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

Reserved on: 19.02.2019

Pronounced on: 26.03.2019

+ W.P.(C) 8597/2009 & CM APPLN. 5681/2009

SWARN BHANOT

..... Petitioner

Through Dr.Aurobindo Ghose, Adv. with
Mr.Prem Bhushan Dewan &
Ms.Gurjeet Kaur, Adv.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through Mr.Arun Bhardwaj, Adv. for UOI.
Mr.Yashraj Singh Deora, Adv. with
Mr.Shyam Agarwal, Adv. for R-1.
Mr.Kirtiman Singh, CGSC with
Mr.Waize Ali Noor & Mr.Parth
Semwal, Adv. for UGC.
Ms.Beenashaw N. Soni, Adv. with
Mr.Aakash Yadav, Adv. for R-2.

+ W.P.(C) 12712/2009 & CM APPLN. 13404/2009 & 21945/2010

R C BHATIA

..... Petitioner

Through Dr.Aurobindo Ghose, Adv. with
Mr.Prem Bhushan Dewan &
Ms.Gurjeet Kaur, Adv.

versus

SHYAM LAL COLLEGE(EVENING)

THROUGH ITS PRINCIPAL AND ORS

..... Respondents

Through Mr.Yashraj Singh Deora, Adv. with
Mr.Shyam Agarwal, Adv. for R-1.

+ W.P.(C) 3679/2017

KANCHAN SAINI

..... Petitioner

Through Mr.P.P. Malhotra, Sr. Adv. with
Mr.Prem Bhushan Dewan, Dr.
Aurobindo Ghose, Ms.Gurjeet Kaur,
Adv. with petitioner in person.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through Mr.Ankur Chhibber, Adv. with
Mr.Bhanu Gupta, Adv. for DoE.
Mr.Pradeep Kr. Jha, G.P. for R-4.
Mr.Ravinder Agarwal, Adv. for R-3.
Mr.Santosh Kumar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide these petitions, the petitioners have challenged their respective termination orders by way of alleged retirement at the age of 60 years being arbitrary, illegal, unconstitutional and contrary to the terms and conditions of the employment. Further seek directions thereby declaring that the petitioners are entitled to continue in the employment of the respondents college till they attain the age of retirement of 65 years. Consequently, restrained the respondents and particularly respondent college not to give effect to their impugned contemplated action of terminating the services of

the petitioners.

2. In all the petitions, two following questions arises:

- (i) Whether the petitioners can be regarded as 'Teacher'?
- (ii) What is the retirement age of the petitioners?

3. Accordingly, the events and facts of the writ petition in W.P.(C) 3679/2017 shall be discussed *inter alia* and the facts and issues of other petitions shall not be discussed for the reasons that the issue in all the petitions are same and this court has decided to dispose of these petitions by this common judgment.

4. The brief facts of the case are that the petitioner was initially appointed as an Instructor. For Instructor in Shorthand and Stenography, the required qualification is mentioned as under:

- i. "Degree of a recognized university.
- ii. Certificate of higher or lower grade in English shorthand and Typewriting of an examining body other than UPSC.
- iii. Teaching experience in (a) English shorthand through common words (b) vertical horizontal or higher

frequency words, pattern of teaching, typewriting and

(c) General English.

iv. Aptitude for teaching English Shorthand and
Typewriting.

v. Minimum of 10 years service as English
Stenographer.”

5. Admittedly, the petitioner was called for interview and selected. Appointment letter dated 29.08.1997 says that the petitioner was appointed as an Instructor to teach English Stenography in the College and appointment was subject to the approval of the University of Delhi. The petitioner was recognized as a teacher by the University.

6. Paragraph 5 of the appointment letter is as under:-

“5. You will be expected to do teaching and research work as may be assigned to you from time to time”.

7. Accordingly, an agreement was signed between the petitioner and the respondent college on 03.09.1997 which is annexed as Annexure D (Colly). As per the agreement, the petitioner was appointed as a teacher as member of the staff. Paragraphs 1 to 11 of this Agreement talk of the petitioner as a ‘Teacher’. The petitioner was included in the Teaching Staff as a Lecturer as per office order dated 10.09.1998. The Petitioner was shown in the

Teaching Staff of the College in the Staff Council Meeting dated 23.02.2017. The college prospectus annexed to the petition shows members of the faculty of college which includes the petitioner and the Department of OMSP, the petitioner is shown as a Teacher incharge which is at page 64 of the petition. In the Admission Committee for B.A. (Programme), the petitioner is shown as a Member of the Admission Committee for B.A. (Programme) which is evident from pages 66 and 67 of the petition.

8. Mr. P. P. Malhotra, learned senior counsel appearing on behalf of the petitioner submits that the petitioner was always shown and treated as a Teacher and he was placed in the higher grade of 8000-13500, which was the grade payable to teachers. The University of Delhi vide its letter dated 16.05.1994 mentioned that the post of instructor was a teaching post and it invited attention to clause 7(4)(A) of the Ordinance XVIII and Ordinance XX of the Ordinance. Again the University of Delhi in its letter dated 24.01.1995 written to the Principal of Satyavati College mentioned that the post of Instructor in English Stenography was a teaching post. The petitioner also attended the Area Committee Meeting held on 09.12.2003 for the course of office management and 2nd year 100 marks paper was to be set-up by the petitioner.

9. Learned senior counsel further submitted that the petitioner all along was treated as a teacher and the University of Delhi in its letter dated 04.05.2003 to the University Grants Commission stated as under:-

“Instructor in English Stenography has been imparting instructions at the undergraduate level in some of the colleges of the University of Delhi like other Teachers. They are vacation staffs. They are appointed as a paper setter and as examiner in evaluation of answer sheets as per University Act, they are Teachers”.

10. University referred to the appointment letter which stated as under:

“You will be expected to do teaching work as may be assigned to you from time to time”.

11. It is further submitted that they have been working as teachers for long period and should get benefit available to the teachers including the age of retirement. The instructors in English Stenography were functioning as teacher for all purposes and have been treated as teachers since the creation of these posts.

12. Mr. Malhotra further submitted that even the Delhi University Act, paragraph 2(g) defines ‘teacher’ as under:-

“2(g) Teacher includes professor, readers, lecturer and other persons imparting instructions in the University or in any college or hall”.

13. He further submitted that there is no manner of doubt that the petitioner was a teacher for all intents and purposes and was performing the duties of teacher. The petitioner was holding class room teaching and was taking attendance, which is evident from pages 157 to 175 and 176 to 181 of the petition. There was a proper time table which is evident from pages 140 to 153.

14. Mr. Malhotra further submitted that earlier the retirement age of teachers was 60 years. Their retirement age was enhanced to 62 years. One of the instructors of Jamia Milia approached this Court for retirement age to be treated as retirement age of teacher of Central University as 62 years and this Court held that the retirement age of *S. Dildar Hussain* was to be 62 years and not 60 years in W.P.(C) 2820/2003 decided on 18.08.2006.

15. The petitioner in the above mentioned petition had joined as an Instructor in Leather Craft. However, the age of superannuation was increased from 60 years to 62 years vide letter dated 27.07.1998 and on the said basis, he claimed that he was also a teacher and his retirement age would be 62 years, whereas the stand of UGC was that he was appointed on

a non-teaching post. However, this Court considered the law and held that he was entitled to be retired at the age of 62 years at par with the teachers.

16. It is further submitted that the age of retirement of teachers has been increased from 62 years to 65 years vide letter dated 23.03.2007. The said letter states in its para 2(i) that the age of superannuation of all persons who were holding teaching positions on regular employment against sanctioned posts as on 15.03.2007 in any of the Centrally Funded Higher and Technical Education under the Ministry shall be increased from 62 to 65 years.

17. Vide letter dated 19.04.2007, the position was clarified in paragraph 1 (iii) as provided in the Ministry's letter even dated 23.03.2007 that those teachers who were occupying teaching positions on regular employment against sanctioned post in Centrally Funded Higher and Technical Educational Institution on 15.03.2007 would henceforth retire at the age of 65 years.

18. However, the said letter in paragraph 1(ii) has clarified that the letter dated 23.03.2007 will not apply to posts that will be considered equivalent to teaching position. The case of the petitioner is that the petitioner was in a

teaching post. The petitioner was teacher and paragraph 1(ii) of the letter dated 19.04.2007 is not applicable to the petitioner.

19. He further submitted that in paragraph 1(i) of letter dated 19.04.2007 which is at pages 270-274 states that the letter dated 23.03.2007 was applicable only to teachers in Centrally Funded Institutions who are actually engaged in teaching in Class Room courses and programs of study in such institutions. Therefore, looking from the evidence on record, it is clear that the petitioner was recruited as a teacher. Moreover, the petitioner was a teacher as per the Delhi University Act. The petitioner was engaged in a classroom teaching, therefore, is entitled for the increase in age from 62 to 65 years and, therefore, could not be retired at the age of 60 years. It is further submitted that even as per the judgment of *S. Dildar Hussain (supra)*, the petitioner could retire only at the age of 62 years at that time, which has now been increased to 65 years.

20. He further submitted that the age of retirement was enhanced by respondent no. 4 (HRD) vide its letter dated 23.03.2007. Therefore, respondent no. 3/UGC has no role and cannot fix the age of retirement. Even otherwise, the respondent no.3/UGC has admitted in its letter No. F.1-198/2006(RIA) of July, 2007 that it has not laid down any norms regarding

retirement age of instructor. Therefore, reliance on what the UGC now claims is irrelevant.

21. Mr.Malhotra further submitted that the respondent/University has not given parawise reply to this effect and has completely taken a summersault from its stand reflected in its letter written to the UGC dated 04/05-03-2003 wherein it is clearly stated that the petitioner was a teacher and was entitled to the benefits of a teacher including the age of retirement of a teacher. Now, the respondent/University has now relied upon a letter dated 19.04.2010 written by the Ministry of Human Resources Development which is annexed along with its reply as R-1/5 (Pages 520-542). These are the regulations issued in the year 2010 whereas the petitioner was appointed in the year 1997. These regulations deal with minimum qualification for the appointment of teachers and other academic staff in Universities and Colleges. Paragraph 2 of the said regulation states that the minimum qualification for appointment and other service conditions of university and other college teachers, librarian and director of physical education and sports as a measure of maintenance of standard of higher education shall be as provided in the Annexures to the Regulations. Even in these regulations, the Instructors are treated as teachers because it refers to teachers and librarians

and Director of Physical Education and Sports. As far as pay fixation is concerned, the pay of teachers and librarian and Director of Physical Education and Sports is the same. In paragraph 3.2 again, it refers to Assistant Professors, Associate Professors, Professors, Principals, Assistant Director of Physical Education and Sports, Assistant Librarian, Dy. Librarian, Librarian, etc. but the Instructors, who are teachers are not included therein. Appendix I dated 31.12.2008 clearly mentions that there will be no change in the present designation of Library and Physical Education personnel at various levels and the pay of teachers and equivalent positions shall be fixed according to the designation of two pay bands, etc.

22. Learned senior counsel further submitted that it separately deals with the pay scales and career advancement scheme for librarian, assistant librarian and college librarian. In the same manner, it deals with physical education personnel. Thus, these categories of librarian, sports and physical education personnel who are not doing any classroom teaching have been separated and are different class. Their age of retirement is different. As far as age of superannuation of petitioner is concerned, it has been clearly specified in paragraph (f) (internal page 418) that the age of teachers was enhanced to 65 years and will apply to those who are involved in classroom

teaching and the enhancement of age will not be applicable to librarian and director of physical education, etc. Thus the present petition deserves to be allowed.

23. Learned counsel appearing on behalf of respondent no.1 submits that respondent no. 1 is abiding by the guidelines received from the respondent No.3 /UGC from time to time. The respondent no.1 had earlier taken up the matter regarding retirement age of Instructors in Stenography with the UGC and the UGC vide its letter dated 24.10.2002 specifically stated and informed that the age of superannuation for the Instructors in affiliated colleges of Delhi University is 60 years. The petitioner has not challenged any of the communication, rules / service conditions, guidelines / norms of the UGC, etc. regarding the age of superannuation. The aforesaid communication of the UGC dated 24.10.2002 was reported and recorded in the Executive Council vide Resolution no. 114(13) dated 13.11.2002.

24. It is further submitted that the Department of Higher Education, Ministry of Human Resources Development, Government of India vide its letter dated 23.03.2007 enhanced the age of superannuation of teachers from 62 years to 65 years. The very fact that at the time of the aforesaid decision, the age of superannuation of instructors was 60 years as is evident from the

UGC's letter dated 24.10.2002, is itself evidence of the fact that the Instructors have never been considered as teachers.

25. Learned counsel for the respondent no.1 further submitted that the Department of Higher Education, Ministry of Human Resources Development, Government of India received queries from various universities on the issue as to “whether *enhancement age of superannuation from 62 years to 65 years applied to those who hold posts equivalent to teaching positions, but are not actually engaged in teaching?* The aforesaid query was answered by the said Ministry vide its letter dated 19.04.2007 and the same is reproduced as below:-

i) *“The enhancement of the age of superannuation from 62 years to 65 and the provisions for re-employment as mentioned in this Ministry's letter dated 23.3.2007 referred to above, have been made in order to overcome the shortage of teachers and is applicable only to the ‘Teachers’ in centrally funded institutions in higher and technical education under the Ministry of Human Resource Development, who are actually engaged in teaching classes/courses/programmes of study in such institutions.*

ii) *The provisions of the Ministry's letter of even number dated 23.03.2007 mentioned above shall **not** be applicable to any other categories of employees in such institutions, notwithstanding the fact that the posts they*

hold may be considered as 'equivalent' to teaching positions."

26. Learned counsel submits that it is evident from the above that the enhancement of age of superannuation from 62 years to 65 years was not to be applicable to any other categories of employees. Moreover, the respondent no.3/UGC has framed the regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education, 2010. The instructors of Stenography do not come under the purview of the aforesaid 2010 regulations and thus the post of Stenography Instructor is a non-teaching post. It is further submitted that the enhancement of the age of superannuation to 65 years is applicable only to the holders of Group A posts i.e. Assistant Professor, Associate Professor and Professor. Moreover, the clause 8(f)(iii) of the Notification dated 31.12.2008 of the Department of Higher Education, Ministry of Human Resources Development states as under:-

"ii) 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.”

27. Thus, it is evident that enhancement of age of superannuation was to meet the shortage of teachers and without prejudice to the other averments made in this affidavit. Since there is no shortage of instructors, increase in the age of superannuation was not applicable to the Instructors in Stenography. The instructors were always liable to superannuate at the age of 60 years. Therefore, there was no question of enhancement of age of superannuation from 62 to 65 years.

28. It is further submitted that the qualification of Assistant Professor and Instructor in Stenography is totally different, therefore, the petitioners being instructor in Stenography cannot be treated at par with the teachers for any of the benefit including the superannuation age upto 65 years.

29. Learned counsel for respondent no.2 submitted that the petitioner had entered into an agreement of service with respondent no.2 on 03.09.1997, as an instructor and the said agreement clearly stated that she has been appointed as an instructor. Thus, all applicable rules of University of Delhi to her cadre of instructor in OMSP has been complied with including the date of retirement at the age of 60 years. Furthermore, respondent no.2 /

colleges affiliated to the University of Delhi, only appoints instructors in Office Management and Secretarial Practice (English Stenography and Typewriting) with specific qualifications in a particular pay scale. Till date the petitioner has never applied for the post of lecturer in the college. Therefore, as per the rules and regulations of the colleges affiliated to University of Delhi, the superannuation age of Instructor is 60 years.

30. Learned counsel has fairly conceded with an office order dated 10.09.1998 which was issued in respect of 4 teachers including the petitioner in which all of them were treated as Lecturer but in respect of the petitioner, it was a typographical error as till date her designation is that of an Instructor only which she herself clarifies by writing all the correspondence to the College in the capacity i.e. Instructor in OMSP.

31. Learned counsel appearing on behalf of respondent no.3 /UGC submitted that the UGC Act, 1956 was enacted to make provisions for the coordination and determination of standards in universities. The commission is also authorized to perform such other functions as may be prescribed or may be deemed necessary for advancing the cause of higher education or as may be incidental or conducive to the discharge of its functions. Section 26 of the Act which gives power to the commission to make regulations

consistent with the Act. In exercise of its powers, the University Grants Commission has framed the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Measures for the Maintenance of Standards in Higher Education, 2010 *inter alia* prescribing the service conditions of the University and College Teachers.

32. The Regulation 1.2 deals with the applicability and provides as under:-

“1.2. They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under clause (f) of Section 2 by the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act.

Further Regulation 2 provides as under:-

2. The Minimum Qualifications for appointment and other service conditions of University and College teachers, Librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards on higher education, shall be as provided in the Annexure to these Regulations.”

6. That further Clause 1.1.1 of the annexure to the Regulation deals with coverage provides as under:-

“1.1.1 For teachers in the Faculties of Agriculture and Veterinary Science, the norms/Regulations of Indian

Council of Agricultural Research; for Faculty of Medicine, Dentistry, Nursing and AYUSH, the norms/Regulations of Ministry of Health and Family Welfare, Government of India; for Faculty of Education, the norms/Regulations formulated in consultations with National Council of Teacher Education; for Engineering and Technology, Pharmacy and Management/Business Administration, the norms/Regulations formulated in consultations with All India Council for Technical Education; and the qualifications in the field of rehabilitation and special education at Degree, PG Diploma and Masters level, the norms/Regulations Council of India, shall apply.”

7. That it is respectfully submitted that Clause 2.1.0 of the Annexure to the Regulation Provides as under:-

2.1.0 The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and /or funded by the University accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in Appendix-I.”

33. Learned counsel submitted that so far as Appendix-I is concerned, clause 1 (i) of the said Appendix specifically provides that there shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professor. However, there shall be no change in the present designations in respect of Library and Physical Education Personnel at various levels. Clause 8 of the Appendix-I deals with other terms and conditions and sub-clause(f) of Clause 8 thereof dealing with age of superannuation provides as under:-

“8(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 High Education letter No. F.No. 119/2206-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 amendment 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, teacher 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 on 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.”

34. Thus it is evident that 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 62 years shall not be available to the categories of Librarians and Directors of Physical Education. Thus, it is apparent that the enhancement of age of superannuation to 65 years is with the particular objective i.e. to meet the shortage of teachers and the said enhancement of the age of superannuation is confined to a specific class of employee i.e. “*teachers involved in class room teaching*”. Therefore, the benefit of enhancement of age of superannuation to 65 years cannot be extended to any other unless they qualify and fall within the classification/expression “*teachers involved in class room teaching*.”

35. Learned counsel further submitted that Stenography instructors do not come under the purview of UGC (Minimum qualification for appointment of teachers and other academic staff in universities and colleges and other measures for maintenance of standards in higher education) Regulations, 2010 as the post of '*Stenography Instructor*' is a non-teaching post as well as a non-academic post. Thus the instructors cannot be said to have ever been considered by UGC at par with a "*teacher*" much less at par with "*teachers involved in class room teaching*". So far as minimum qualification, nature of duty, selection committee, process of recruitment of a teacher and instructor are concerned, they are also different. A teacher has to be involved in the classroom teaching whereas an instructor is hardly involved in class room teaching. Thus, the nature of duty and degree of responsibility of a teacher and instructor is entirely different and therefore cannot be any parity and equation in relation to a instructor vis-a-vis a Teacher in the university or college.

36. To strengthen his argument, learned counsel has relied upon the case of *University of Mysore vs. C.D. Govinda Rao: AIR 1965 SC 491* which has been referred in *Tariq Islam vs. Aligarh Muslim University & Ors: (2001) 8 SCC 546* that "*normally it is wise and safe for the Courts to leave*

the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are.”

37. A similar view has been expressed thereafter in several decisions by the Hon'ble Supreme Court, thus the regulations have been framed by the UGC in exercise of its powers conferred under section 27 of the UGC Act, 1956 in due discharge of its duties to maintain standards of higher education.

38. It is further submitted that the age of superannuation of the academic staff of the centrally funded universities and colleges affiliated thereto was increased to 65 years by way of statutory regulations to meet the situation arising out of shortage of teachers in universities and other teaching institutions. This benefit was extended to only those teachers who were 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. Further, there is no shortage in the categories of instructors, therefore, the increase in the age of superannuation to 65 years shall not be available to the categories of instructors.

39. Respondent no.4/UOI has adopted the counter affidavit filed by respondent no.3, therefore, they are adopting the stand taken by respondent no.3.

40. I have heard learned counsel for the parties in length and perused the material on record.

41. In case of ***Union of India vs. TVLN Malli Karjuna Rao: (2015) 3 SCC 653***, the Hon'ble Supreme Court has held that merely because the duties and functions of employees are of similar nature would not lead to the employees claiming parity for other benefits. Similarly, in ***Steel Authority of India Ltd. & Ors. Vs. Dibyendu Bhattacharya: (2011) 11 SCC 122***, the Supreme Court has held as under:-

21. In Mewa Ram Kanojia v. AIIMS [(1989) 2 SCC 235 : 1989 SCC (L&S) 329 : (1989) 10 ATC 51], this Court dealt with an issue of pay parity between Speech Therapists and Audiologists and held that merely because Speech Therapists who perform similar duties and functions in other institutions, are paid higher pay scales is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the hearing therapists in other institutions. The person claiming parity must sufficiently produce material before the Court to adjudicate upon such a complicated issue of factual determination. More so, if the employer is not the same, the principle of equal pay for equal work would not be

applicable.

22. The court must consider the factors like the source and mode of recruitment/ appointment, the 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 wholesome/wholesale identity between the holders of two posts.** The burden of establishing right and parity in employment is only on the person claiming such right. (Vide U.P. State Sugar Corpn. Ltd. v. Sant Raj Singh [(2006) 9 SCC 82 : 2006 SCC (L&S) 1610 : AIR 2006 SC 2296] , Union of India v. Mahajabeen Akhtar [(2008) 1 SCC 368 : (2008) 1 SCC (L&S) 183 : AIR 2008 SC 435] , Union of India v. Dineshan K.K. [(2008) 1 SCC 586 : (2008) 1 SCC (L&S) 248 : AIR 2008 SC 1026], Union of India v. Hiranmoy Sen [(2008) 1 SCC 630 : (2008) 1 SCC (L&S) 271], Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943], U.P. SEB v. Aziz Ahmad [(2009) 2 SCC 606 : (2009) 1 SCC (L&S) 418] and State of M.P. v. Ramesh Chandra Bajpai [(2009) 13 SCC 635 : (2010) 1 SCC (L&S) 287].) ” **(emphasis supplied)**

42. Accordingly, unless all criterion are fulfilled the employee cannot claim parity with another class. In the present petitions, the petitioners are seeking parity with “teachers”, whereas, in law there is no such parity as is evident from the minimum qualifications prescribed for the entry level to teachers post, namely lecturer/ assistant professor as opposed to instructor. Moreover, the pay scale as well as educational qualification is completely different and distinct between the two posts and there can be no equality as

is claimed.

43. On perusal of the HRD's Circulars dated 27.07.1998 (Page 85-87) and 06.11.1998 read with 19.06.1999 (pages 108 to 109) make it evident that for the benefit of the age of superannuation to be extended to 62 years, the following criteria had to be satisfied to claim parity with "teachers":-

*"(i) Whether the level and method of recruitment **including the qualifications prescribed are comparable to those of teachers or not** (emphasis supplied).*

(ii) Whether the function, nature of duty and responsibilities are comparable or not.

(iii) Whether similar pay scales which are available to the teachers have been given with the due approval of the Govt. or not.

*(iv) Whether the other terms and conditions of service, including age of superannuation, as applicable to the teachers **have been given with the approval of the Govt. or not.***

The decision to extend the enhanced age of superannuation to various categories of University and college employees should be taken by the University concerned in consultation with the UGC with approval of the Commission."

44. Similarly, to obtain the benefit of the HRD Circular dated 31.12.2008 (Pages 180 to 195) whereby the age of superannuation for "teachers" was extended from 62 years to 65 years, thus, a person had to fall within the designation of "teacher". The said Circular under Para 1(i) specifically

provides that there would be only three designations in respect of teachers in Universities and Colleges namely, Assistant Professor, Associate Professor and Professor. Admittedly, the petitioners do not fall within any three of the designations.

45. Para 8(f) (page 191) of the said Circular dated 31.12.2008 specifically provides that the age of superannuation is being increased to meet the situation of shortage of teachers in University and other teaching institution which has created vacant positions therein. As is evident the said benefit has not been extended to other categories [Para 8(f) (ii) page 191] r/w [HRD Clarification dated 19.4.2007 page 177/para (ii)]. Therefore, it is evident that the benefit under the said circular was only for the persons appointed in the posts of Assistant Professors, Associate Professors and Professors and no one else.

46. It is settled law that where a particular term has been understood in a particular manner, no separate meaning can be assigned to the same term for the purposes of interpretation when used in other places in the same rules. In the present petitions, the circular/letter dated 31.12.2008 itself defines who would fall within the definition of teachers and thereafter provides the age of superannuation of teachers. Therefore, the petitioner being an

‘*Instructor*’ and not an Assistant Professor, Associate Professor or Professor cannot seek to avail of the benefit of the said circular.

47. In addition to above, with regard to seeking extension of the age of superannuation is no longer *res integra* and is covered by the decision of this Hon’ble Court in ***Krishnan Gopal Vs. UOI: Writ Petition (Civil) No.7375 of 2013***, dated 18.02.2015 whereby this Court has rejected the contention of persons claiming parity with teachers for extension of the age of superannuation to 65 years.

48. It is pertinent to mention here that the judgment in ***S. Dildar Haider (supra)*** delivered on 18.08.2006 is firstly not applicable in the present case as this Court had no opportunity to consider the letters of Ministry of HRD dated 23.03.2007 (page 35) and 19.04.2007 (page 177) which came subsequently, by which the age of superannuation of teachers has been increased to 65 years, but was rather dealing with the extension of the age of superannuation to 62 years only. Secondly, this Court had no opportunity to consider the circular dated 31.12.2008 issued by the Ministry whereby benefit of age not granted to other categories except Assistant Professor, Associate Professor and Professor. Therefore, the said judgment is of no avail to the petitioner for seeking relief of extension of age of

superannuation to 65 years.

49. In case of *Dibyendu Bhattacharya (supra)*, it has been held that the scope of judicial review in cases where someone claims parity is limited and **that the equation of posts or not was purely within the executive domain**. In the present petitions, the Ministry of HRD vide letter dated 23.03.2007 in paras 2-3 has clarified that the extension in the age of superannuation was being granted only to meet the shortage in teachers. The said Ministry vide letter dated 19.04.2007 has further clarified that the said benefit would not be applicable to any other posts even if considered equivalent to '*teaching post*' and the same has been reiterated in the Circular dated 31.12.2008. In the present petitions, the petitioners have not made out any case that there is shortage of Instructors and, therefore, there is parity with teachers.

50. The respondents have also considered the issue and come to the conclusion that the benefit of extension of age of superannuation should not be made available to Instructors and that there is no shortage of Instructors. In addition to above, the petitioners have not challenged the letter dated 24.10.2002 by which UGC has specifically instructed the University that Instructors would retire at the age of 60 years. Similarly, the petitioners

have not challenged the decision of UGC dated 27.5.2003 reiterating its decision dated 24.10.2002 or the letters and direction dated 11.5.2007 or 7.4.2008 by which it was specifically stated that Instructors cannot be treated at par with Lecturers. In the absence of challenge, the said letters as well as HRD clarification Circulars dated 19.6.1999, 19.4.2007 and scheme of 31.12.2008 are binding and have to be implemented. Moreover, the UGC Regulations, 1991 are statutory Rules as held by the Hon'ble Supreme Court in *Union of India vs. S.K. Saigal: (2007) 14 SCC 556* that in the absence of challenge to the Rules, the same were binding on the parties and the Court cannot brush them aside. Similarly, in *Union of India vs. EID Parry (India): (2000) 2 SCC 223* para 4, the Hon'ble Supreme Court has held that the Court should not decide a question which has not been raised.

51. In view of above discussion and the settled question of law, I find no merit in these petitions.

52. Accordingly, the petitions are dismissed with no order as to costs.

CM APPL. No.5681/2009 in W.P.(C) 8597/2009

CM APPLN. 13404/2009 & 21945/2010 in W.P.(C) 8597/2009

In view of the order passed in the present writ petitions, these

applications have been rendered infructuous and are accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

MARCH 26, 2019/ab

