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

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Date of Order : 31st May, 2019

+ LPA 411/2019

DR MEERA SOOD

..... Appellant

Through: Mr.Sunil J.Mathew and Ms.Sabah
Iqbal Siddiqui, Advocates

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr.Mohinder J.S.Rupal, Adv. for
University of Delhi/R-1.
Mr.Santosh Kumar and Mr.Bibin
Kurian, Advocates for R-2 & R-3.
Mr.Apoorv Kurup and Ms.Nidhi
Mittal, Advocates for UGC/R-4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in this appeal is to the order dated 22.05.2019 passed by the Learned Single Judge of this Court. On an application being C.M.24792/2019 seeking interim relief, the following order was passed:

“On oral request of the counsel for the petitioner, University Grants Commission is impleaded as respondent no.4. Let amended memo of parties be filed within three days.
Issue notice.

Learned counsel accepts notice on behalf of respondent no.1 as well as on behalf of respondent nos. 2 & 3 and seek time to file the counter affidavit.

Let needful be done within a period of six weeks.

Rejoinder thereto, if any, be filed within four weeks thereafter.

On taking steps within one week, let notice be served upon respondent no.4. On receipt of the notice, the said respondent is directed to file counter affidavit within six weeks.

Rejoinder thereto, if any, be filed within four weeks thereafter.

Renotify on 18.09.2019.

It is made clear that the retirement age in question shall be subject to the outcome of the present writ petition.”

2. Learned counsel for the appellant submits that the appellant joined respondent no.2 (college) in the year 1983 on the post of Director, Physical Education. She was thereafter designated as a Reader by way of promotion on 24/25.06.1998 and subsequently deputed as Associate Professor. It is also the case of the appellant that she has been taking classes like any other ‘teacher’. Copy of the time table has been filed at pages 194 to 203 of the paper book. Additionally, counsel for the appellant submits that a query had been raised by the office bearers of National Democratic Teacher’s Front of University of Delhi, enquiring from the Chairman, UGC as to what would be the age in respect of the appellant for superannuation. But there has been no response so far, from the UGC.
3. Learned Counsel for the appellant has placed strong reliance on the Resolution of the Governing Body to point out that the Governing Body in its meeting held on 10.12.2018 has resolved that the age of superannuation of the appellant will be 65 years, since she has been designated as Associate Professor, in physical education. It is submitted that only because the Member Secretary, who is the Principal of the College, has dissented on the issue, that the Resolution is not being given effect to. It is argued that the dissent of the Member

Secretary cannot override the unanimous opinion of the majority members of the Governing Body. It is further submitted on behalf of the appellant that there is no doubt that the appellant was designated as an Associate Professor and therefore the Governing Body had rightly recommended her superannuation age as 65 years. It is submitted that the Registrar of the University of Delhi vide letter dated 14.09.2011 addressed to the Principal of the College had clearly intimated that the appellant was to proceed for deputation and join the post as Associate Professor with the University. Further, the Executive Council of the University in its meeting held on 28.09.2013 extended the deputation of the appellant as an Associate Professor for a period of one year.

4. Learned counsel has further argued that the appellant is being discriminated and singled out inasmuch as the Directors in the field of physical education, in several other colleges have been and are being made to retire at the age of 65 years. Attention of the Court is drawn to a letter at page 244 of the paper book written by the UGC to the Registrar, University of Delhi, wherein, in reply to query no.5 it has been mentioned that the age of superannuation of a Assistant Professor/Associate Professor in physical education is 65 years. Learned counsel has also referred to page 261 of the paper book, which is a letter dated 06.07.2011 from the University of Delhi to the Principal, Zakir Hussain PG Evening College, wherein it is clearly stated that the age of retirement of Mr.Syed Shaheen, who has been designated as Associate Professor in Physical Education shall be 65 years at par with other teachers working in the said college. Similar letters with respect to other colleges such as Shaheed Bhagat Singh

Evening College, Daulat Ram College, Miranda House College, Mata Sundari College, Gargi College, Satyawati College etc have been placed on record to point out that in all these colleges, the Associate Professors in Physical Education are retiring at the age of 65 years. The argument is that there is a clear violation of Article 14 of the Constitution of India as the appellant cannot be singled out since the college in question is also a college affiliated with the University of Delhi.

5. Per contra, learned counsel for the respondents have been vehemently opposed this appeal. It is contended that the age of superannuation for Director, Physical Education continues to be 62 years and the appellant is wrong in claiming that the age of superannuation is 65 years. It is submitted that there is no error in the impugned order passed by the learned Single Judge. The writ petition is still pending and no stay of retirement can be granted till the writ petition is finally adjudicated. Learned counsel for the respondents also point out that the issue is no more res integra and relied upon various judgments to argue that the present appeal deserves to be dismissed. Reliance is placed on a judgment of the Full Bench of this Court in the case of ***Hari Krishan Sharma vs. Municipal Corporation of Delhi*** reported in 1988 (14) DRJ 134, wherein it was held that no stay of the order of retirement can be granted because the relief can be measured in terms of money. Further, reliance is placed on the judgment of a Division Bench of this Court in the case of ***Jitendra Singh Naruka vs. University of Delhi and Ors.*** decided on 09.11.2016 in W.P. (C) 6025/2014 as well as on the judgment in the case of ***Krishan Gopal vs. Union of India and Ors.***

reported in 2012 (130) DRJ170. The submission is that the two Division Benches of this Court have already taken a view that the age of superannuation of Director, Physical Education is 62 years. Reliance in the case of ***Jitendra Singh Naruka*** (supra) was placed on Ordinance XXVII of the Delhi University.

6. We have heard learned counsel for the parties.
7. From the material placed on record by the appellant, we find that neither the University nor the UGC has taken a uniform stand in the past, with regard to the superannuation age of Director, Physical Education though Mr.Rupal submits that now a uniform stand is being taken and the age of superannuation is 62 years. Learned counsel for the UGC submits that UGC has always been taking a consistent stand in the matter and the Director of Physical Education has always been treated as a non-teaching staff and therefore the appellant is not entitled to a superannuation age of 65 years.
8. From the Resolution of the Governing Body, referred to above, we find that the appellant has been designated as an Associate Professor in Physical Education. The Resolution also indicates that the members of the Governing Body had unanimously resolved that her age of superannuation would be 65 years and only the Member Secretary has dissented on the issue. We are unable to understand as to how despite the Resolution of the Governing Body, in favour of the petitioner, the college is taking a different stand. The documents placed on record, apart from the Resolution, also clearly reveal that the appellant had been designated as an Associate Professor and had been sent on deputation by the Delhi University in that capacity. This apart, the

appellant was also promoted as a Reader on 24/25.06.1998 and the promotion order is also on record. The time table placed on record also indicates that in fact, the appellant was taking classes like any other teacher. All these documents in our view prima facie support the contention of the appellant.

9. We also find merit in the arguments of the appellant that in several colleges affiliated to the Delhi University, the Associate Professors in the Department of Physical Education have been and are retiring at the age of 65 years. There is no plausible explanation at present with the respondents as to why the appellant has been singled out.
10. In so far as the judgments relied upon by the respondents are concerned, we may note that in the case of ***Hari Krishan Sharma*** (supra), there is no decision on the merits of the proposition and all that is held is that monetary compensation can be awarded in case the petitioner finally succeeds. In the case of ***Krishan Gopal*** (supra), the Coordinate Bench has in fact noted that the issue as to whether DPEs and librarians fall in the category of teacher has not been appropriately examined by the respondents and therefore, a direction was given to reconsider the issue and take a fresh decision. In the case of ***Jitendra Singh Naruka*** (supra), we find that on the question of violation of Article 14, a pointed query was raised by the Court and the respondents had specifically stated that only one Ms.Sudarshan Pathak has been allowed to continue till the age of 65 years. Based on this response, the Court had negatived the plea of discrimination under Article 14 of the Constitution.
11. In the present case, we find that the appellant has placed letters of several colleges to show that the Associate Professors in the department

of Physical Education are retiring at 65 years and it is not as if there is one stray case, where this has happened. Considering the fact that 65 years as the age of superannuation, is being followed uniformly in several colleges, which are affiliated to the Delhi University, we see no reason as to why at this stage we should deprive the appellant of the said benefit.

12. From the material placed on record by the appellant, we are of the view that the appellant has been performing teaching activities, she has been promoted as a Reader and also designated as an Associate Professor and thus she has been able to make out a prima facie case for continuing to serve beyond the age of 62 years. We therefore direct the respondents to permit the appellant to continue serving on the same terms and conditions till the decision of the writ petition by the learned Single Judge.
13. The appellant is present in Court. She has given an undertaking that in case she does not succeed in the writ petition, then the salary/allowances paid to her in the interregnum period would be returned by her to the University or else will be deducted by the University from her retiral benefits. The undertaking of the appellant is taken on record and accepted. The appellant will be bound by the undertaking and she has been explained the consequences of the breach of the undertaking.
14. The respondents will file the counter affidavits within four weeks from today to the writ petition and rejoinders thereto, be filed within two weeks thereafter.
15. We, however, make it clear that while deciding the writ petition, the

learned Single Judge will be uninfluenced by any observation made by us in this order, which is being made purely as an interim arrangement and only on a prima facie opinion formed by this Court.

16. With the aforesaid directions, the appeal stands disposed of.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 31, 2019

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