: 27.01.2012

ORDER

The Hon’ble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow re-employment to those Vice-Principals/Principals, Principals of Government Aided Schools under the Directorate of Education who have approached the various Hon’ble Courts and got the judgment in their favour with immediate effect.

The Hon’ble Lt. Governor, Delhi is also pleased to allow the re-employment to all the retired Vice-Principals/Principals of Government and Government Aided Schools, who have not gone to the Hon’ble Courts but have retired and applied for re-employment to the department after

the judgment dated 08.07.2011 in W.P. (C) No. 4703/2011 titled Dharam Singh vs. Govt. of NCT of Delhi.

The said re-employment is for a period of one year and extendable for another one year based on the performance and subject to fitness and vigilance clearance, till they attain the age of 62 years, whichever is earlier. They will get the financial benefit with effect from the date of assumption of work.

The terms and conditions of automatic re-employment and other aspects of re-employment in respect of retired Vice Principals/Principals of Government schools will remain same as issued by this Directorate vide Notification N.F.30-3(28)/Co-ord.2006/689-703 dated 29.01.2007, order No.F.30-3(28)/Co-ord/2006/4637-72 dated 28.02.2007, Order No. 30-3(28)/Co-ord/2006/5982-6012 dated 22.03.2007, and in respect of Govt. aided schools vide order No.30-3(28)/III/Co-ord/07 (Part File/3426-3439 dated 31.12.2007 and F.30-3(28)/III/Coord/07/Pt file/180-220 dated 15.02.2008 respectively.

However, this order is issued subject to the outcome of any appeal filed against the said judgment/order before any higher forum or courts of law. Further, it is also subject to the final outcome of any SLP likely to be filed in the Hon'ble Supreme Court of India against the above said judgment.

This issues with the prior approval of the competent authority.

*Sd/-
(Shashi Kaushal)
Addl. Director (Sectt.BR)''*

15. The Notification dated 29th January 2007 was the subject matter of consideration in a case titled as ***Sushma Nayar vs. Managing Committee, Delhi Public School, Mathura Road***, reported in ***2009 AD (VII) Delhi 246***. In the aforesaid case, the petitioner – Sushma Nayar had filed a writ petition seeking quashing of re-employment granted to the respondent on the post of Vice Principal. The plea taken by the petitioner therein was that in terms of Notification dated 29th January 2007, the benefit of

relaxation has been extended only to teachers and not to Vice Principal/Principals. In the absence of any challenge raised by the petitioner to the said Notification dated 29.1.2007, the learned Single Judge after placing reliance on the ratio of decision in the case of ***Sheila Puri vs. MCD, 1985 (9) DRJ 180 (DB)***, which was followed in many other cases also, took a view that the respondent remained teacher even though she was appointed as Vice Principal of the school and as such was entitled to the benefit of the Notification dated 29th January 2007, which allowed automatic re-employment till the age of 62 years to all retiring teachers up to PGT teachers.

16. With the authoritative pronouncements of this court, right from the judgment of ***Sheila Puri case (supra)***, ***Charanjit Singh Nischal case (supra)***, ***Sushma Nayar case (supra)***, and many other cases including Vice Principals/Principals, Head Masters of MCD Schools and the Schools run by GNCT of Delhi and Govt. Aided School under the Directorate of Education were granted the same benefit of re-employment in terms of the Notification dated 29th January 2007. In fact, taking into consideration the said decisions of this court, Lt. Governor /Govt. of NCT of Delhi had issued another Notification dated 27.1.2012 (reproduced herein above) to specifically allow re-employment of all the retired Vice

Principals/Principals of Government and Government Aided Schools, who had not gone to the court, but have retired and had applied for re-employment to the department after judgment dated 8.7.2011 in **W.P. (C) No. 4703/2011** titled as *Dharam Singh vs. GNCT of Delhi*. By this notification of 2012, the Government of NCT of Delhi itself extended the benefit of re-employment to the Vice Principals/Principals, although this category was not specifically included by the Government in earlier Notification dated 29th January 2007.

17. There can be no cavil that in terms of the said two notifications, the Government of NCT of Delhi had been pleased to allow automatic re-employment of all retiring teachers up to PGT level and also to the Vice Principals/Principals of the schools run by Government of NCT of Delhi and Government Aided Schools till they attain the age of 62 years, subject to their fitness and vigilance clearance. But the issue which we are confronted in these two cases is as to whether the benefit of these two notifications can be extended to these respondents, who were working on the post of Supervisor (Physical Education) which has not been specifically covered in the said two notifications.

18. As per the respondents, the issue is no more *res-integra* in the light of the decision of Division Bench of this court in *Sheila Puri vs. MCD*

(*supra*) while the stand taken by the petitioners is that the decision in *Sheila Puri (supra)* case never attained finality as the legal issues were left open by the Supreme Court when the challenge was laid by the MCD in SLP No.5051 of 1985 preferred by them.

19. The case of *Sheila Puri (supra)*, is one of the earliest cases decided by a Division Bench of this Court on 22.05.1985 where the Court was dealing with an issue of retirement age of the petitioner who joined the MCD as a teacher then became Head Mistress of the School and finally became a School Inspectress and the question arose was whether such a person would still remain a teacher even after promotion to the post of Inspectress and would get the benefit of retirement at the age of 60 years and not at 58 years. As per the relevant resolution of MCD, the age limit for retirement of officers and other employees was 58 years and in case of teachers and class 4th servants, it was 60 years. The issue arose before the Court was whether the petitioner would cease to be a teacher after she is promoted to the post of Senior School Inspector. Answering the question in the background of relevant resolution passed by the MCD, the Court held that it would be a strange result that a Head Mistress promoted to the post of School Inspectress should have a lower retirement age whereas if she remained Head Mistress then she would retire at the age of 60 years.

The Court also held that a very concept of an Inspector is to see that the teaching is conducted in accordance with some standard practice and the progress of students is as desired. It also held that there is a difference between the administrative line in the corporation and the teaching line.

The relevant paras of the said judgment are reproduced as under:-

14. We think that this problem cannot be solved by mere reference to the affidavit. The petitioner was a teacher. She was a Headmistress of a school, then she became a School Inspectress, then became a Senior School Inspectress. If she is a Senior School Inspectress, does she cease to be a teacher ? Does she become an officer and not a teacher ? It seems to us that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the schools rather than teaching in the schools. It would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. The position set out in the Resolution of 1970, i.e., Resolution No. 127 did not make any distinction between teachers and School Inspectresses. We fail to understand how two sets of persons belonging to the same class should have different retiring ages if they are promoted or not promoted. Also, when some persons of that class are transferred to the Delhi Administration on the understanding that they would retain their retiring age of 60, we fail to understand why the remaining persons should not retain the same retiring age of 60. Also, there seems to be some confusion as to who is a teacher? If the interpretation of the Municipal Corporation is accepted it leads to a number of awkward complications. The ruination post of Headmistress is that of School Inspectress. Normally, seniors are promoted and they are not far from the age of retirement. So, it would be a strange result that when a Headmistress is promoted, she would immediately retire whereas if she remained Headmistress, she would retire at 60. This result could not have been desired. Furthermore, the word 'teacher' means a person in the teaching profession. The entry of such persons into service would normally be in lower grades. They would be promoted from say Assistant Teacher to Teacher and then Vice-Principal, Principal or Headmistress, and so on. They would then be promoted to the post of Inspector and there may

be further posts like Senior Inspectors and so on. We cannot imagine an Inspector of Schools not being a teacher. A very concept of an Inspector is to see that the teaching is conducted in accordance with some standard practice and the progress of students is as desired. An Inspector or Inspectress must, therefore, be a teacher. Such a person does not cease to be a teacher by becoming an Inspector. An Inspector's job is not that of looking after the up-keep of the school, but to see that the teaching is done properly. We are of the view that such a person would remain a teacher even after promotion. No doubt, the Resolution states that officers would retire at 58 and teachers at 60, presumably by officers are meant non-teachers employed in other branches of the Corporation. There is a difference between the administrative line in the Corporation and the teaching line. We would prefer to hold that the petitioner continues to be a teacher in spite of being promoted to the post of School Inspectress. The real meaning of the Resolution is that persons employed on the teaching side, or educational department of the Municipal Corporation have a retiring age of 60, whereas others have a retiring age of 58. Referring again to the judgment cited at the Bar, Shri B. N. Chaudhary v. The Commissioner, Municipal Corporation of Delhi and others, wherein it seems to have been accepted that the retiring age was 58, we think that is not a precedent, because the petition was dismissed in limine without a careful examination of the Resolutions No. 127 of 1970 and 666 of 1978. We do not think that we are bound by a petition dismissed in limine.

15. *In addition, it must be stated that if there is any doubt in the matter, it has to be resolved in favor of the petitioner on the application of Article 14 of the Constitution. The petitioner was identically placed to the other School Inspectresses in the Department. Those Inspectresses who have been transferred to the Delhi Administration were informed by Resolution No. 127 of 1970 that they would retain their retiring age of 60. This was an admission by the Municipal Corporation that the petitioner's retirement age was also 60. We cannot read the Resolution No. 666 of 1978 as a change in that retiring age because it does not clearly state anything about School Inspectresses. As we have interpreted School Inspectresses to be 'teacher's, they will continue to retire at the age of 60, but if there is any doubt, we think that the petitioner has to get the equal protection of law under Article 14 of the Constitution and, therefore, cannot have a different retiring age from the other School Inspectresses who were transferred to the Delhi*

Administration. Undoubtedly, these schools and some of the teachers have from time to time been transferred either from the Delhi Administration to the Municipal Corporation or from the Municipal Corporation to the Delhi Administration. They all seem to be the same and are doing identical jobs in relation to similar schools. Being equally placed, Article 14 of the Constitution is certainly attracted, so the retirement age of the petitioner cannot be less than 60.”

20. In another case of ***Charanjit Singh Nischal (supra)***, the learned Single Judge of this Court was again dealing with a petitioner who from the post of Headmaster was promoted to the post of School Inspector and following the ratio of ***Sheila Puri (supra)*** the Court held that the petitioner would be entitled to retire at the age of 60 years and not at the age of 58 years.

21. Both these cases referred to above were not dealing with the notifications dated 29.01.2007 and 27.01.2012. The said notification of 29.01.2007 was a subject matter of consideration before the learned Single Judge of this Court in ***Sushma Nayar (supra)***, wherein the challenge was raised by the petitioner therein to seek quashing of re-employment of the respondent to the post of Vice Principal on the ground that the age relaxation in terms of the said notification is intended only for PGT and TGT Teachers upto 62 years of age and not for Vice Principal/ Principal. The learned Single Judge following the ratio of the decisions of this Court in ***Sheila Puri (supra)***, ***Charanjit Singh Nischal***

(*supra*) and after drawing support from the definition of teacher given under Section 2(w) of the Delhi School Education Act, 1973 and Rule 110 of the Delhi School Education Rules, 1973, took a view that the respondent would remain a teacher even though he was promoted to the post of Vice Principal of School and as such would be entitled to the benefit of the notification dated 29.01.2007. Thereafter, many such identically placed Teachers, Principals and Vice Principals claimed extension of their retirement age and in view of the dicta of the Division Bench of this Court in *Sheila Puri (supra)*, the decision of the learned Single Judge in *Charanjit Singh Nischal (supra) and Sushma Nayar (supra)*, there was a reiteration of the same view by various Benches of this Court.

22. To our surprise in none of these judgments, there is a reference to another important decision of the Division Bench holding the field, which is in the case of *P.S. Tomar (supra)*. This case was decided by the Division Bench of this Court on 07.02.1997. In this case the Court was considering the legality and validity of the Circular dated 06.07.1992 issued by the MCD pursuant to the decision of this Court in *Sheila Puri (supra)*. The Circular issued by the MCD envisaged that a teacher would retire at the age of 60 years but in case of promotion to 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 FR 56(a) of the Fundamental Rules. In the Circular, an option was also given which could be exercised six months prior to attaining the age of 58 years by a teacher, if promoted to the cadre of Inspector and it is only on exercise of such an option, he would continue till the age of 60 years but in such cases he 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. In this judgment, the Division Bench of this Court made a reference that the decision of this Court in *Sheila Puri (supra)* was challenged by filing a Special Leave Petition before the Hon'ble Supreme Court and on leave being granted by the Supreme Court, the case was not decided on merits but on concession. The Court further held that a bare reading of the judgment of the Hon'ble Supreme Court, would suggest that reasoning of this Court that a teacher on promotion to the post of Inspector will continue to be termed as a teacher or that the post of Inspector is also akin to a teacher were neither approved nor gone into by the Hon'ble Supreme Court and the Hon'ble Supreme Court decided the case only on the stand taken in the affidavit and the concession given and this question was remained open and alive.

Relevant paras of the decision of ***P.S. Tomar (Supra)*** are produced as under:

“Decision of this Court in Smt. Sheila Pun's case was challenged by the respondent by filing Special Leave Petition to Supreme Court. On leave being granted the case was not decide do nmerits 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 v. Smt. 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 **Special Leave Petition (Civil) 13386/80** On 17.7.1990 the **Special Leave Petition** 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."*

23. It can be thus seen from the above discussion that the legal issue settled in ***Sheila Puri (supra)***, was left open and alive by the Hon'ble Supreme Court and therefore, the learned Tribunal fell in grave error to place reliance on the decision of this Court in ***Sheila Puri (supra)*** to give the benefit of re-employment to the respondents upto the age of 62 years without appreciating another decision of this Court in ***P.S. Tomar (supra)*** and also the contents of the above two notifications dated 29.01.2007 and 27.01.2012.

24. We have already noticed that the above two notifications were not the subject matter of discussion either in ***Sheila Puri (supra)***, ***Sushma Nayar (supra)*** or even ***P.S. Tomar (supra)***, as these notifications came to be issued much later in time than the decisions given in the said cases.

We will thus confine ourselves to the contents of the above two notifications to ascertain the fact whether these respondents who were occupying the post of Supervisor Physical Education, are entitled to get the benefit of re-employment till the age of 62 years. It is an admitted fact between the parties that these respondents were not occupying the post of Teacher, or Vice Principals/ Principals and their post was that of Supervisor Physical Education. Whether this post is an administrative post or a teaching post or a post combined of teaching and administrative duties, is broadly the issue for determination. To decide this question, it would be relevant to refer to the relevant recruitment rules for the post of Supervisor (Physical Education) and also the chart of duties assigned to this post and are supposed to be performed by the holders of this post in the sphere of physical education/ development of schools and games in schools. The same are reproduced as under:-

“Recruitment Rules for the post of Supervisor (Physical Education)

- | | | |
|----|---|--|
| 1. | Name of the post | : Supervisor (Physical Education) |
| 2. | No. of posts | : 24 (subject to variation dependent on work load) |
| 3. | Classification | : CGS, Group ‘B’, Gazetted, Non-ministerial |
| 4. | Scale of Pay | : Rs.2000-60-2300-EB-75-3200-100-3500 (Pre-revised) 7,500-12,000 (Revised as per V C.P.C.) |
| 5. | Whether selection post or non-selection posts | : Selection |

6. Age limit for direct recruits : Not exceeding 30 years (Relaxable from Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government)
7. Whether benefit of added years of service admissible : No
8. Educational and other qualifications : Essential:
 - i) Master Degree in Physical Education from a recognised University or equivalent.
 - ii) 5 years experience in the field of Physical education, such as organising games, camps, sports, activities, sports, camps, welfare youth camps, etc.Or
5 years experience of working as a Physical Education teacher in a recognised/Aided High or Higher Sec. School or in a recognised intermediate college.
Desirable:
 - i) Doctors degree in Physical Education or Master's Degree in a subject other than Physical Education from a recognised University or equivalent.
 - ii) Administrative Experience.
9. Whether age and qualifications (Educational) prescribed for direct recruits will apply in the case of promotes. : Age – No.
Educational Qualification – Yes.
10. Period of probation, if any. : Two years.
11. Method of recruitment whether by direct rectt or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods. : Promotion failing which by transfer on deputation, failing both by direct recruitment.
12. In case of rectt by : **Promotion:**

promotion/
deputation/ transfer,
grades from which
promotion/
deputation/ transfer to
be made.

Post Graduate Teachers (Physical Education) under the Directorate of Education, Delhi Administration with three years' regular service in the grade. Promotion will be made from the feeder grade on the basis of a combined seniority list of Male and female.

"Note: Where juniors who have completed their qualifying/ eligibility service by more than one year and have successfully completed their probation period if prescribed."

Transfer on Deputation:

- (a) Officers of the Central/ State Government.
 - i) Holding analogous post on regular basis or
 - ii) With 3 years regular service in the post in the pay scale of Rs.1640-2900 or equivalent and
- (b) **Possessing the educational qualifications and experience prescribed for direct recruits under column 8.**

The Departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.

Period of deputation including period of deputation in another ex-cadre post held immediately proceeding this appointment in the same or some other organisation/ department of the Central Government shall ordinarily not to exceed three years. The maximum age limit for appointment by transfer on deputation shall be, not exceeding 56 years, as on the closing date of receipt of applications.

13. If a DPC exists, what :
is its composition

Group 'B' – DPC as notified.

Note: The proceeding of the DPC relating to confirmation of direct recruit shall be sent to the Commission for approval. If

- however, these are not approved by the Commission a fresh meeting of the DPC to be presided over by the Chairman or a Member of UPSC shall be held.
14. Circumstances in which UPSC is to be consulted in making recruitment. : Consultatin with UPSC necessary while making direct recruitment and appointing an officer on deputation.

“Chart of duties assigned to Supervisor (Physical Education)

DIRECTORATE OF EDUCATION DELHI (PHYSICAL EDUCATION BRANCH)

The Supervisors/School Inspectors (Physical Education) working in the Directorate of Education, Delhi are supposed to perform the following duties in the sphere of Physical Education, development of sports and games in schools as well as in public sectors. They may be assigned other duties from time to time under instructions of the Director of Education.

Their duties are divided in three heads besides other official, instructions of the immediate head of the branch from time to time.

SUPERVISION

1. To supervise the activities of Physical Education, games sports and allied activities in schools and in public sectors if and when it is necessary.
2. To suggest ways and wears to improve the existing conditions in Physical Education.
3. Periodical supervision and surprise checking of all the activities and routine classes in Physical Education and sports & games and the syllabus adopted in schools. Submission of report thereof to the EO/Principal/and DDE (Sports) with specific suggestions and inviting attention at the zonal, district and all Headquarter level.
4. Super visit of playing fields, courts, gymnasium and sports material etc. And necessary instructions for their improvements.
5. Supervision of healthy condition in schools for game and sports and Physical Education activities with a good emphasis on sanitation and hygienic conditions in the schools.
6. Supervision of mid day meal and payment hawkers if and when it be required.
7. Supervision and surprise visits of sports coaching centres, vyamshalas, swimming pools and report to be

submitted to pe Branch.

8. To check the diaries of Physical Education Teachers and other regards regarding Physical Education, games and sports and to guide them in this regard.
9. To make a good supervision of sports purchases in the schools in respect of quantity, quality and its maintenance.

ORGANISATION

1. To arrange Zonal forum of Physical Education Teachers and their meetings from time to time.
2. To arrange meetings of the Heads of the institutions for certain organizational purposes.
3. To organise the Tournaments inter-schools and inter-zone competition in games and sports and multifarious co curricular activities in consultation with zonal conveners and to render any assistance required by them.
4. To appoint officials for various competitions/Tournaments.
5. To organise coaching of talented students, clinics and Refresher courses for Physical Education Teachers.
6. To organise and make preparations for all the activities assigned by the Headquarter on occasion such as independence day celebrations, children's day, republic day, EPED, DSS & AB activities and the programmes of council of sports, seminars, conferences and rallies.

ADMINISTRATION

1. To make a good liaison with the Heads of the Institutions and the officers at the Headquarter (Phy. Edn. Branch)
2. Follow up of the administrative action at the zonal, district and Headquarter level on the reports of the visits and surprise checking made in schools for Phy. Edn., sports and games and other allied activities.
3. To be a member of the Condemnation Board for sports purposes.

APPROVED

BY THE

DIRECTOR OF EDUCATION, DELHI

(H. SAREEN)

DY.DIRECTOR OF EDUCATION (SPORTS)

DELHI

Copy forwarded for information and necessary action to:

1. All the D.D.Es (Districts)
2. All Education Officers.
3. All the Supervisors/School Inspectors (Phy. Edu)

(H. SAREEN)
DY.DIRECTOR OF EDUCATION (SPORTS)
DELHI

25. It would also be necessary here to mention that the Delhi School Education Act, 1973, does not provide any meaning to the word 'teacher'. It only gives an inclusive definition under Section 2(w) which provides that "teacher" includes the Head of school. The same is reproduced as follows:

(2) *Definitions- In this Act, unless the context otherwise requires :-*

.....
(w) "teacher" includes the Head of school;

Further Rule 59 (2) (h) (xxv) of the Delhi School Education Rules, 1973 provides as follows:

59. Scheme of management of recognised schools (h) the duties, powers and responsibilities of the head of the school, which shall provide that he shall :—

.....
(2) *The scheme of management shall also provide for the following, namely:—*

.....
(xxv) *devote at least twelve periods in a week to teaching of the pupils;*

Rule 110 of the Delhi School Education Rules, 1973 deals with retirement age and provides as under:

“Rule 110 of the Delhi School Education Rules, 1973 reads as under:- Retirement age –

Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognized private school, whether aided or not, shall hold office until he attains the age of 58 years.

Provided that the managing committee may grant extension to a teacher for a period not exceeding two years in the aggregate, if in the opinion of the managing committee such teacher is fit for such extension and has no mortal or physical incapacity which would disentitle him to get such extension.

Provided further that no such extension shall be granted in the case of a teacher of an aided school except with the previous approval of the Director.

- (2) ***Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, Librarian, Principal or Vice-Principal employed in such school shall continue to hold office until he attains the age of 60 years : Provided that where a teacher, Principal or Vice Principal attains the age of superannuation on or after the 1st day of November of any year, such teacher, Principal or Vice Principal shall be re-employed upto the 30th day of April of the year immediately following.***
- (3) ***Notwithstanding anything contained in sub-rule 91) and sub-rule (2), where a teacher, Principal or Vice Principal has obtained National or State Award for rendering meritorious service as a teacher, Principal or Vice Principal or where he has received both the National and State Awards as aforesaid, the period of service of such teacher, Principal or Vice Principal may be extended by such period as the Administrator may, by general or special order, specify in this behalf.”***

26. Indisputably, these respondents are not performing any of the duties of a teacher and their duties are mainly in the administrative field. This fact has also been admitted by the respondents that they had been

occupying administrative post and in fact the case set up by these respondents is that they continued to be teacher even though they have been promoted to a higher administrative post.

27. When we look at the recruitment rules for the said post of Supervisor (Physical Education), it can be seen that the same is a selection post and vacancies can be filled by promotion, failing which by transfer on deputation; and failing both, by direct recruitment.

28. In so far as the recruitment by promotion to the said post is concerned, the Post Graduate Teachers under the Directorate of Education, Delhi Administration with three years regular service in the grade will be considered for promotion on the basis of combined seniority list of male and female candidates and thus, the feeder cadre to seek promotion to the post of Supervisor (Physical Education) is a cadre of post graduate teachers (Physical Education). In so far as the appointment by direct recruitment is concerned, the educational qualification is the same as required by promotee candidate but so far as the experience is concerned, for a direct recruit, the same is laid down as five years experience in the field of Physical Education such as organising games, camps, sports, etc or five years experience of working as Physical Education teacher in a Recognised/Aided High or Higher Secondary

School or any Recognised Intermediate College. So far as the direct recruitment is concerned, the experience of five years can be either as a Physical Education Teacher or in the field of physical education not necessary as physical education teacher, but by organising games, camps, sports activities, welfare youth games, etc.

29. The charter of duties, which the holders on the said post are required to perform in the sphere of physical education, development of sports and games are in relation to schools or in relations to the activities of sports and games in schools and the same are predominantly administrative in nature. To say that these promotee respondents had entered in service as teachers or were teachers prior to occupying the said post of Supervisor Physical Education, would make them entitle to get the benefit of age relaxation, but this will result in an anomalous situation as on the said date, the same benefit would not be available to direct recruits although occupying the same post. In such an eventuality the direct recruits would be retiring at the age of 60 years while the promotees on this post would get the benefit of extension in age up to 62 years.

30. It is a settled legal position that the courts should not embark on the unchartered ocean of questioning the policy decision of the Government so long as the same does not offend the provision of the any Statute, law

or enactment. The said two notifications of the Government of NCT of Delhi, gave the benefit of extension of age up to 62 years only in the case of Teachers, Vice Principals, Principals, Head Maters, etc and it has not included any other category of posts whether administrative or otherwise. To give the benefit of the said notifications to the post which is administrative in nature and particularly where no activities of a teacher are involved and the cadre of the post has also been changed, would amount to adding certain other categories of posts in the said notifications, which is totally impermissible under law through a judicial decision, as the same exclusively vests within the domain of Executive Authority.

31. In so far as the reliance placed on certain decisions of this Court, we have already said above that neither these two notifications nor the post occupied by these respondents was under consideration in *Sheela Puri (supra) case*. It is a settled legal position that a decision is an authority for what it actually decides and not what logically flows from the observations made in the judgment.

32. The words of Lord Denning in the matter of applying precedents, in *Union of India vs. Amrit Lal Manchanda and Anr.*, (2004) 3 SCC 75, which have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

33. We may also refer to the decision of the Hon’ble Supreme Court in

Re special reference No. 1 of 2012, wherein it was held as follows:

“Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it, the ratio decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in “The Nature of a Judicial Process”, had said that “if the judge is to pronounce it wisely, some principles of selection there must be to guide him along all potential judgments that compete for recognition” and “almost invariably his first step is to examine and compare them;” “it is a process of search, comparison and little more” and ought not to be akin to matching “the colors of the case at hand against the colors of many sample cases” because in that case “the man who had the best card index of the cases would also be the wisest judge”. Warning against comparing precedents with matching colours of one case with another, he summarized the process, in case the colours don’t match, in the following wise words:- “It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon’s: “For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow.”

34. In the light of the above discussion we allow the present writ

petitions filed by the petitioner holding that the respondents are not entitled to the benefit of age relaxation up to the age of 62 years in terms of Notification dated 29.01.2007 read with Notification dated 27.01.2012 issued by the Directorate of Education, Govt. of NCT of Delhi. Consequently, the impugned order dated 27.03.2014, passed by learned Central Administrative Tribunal is set aside. Parties are left to bear their own costs.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

MARCH 27, 2015

v/pkb