

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

+ **W.P.(C) 6025/2014 & CM.14686/2014**

% Reserved on : 28th September, 2016
Pronounced on : 9th November, 2016

JITENDRA SINGH NARUKA Petitioner

Through: Mr.R.P. Luthra, Advocate.

versus

UNIVERSITY OF DELHI & ORS. Respondents

Through: Mr.Amit Bansal, Ms.Seema Dolo &
Ms.Surbhi Mehta, Advs for respondent No.1
Mr.Bhagwan Swarup Shukla, CGSC and
Ms.Priti, Advocate for Union of India
Mr.V.Sudeer & Ms.Monica Yadav, Advocates
for the respondent no.3

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

1. Dr.Jitendra Singh Naruka, in this writ petition has made the following prayers:

“(i) Declare the recommendations dated 23rd January, 2013 of the committee, constituted under notification no.DU/124/LEGAL/HC-4310/2011 dated 20th October, 2012 and also its approval by the vice chancellor, as illegal and unconstitutional.

(ii) Declare the E.C.Res. No.142 dated 6th October, 2009, notification vide Reference No.Estb.II (i)2009/Delhi Dated 16th October, 2009: The Ordinance XXVII – Age of Retirement of Staff as illegal, and Unconstitutional.

(iii) Quash the Office order No.380 dated 22nd October, 2009 (reference no.Estb.II (i)/2009/66556 Delhi dated 22nd October, 2009), thereby retiring the Petitioner at Age of 62 years, as illegal and unconstitutional.

(iv) Direct the Respondents to declare the age of retirement / superannuation of the Petitioner as 65 Years instead of 62 years, with all consequential benefits.

(v) Petitioner further prays for passing of any other or further order(s), which this Hon'ble Court may deem fit and proper and also in the interest of justice.”

2. On 26th March, 1985, the petitioner was appointed to the post of Director of Physical Education. The petitioner claims that his appointment was duly recognized as a teacher as per the Statute of the University of Delhi and accordingly his service conditions were governed by Ordinance XI of the Delhi University Act, 1922. Accordingly, he was entitled to benefit of Clause 4 (1) of Ordinance XI as amended on 8th August, 2007 enhancing the age of superannuation of teachers from 62 years to 65 years. The petitioner was earlier extended and given benefits as were extended and made applicable to Professors of the Delhi University on implementation of recommendations of the 6th Pay Commission. Further, one (Dr.) Ms.Sudershan Pathak, who was the Deputy Director of Physical Education, University of Delhi, and was to retire on 31st August,

2007 on attaining the age of 62 years was allowed to continue and had retired at 65 years.

3. Predicated on the aforesaid assertions and ascribing the legal position, it is submitted that the respondent University had erred in issuing the Office Order dated 26th June, 2009, that the petitioner would retire on 31st July, 2009 as he had attained the age of superannuation of 62 years.
4. The petitioner had earlier filed Writ Petition (Civil) No.6242/2011, impugning the Office Order dated 22nd October, 2009 retiring him, and had sought mandamus to allow him to continue in service till he attained the age of 65 years. The petitioner had also impugned the notification dated 16th October, 2009 amending Ordinance XXVII by inserting a specific clause that the Directors of Physical Education would retire at the age of 62 years. The writ petition was admitted for hearing on 31st July, 2012. The petitioner had thereafter filed CM No.8409/2012 pleading that he would be completing 65 years of age on 31st July, 2012 and the issue was covered by the Division Bench judgment dated 18th May, 2012 passed in Writ Petition (C)No.7939/2011 titled ***Damayanti V. Tambay Vs. Union of India & Ors.*** On the basis of this submission by the petitioner, Writ Petition (C) No.6242/2011 was disposed of vide order dated 7th August, 2012, recording as under:-

“2. We have in our judgment in *Damayanti V. Tambay* (supra) directed the Jawaharlal Nehru University (JNU), respondent in that case to reexamine exclusion of Directors of Physical Education from the benefit of enhancement of superannuation age accorded to teachers and in the light of the discussions contained therein, in as much as we had not found

any justification in the reasons given for denying the benefit of age enhancement to Directors of Physical Education.

3. The respondent University is similarly placed as JNU and the counsel for the respondent University has been unable to point out any difference.

4. We accordingly allow this petition by similarly directing the respondent University. The matter shall be considered and fresh decision shall be taken in terms of our judgment in *Damayanti V. Tambay* within a period of two months from today. Needless to state that if the age is enhanced, the petitioner shall be entitled to all consequential benefits.

5. Though we had awarded costs to the petitioner in *Damayanti V. Tambay* but since the present petition is disposed of merely following that judgment, no costs.”

5. A reading of the aforesaid quotation would indicate that the Division Bench had directed the respondent University to consider and take a fresh decision in terms of the judgment in *Damayanti V. Tambay (supra)* within a period of two months; and if the retirement age applicable to Directors of Physical Education was enhanced, the petitioner would be entitled to all consequential benefits. Thus, the petitioner was to be extended benefit only if the University would agree to enhancement of the age of retirement of Directors of Physical Education.
6. The Writ Petition (C) No.7939/2011 titled *Damayanti V. Tambay Vs. Union of India & Ors.* was heard with W.P. (C) No. 7130/2011 titled *Krishan Gopal Vs. Union of India & Ors.* and were disposed of by a common judgment dated 18th May, 2012. These writ petitions were filed by employees of Jawaharlal Nehru University, who were

working as Deputy Librarians and Directors of Physical Education. They were seeking a declaration that their status should be treated as that of teachers and hence the notification dated 31st December, 2008, by which the retirement age of teachers was enhanced to 65 years would be applicable to the Deputy Librarians and Directors of Physical Education. The impugned notification had excluded library staff as well as staff of physical education. The judgment dated 18th May, 2012 refers to the notification dated 31st December, 2008 of the Ministry of Human Resource Development (Department of Higher Education), Government of India, which had revised the pay scale and other service conditions of teachers in the Central Universities and had enhanced the age of superannuation of teachers to 65 years. The said notification in sub-para (f) of paragraph 8, relating to the age of superannuation, had stipulated as under:

“(f) Age of Superannuation:

- (i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-

24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice- Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(ii) Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(iii) Whereas the enhancement of the 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.”

Sub para (iii) quoted above in categorical terms states that the enhanced retirement age for teachers was confined to those who were engaged in class-room teaching. The enhancement was intended to attract eligible persons to careers in teaching and to

retain teachers in service for longer periods, as there was a shortage of teachers. The notification records that there was no shortage of Librarians and Directors of Physical Education, hence, their age of retirement would continue to be 62 years.

7. Reference was also made to the communication dated 23rd March, 2007 vide which the Central Government had decided to enhance the age of superannuation from 62 to 65 years in 'teaching posts' in Central funded institutions. This communication had not expressly excluded Directors of Physical Education or Librarians. The decision, however, records that another communication dated 19th April, 2007 was issued, wherein it was clearly specified that the enhanced age of superannuation from 62 to 65 would apply to those who hold posts equivalent to teaching positions, and were actually engaged in teaching classes/courses/programmes of study in these institutions.
8. The Division Bench proceeded to examine semantics and the meaning of the term 'teacher' and whether this term would include professionally qualified library staff and Directors of Physical Education. After extensively referring to the case law, it was held by the Division Bench, as under:

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

Much material is placed by Mr.Mukund and Dr.Sarabjeet Sharma, learned counsel who appeared for the two petitioners, on the basis of which it is sought to be impressed upon that the Librarians and DPEs also qualify as teachers and are not different from other teachers. We are

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

"15.It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity (sic. 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."

9. Thus, the conclusive finding recorded by the Division Bench in *Damayanti V. Tambay (supra)* on the basis of the pronouncements on the subject was that there were two classes; (i) Teachers, and (ii) Librarians and/or Directors of Physical Education. So observing, it was elucidated:

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*."

The paragraph extracted above would show that the Division Bench had observed that the position would be different when the legislature by definition, has accorded parity between those imparting educational instructions, i.e. the teachers, and those imparting physical education, i.e. the Directors of Physical Education. Certain observations were made with regard to librarians. The Bench noticed that the term 'teacher' was defined in Section 2(g) of the University of Delhi Act, 1922. Librarians stand equated with teachers under the category of "other persons imparting instructions in the University or in any College or Hall". For the sake of clarity and convenience we would like to reproduce

Section 2(g) and (h) of the said Act which define the terms ‘teacher’ and ‘teachers of the University’ as under:

(g) ‘Teachers’ include Professors, Readers, Lecturers and other persons imparting instructions in the University or in any College or Hall;

(h) ‘Teachers of the University’ means persons appointed or recognised by the University for the purpose of imparting instruction, in the University or in any College;

10. The second aspect examined by the Division Bench in the said case was relating to fixation of age of superannuation. This was held to be the prerogative of the Government. The employer could fix the age of retirement. However, this prerogative was subject to the caveat that all employees falling in the same category and forming a class, should be treated equally and not discriminated against when the age of superannuation was increased, for violation would result in invidious discrimination. On the said aspect, the Division Bench felt and observed that the University authorities had failed and neglected to consider several important aspects. Accordingly, it was directed as under:

“33. To conclude, we are of the opinion that the matter is not appropriately examined by the respondent authorities while excluding the categories of Librarians and DPEs from the benefit of enhancement of superannuation age which is accorded to the teachers. Various important aspects are left out which could not have been ignored and that vitiates the decision making process. It is, thus, imperative that the matter be examined afresh by the respondent authorities in the light of the discussions contained in this decision and an informed and rational decision be taken, as we do not find any

justification in the reasons given by the respondents in denying the benefit of age enhancement to DPEs and Librarians.

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.7939/2011, who is continuing in service by virtue of interim orders, shall be allowed to continue. Fate of the other petitioner in W.P. No.7130/2011 shall depend upon the fresh decision taken.”

11. It is in terms of the aforesaid directions that the Writ Petition (Civil) No.6242/2011 filed by the petitioner was disposed of vide order dated 7th August, 2012. In fact the petitioner had himself pleaded and asked for disposal of the writ in terms of the directions given in the case of *Damayanti V. Tambay (Supra)*.
12. Pursuant to the judgment dated 18th May, 2012 in *Damayanti V. Tambay (Supra)*, an expert Committee was constituted comprising of members of the University Grants Commission, Ministry of Human Resource Development and different Universities to examine the age of superannuation of Librarians and Directors of Physical Education. The said Committee submitted a report dated 29th August, 2013, to the following effect:
 - “No parity can be granted to Librarians / Deputy & Director of Physical Education Personnel with that of Assistant Professors, Associate Professors and Professors.
 - There is no shortage of supply of Library and Physical education staff in Universities system as that of the teachers.

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

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

7. In compliance with the mandamus issued, a seven member committee under Chairmanship of Prof.V.S.Chauhan comprising six members being Prof.Furquan Qamar the 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
Assistant Director of Physical Education		54	22	29

Vacancy position of Librarians in Colleges

	Sanctioned posts	Filled	Vacant	% of vacancy
Govt.	145	140	5	3
Aided	279	266	13	5
Non-aided	22	22	0	0
Total	446	428	18	4

Vacancy position of DPEs in Colleges

	Sanctioned posts	Filled	Vacant	% of vacancy
Govt.	74	72	2	3
Aided	163	157	6	4
Non-aided	10	10	0	0
Total	247	239	8	3

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

“Having extracted the above, the Committee noted that % of vacancies mentioned in the aforesaid 2 charts in the said paper written by aforesaid authors does not lead to any conclusion of shortage of the staff in Library and Physical Education in Universities. The aforesaid chart merely (sic. nearly) gives existing % of Vacancy of different posts in Library and Physical Education Cadre in Universities which may be lying vacant for various reasons such as procedural delay in filling up the vacancies. Further, the Committee finds it difficult to accept that if a post of Library and Physical Education Cadre in Department in Universities is lying vacant, then that will lead to irresponsible conclusion of shortage supply of Library and Physical Education staff in Universities system in the country. In fact, the existing vacancy if any cannot be the Indicator of shortage of supply of manpower and in the present case it cannot be that if a post is lying vacant, then by reason of such existing vacancies only, there is a shortage of qualified Librarians and Physical Education Personnel in the University System in India. The Committee also deem it appropriate to note that so far as the issue of shortage of qualified teachers is concerned i.e. in the backdrop of actually qualified teachers for recruitment and also the consequential impact of teacher-student ratio to be maintained in an expanding Higher Education System. However, the said parameter is not available in case of Librarians in particulars. The Committee is of the view that there is no parity between Library and Physical Educational Personnel on the one hand and Assistant Professor/Associate Professor/Professor on the other hand, claim of enhancement of age of superannuation of Library and Physical and Educational Personnel from 62 to 65 years is not justified. Accordingly, the

Committee recommended that the existing age of retirement of Library and Physical Education Personnel Education should be maintained at 62 years only.:”

14. Thereafter, the Division Bench had observed:-

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

15. The Division Bench further examined the question of vacancies in the posts of Librarians and Directors of Physical Education and had rejected the contention that there was a shortage of suitable persons who found the job attractive. In view of the aforesaid authoritative pronouncement, we are not required to go into the same issues and contentions in the present litigation. The decision is binding precedent on identical legal submissions and issues raised before us.

16. In the aforesaid situation, we have to only pass the order of dismissal recording our concurrence and respectful agreement with the decision dated 18th February, 2015 in ***Krishan Gopal (Supra)*** other cases. The petitioner in these circumstances had sought to raise a “different” contention and issue. The petitioner relies upon the letter dated 2nd August, 1985, which was written to him by the Registrar and reads as under:

“Kindly refer to your application for recognition as a teacher of the University under Statute 18(ii).

In this connection, I write to inform you that your appointment as Director of Physical Education had been processed through the Selection Committee as provided under Statute 19(i) and you are, therefore, to be treated as University appointed teacher. Thus, your case is not required to be processed for recognition as a teacher of college.”

It is accordingly, submitted that the petitioner was equated with and was always considered to be a teacher and cannot, therefore, be discriminated for he was a teacher. Our attention was also drawn to the resolution of the Executive Council dated 8th October, 2007 by which the age of superannuation was enhanced from 62 years to 65 years for persons in a teaching position. The order dated 30th July, 2009 passed in LPA No.347/2009 titled *Jitendra Singh Naruka Vs. University of Delhi* and Others and the order dated 19th August, 2009, disposing of the writ petition (C)No.10375/2009 titled *Jitendra Singh Naruka Vs. University of Delhi and others*, have been referred.

17. The said contention has no merit. The Writ Petition (C) No.10375/2009 was filed by the petitioner, before he was to attain the age of 62 and retire on 31st July, 2009. He had prayed for an interim order that he should be allowed to continue in service and should be retired only at the age of 65 years. Stay was declined by the Single Judge. LPA No.347/2009 was preferred against the order refusing to grant interim relief. The LPA was disposed of by the order dated 30th July, 2009 observing:

“LPA 347/2009 and CM 10373/2009

Issue notice. Mr. Amit Bansal waives service on behalf of respondents.

With the consent of both parties, appeal is taken up for final hearing.

On being asked whether regulations are amended by UGC or not, learned counsel appearing for respondents states that regulations are yet not amended pursuant to Ministry's Circular dated 31st December, 2008. Therefore, appellant's case would be governed by the existing circular under which he is liable to be retired only at the age of 65 years.

In our view, a prima facie case is made out for grant of ad-interim relief. The respondent-University is directed to file its reply to the writ petition being W.P.(C) No. 10375/2009 within three weeks as directed by learned Single Judge. Rejoinder, if any, be also filed within one week thereafter.

Learned Single Judge is requested to dispose of aforesaid writ petition as expeditiously as possible, preferably by the end of 30th September, 2009. In the meanwhile, if regulations are amended by the UGC or the University, it will be open for respondent-University to apply for directions or vacation of interim relief granted hereinabove.

Accordingly, present appeal and application stand disposed of in terms of aforesaid order.”

18. A reading of the aforesaid order would indicate that the petitioner relied upon Ministry circular dated 31st December, 2008 and claimed that he would be entitled to benefit of the said circular and would retire at the age of 65 years. The Division Bench had observed that a *prima facie* case for grant of interim relief had been made out and instead of granting interim relief had directed that the writ petition should be disposed of expeditiously preferably by the end of 30th September, 2009. Pertinent was the observation made by the Division Bench that if, in the meanwhile, the regulations were amended by the UGC or the University, it would be open to the university to apply for directions or vacation of the interim relief granted.
19. The writ petition was disposed of by a short order dated 19th August, 2009, which reads as under:

“3. Instead of filing counter to this petition, learned counsel for respondent has placed on record communication of 11th August, 2009, which is as under:

The stand of the University in this case is that since the Division Bench of the Hon’ble High Court has held that the University cannot give effect to the age of retirement in respect of Physical Education teachers on the basis of MHRD policy circular dated 31.12.2008, it has been directed by the University not to retire the petitioner till necessary amendments are carried out in the University Ordinances or the UGC published its Notification to this effect whichever is earlier.”

4. Without commenting upon the merits of this case and in view of the aforesaid stand taken by the respondent this petition is disposed of as infructuous.”

A Single Judge had recorded the statement of the counsel for the University of Delhi that the University had decided not to retire the petitioner till necessary amendments were carried out in the University Ordinance or the UGC would publish their notification whichever was earlier. The Single Judge did not comment on the merits and in view of the stand taken by the University of Delhi, the writ petition was treated as infructuous.

20. Two events happened thereafter. Firstly, the amended UGC Regulations 2010 were notified on 30th June, 2010. They had stipulated that the age of superannuation in Central Universities and other Universities maintained or funded by the UGC shall be in accordance with the circular dated 31st December, 2008 issued by Government of India, Ministry of Human Resource Development. We have already quoted paragraph (ii) of the said circular. Apropos the Librarians and Directors of physical education were to retire at the age of 62 years. This notification by the UGC would be in accordance with the statement made by the counsel for the University of Delhi as recorded in paragraph 3 of the order dated 19th August, 2009.
21. Secondly, the University of Delhi also amended their Statute, namely, Ordinance XXVII by EC Resolution No.142 dated 6th October, 2009 in the following terms:

“142. Resolved the amendment with regard to the age of retirement in respect of Director of Physical Education in consonance with Government of India, Ministry of Human Resource Development guidelines (Govt. of India, MHRD Circular No.1-32/2006-U.II/U.I.(ii) dated 31.12.2008, ratified by the Executive Council in its meeting held on 16.01.2009 be accepted.

Ordinance XXVII: Age of retirement of staff

Existing	Amended
The age of retirement of the Registrar and Librarian shall be the completion for the age of 62 years.	The age of retirement of the Registrar and Librarian and Director of Physical Education shall be the completion for the age of 62 years.”

The amended Ordinance specifically states that the age of retirement of Director of Physical Education, as is the case with the Registrar and Librarian, shall be 62 years.

22. It is in these circumstances that the University of Delhi had issued the office order dated 22nd October, 2009 intimating that the petitioner had retired as he had attained the age of 62 years.
23. The petitioner now contends that the University of Delhi had amended Ordinance XXVII and consequentially the age of retirement of the Director Physical Education was fixed at 62 years. *Albeit* the petitioner would not be covered by the said Ordinance for in terms of the letter dated 2nd October, 1985 quoted above the petitioner has been recognized as a teacher and he would be, therefore, governed and covered by Ordinance XI and the Resolution of the Executive Council regarding enhancement of age

of superannuation from 62 years to 65 years for teaching positions. We have to only record the said contention and reject the submission. The petitioner cannot be allowed to raise this issue after he had relied upon the decision in the case of ***Damayanti V. Tambay (Supra)*** and Writ Petition (C) No.6242/2011 which was disposed of on the said basis. ***Damayanti V. Tambay Thame (Supra)*** as quoted above makes a clear distinction between teachers and the Directors of Physical Education. The difference between the two posts is also affirmed in the decision dated 18th February, 2015 in ***Krishan Gopal (Supra)***. These decisions hold that though Directors of Physical Education can be equated to teachers for certain purposes and benefits, they would not qualify and cannot be treated as teachers for the purpose of age of superannuation. The orders relied upon by the petitioner passed in LPA No.347/2009 dated 30th July, 2009 and in Writ Petition No.10375/2009 dated 19th August, 2009 were passed at an earlier point of time and this contention and issue was not raised by the petitioner when the writ petition (C)No.6242/2011 filed by him was disposed of vide decision dated 7th August, 2012.

24. Be that as it may, we would hold that the amended Ordinance XXVII would be clearly applicable to the petitioner. The said Ordinance specifically deals with the age of superannuation / retirement of Registrars, Librarians and Directors of Physical Education. The said amendment being specific to the three categories would override the general references equating the Directors of Physical Education with teachers or for that matter the letter dated 2nd August, 1985. Referring to the teaching positions

stipulated in Ordinance XI, and by applying the principle of harmonious construction and the precept that a special provision would override a general clause, we are of the opinion that, Ordinance XXVII would be applicable and Directors of Physical Education cannot place reliance on Ordinance XI. The petitioner cannot be singled out, and given the benefit by being treated as a teacher.

25. During the course of hearing, counsel for the petitioner has relied and referred to the Annexure to Ordinance XI, which is a form of agreement for service of University teachers. A copy of any such agreement executed by the petitioner has not been placed on record and therefore, the contention of the petitioner that he was appointed as a teacher has not been substantiated. We have already noted that Directors of Physical Education may have been equated with teachers for certain purposes and benefits but that would not mean that they would be equated with and treated as teachers when it comes to their age of superannuation. The claim of parity for the purpose of superannuation has been specifically rejected in ***Krishan Gopal (Supra)***.
26. In the additional affidavit filed by the petitioner, another contention raised is that some Directors of Physical Education were allowed to continue in service till the age of 65. The respondent-University of Delhi, in their reply, has stated that only Ms.Sudershan Pathak was allowed to continue till she turned 65 and had retired on 31st October, 2010. The explanation given by the respondent University is that she was initially appointed as a Lecturer of Physical

Education in Daulat Ram College and consequently appointed as the Assistant Director of Physical Education in the University of Delhi. By the office order dated 30th October, 2007 she was re-designated as a Lecturer of Physical Education (selection grade). It is possible that this benefit was wrongly extended to the said Ms.Sudershan Pathak. However, this would not mean that the same wrong is repeated and this error should be repeated in the case of the petitioner. This is not what is mandated by Article 14 of the Constitution of India.

27. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. In the facts of the case there would be no order as to costs.

SANJIV KHANNA
(JUDGE)

SUNITA GUPTA
(JUDGE)

NOVEMBER 9th, 2016

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