



2024:DHC:465



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

% **Reserved on : 30th October, 2023**
Pronounced on: 23rd January, 2024

+ **W.P.(C) 13288/2023, CM APPL. 52443/2023 & 55680/2023**

DR SHEELA KUMARI. S Petitioner

Through: **Mr. KC Mittal, Mr. Yugansh Mittal and Mr. Vaibhav Yadav, Advocates.**

versus

UNIVERSITY OF DELHI & ANR. Respondents

Through: **Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Santosh Kumar, Mr. Daksh Arora, Ms. Akshita Singh and Mr. Kushagra Aman, Advocates for R-2. Mr. Mohinder JS Rupal, Mr. Hardik Rupal and Ms. Sachpeet Kaur, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed under Article 226 of Constitution of India, on behalf of the petitioner seeking the following reliefs:

“ A. Issue a writ in the nature of certiorari and/or any other appropriate writ/order/direction quashing:

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- a. (1) The executive committee resolution no 20 dated 9.6.2023; and*
b. (2) The Order dated 24.8.2023 bearing ref. No. Gc/133-c/2023/25 being illegal and contrary to article 14, 19 & 21 of the Constitution of India; and
c. Direct the Respondents not to retire the petitioner at the age of 62 and allow the petitioner to discharge her duties and functions till the petitioner attains the age of 65;
A. Pass any other writ/order/direction as this Hon'ble court may deem appropriate."

FACTUAL MATRIX

2. The petitioner was appointed at the post of 'Director Physical Education' ("DPE" hereinafter) in the Gargi College i.e., respondent no.2 ("Respondent College" hereinafter) on 31st August, 1987 and accordingly, an Agreement dated 25th August, 1989 was executed between the petitioner and Respondent college, whereby the petitioner was appointed as a member of the staff of the College w.e.f. 25th August, 1987. Thereafter, the petitioner was re-designated as a 'Lecturer' in pursuance to the letter dated 11th January, 1991 issued by the respondent no.1 i.e., University of Delhi ("Respondent University" hereinafter). By virtue of the said letter, it was stated by the Respondent University that the Directors of Physical Education in all colleges were being re-designated as 'Lecturers'.

3. Subsequently, vide letter dated 27th January, 1994 the petitioner was informed that her case would be put up for consideration on 1st February, 1994 before a Screening/Evaluation Committee for her placement to the post of Lecturer (Senior Scale) in the slab of Rs. 3000 –



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5000, and was further directed to remain present in the college in case the committee desired to interact with her. Consequent to the above, vide letter dated 6th June, 1994, the petitioner was promoted as a Lecturer (Senior Scale) with effect from (“w.e.f.” hereinafter) 16th June, 1993 in accordance with Ordinance XVIII 7 (4-C) (a).

4. The petitioner then received a grant from the University Grants Commission (“UGC” hereinafter) vide letter dated 22nd January, 1996 in pursuance to her application seeking support for a research project titled ‘Analysis of attitudes of administrators, lecturers, students and parents towards national sports organization programmes in women colleges of the University of Delhi’.

5. Thereafter, the salary of the petitioner as a ‘Lecturer Senior Scale’ was revised and fixed in the scale of Rs. 10000-325-15200 vide letter dated 10th December, 1998. The petitioner was further considered for promotion to the post of a ‘Reader’ by a Selection Committee constituted in consonance with Ordinance XVIII 7 (4-C) (b) (ii). Further, vide letter dated 22nd January, 2001 the respondent no.1 promoted the petitioner to the post of a ‘Reader’ w.e.f. 27th July, 1998 and her salary as a ‘Reader’ was fixed in the scale of Rs. 12000-18300 w.e.f. 27th July, 1998. At the time of promotion to the post of ‘Reader’, on account of her obtaining a PhD, the respondent no.1 intimated the petitioner regarding the approval of two advance increments vide letter dated 14th May, 2001.

6. The Department of Higher Education, Ministry of Human Resource Development, Government of India (“DHE” hereinafter) vide letter dated 18th April, 2007 enhanced the age of superannuation of teachers from 62 years to 65 years. Further, the UGC vide its notification

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dated 31st December, 2008 specified the age of superannuation applicable to DPE's and stated the reasoning to its effect under Clause 8(f)(iii) of the said notification. The relevant portion of the above stated notification is reproduced hereinbelow:

“(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.”

7. Thereafter, the Executive Committee (“EC” hereinafter) of Respondent University vide Resolution No. 142 dated 6th October, 2009, amended the Ordinance XXVII of the Respondent University's Statute to put it in line with the aforementioned notification dated 31st December, 2008, wherein, the age of superannuation was fixed at 62 years for the post of DPE. The relevant portion of the Resolution is reproduced hereinbelow for clarity:

“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.

<i>Ordinance XXVII : Age of retirement of staff (Original)</i>	<i>Ordinance XXVII : Age of retirement of staff (Amended)</i>
<i>The age of retirement of the Registrar and Librarian shall be the</i>	<i>The age of retirement of the Registrar and Librarian and Director of</i>



<i>completion of the age of 62 Years.</i>	<i>Physical Education shall be the completion of the age of 62 years.”</i>
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8. The petitioner was then informed by the Respondent University vide letter dated 8th March, 2010, that she had been re-designated as an ‘Associate Professor’ and her pay has been revised w.e.f. 1st January, 2006.

9. Another Notification dated 30th June, 2010 was issued by the UGC reiterating the age of superannuation to be fixed in consonance with the DHE notification dated 31st December, 2008. The relevant portion is reproduced hereinafter for reference:

“2.0.0 PAY SCALES, PAY FIXATION FORMULA AND AGE OF SUPERANNUATION, etc.

*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 Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in **Appendix-I.**”*

10. On 9th January, 2023 the Executive Committee passed the Resolution No. 20, wherein, it stated that as per the decision of the Division Bench of this Court in ‘L.P.A No. 142/2022 titled as Meera Sood v. University of Delhi & Ors.’ and ‘L.P.A No. 491/2019 title as Sudhir Kumar Taneja v. University of Delhi & Ors.’ the age of superannuation of DPE’s is 62 years. The relevant portion of the said EC resolution is reproduced hereinbelow for reference:



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“E.C. Resolution No.20 (20-20)

Dated: 09.06.2023

20/- The following decision/ action taken by the Vice-Chancellor in exercise of his powers/ delegated powers vested upon him other than emergency powers were reported, recorded and confirmed:

*20-20/- Accord of approval on 30.05.2023 to the Judgement of the Hon’ble court pronounced on 22.05.2023 passed in LPA142/2022 titled Meera Sood Vs University of Delhi & Ors. And LPA491/2019 titled Sudhir Kumar Taneja vs University of Delhi & Ors. regarding the retirement age of Director in Physical Education. (Copy of the Judgment is placed at **Appendix-88**)*

1. That the superannuation age of Director Physical Education is 62 Years.

2. That the recovery shall not be made on account of salary given to Director Physical Education teachers for their services rendered after 62 years, in the college. However, retirement benefits shall be calculated for the period upto superannuation age of 62 years only.”

11. Pursuant to passing of the above said resolution, the Respondent College issued an order dated 24th August, 2023 to the petitioner, thereby, intimating her that she shall be superannuating from the services of the Respondent College on attaining the age of 62 years on 31st October, 2023, and thus she was asked to obtain all the necessary clearances. The relevant portion of the said order is reproduced hereinbelow:

“Ref. No. GC/133-C/2023/25

Dated 24.08.2023

Dear Dr. Sheela Kumari S.

I write to inform you that as per service records, you will be superannuating from the service of Gargi College on 31st October 2023 on attaining the age of 62 years. You are requested to take clearance from administration, accounts, library & respective department, so that your dues can be cleared well in time.

Yours sincerely,

Prof. Sangeeta Bhatia

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Principal (Offg.)”

12. Being aggrieved by the Resolution No. 20 dated 9th June, 2023 and order dated 24th August, 2023 (“impugned orders” hereinafter), the petitioner has preferred the instant petition seeking quashing of the said impugned orders.

SUBMISSIONS

(on behalf of petitioner)

13. The learned counsel appearing on behalf of the petitioner submitted that the respondents have infringed upon the petitioner’s fundamental and legal rights by passing the impugned orders and hence the same are liable to be quashed.

14. It is submitted that the respondents have acted in contravention to the law by passing the impugned EC Resolution No. 20 dated 9th June, 2023 and order dated 24th August, 2023 thereby, superannuating the petitioner at the age of 62 years despite her holding the post of an Associate Professor and therefore, the said decision is arbitrary, illegal and contrary to Articles 14, 19 and 21 of the Constitution of India.

15. It is submitted that the petitioner was initially appointed to the post of Director Physical Education vide letter dated 31st August, 1987, wherein she was entrusted to work in the research domain and in teaching capacity as and when assigned by the university. In pursuance of the same, the Respondent College and the petitioner signed an agreement 25th August, 1989, wherein the petitioner has been categorically mentioned as a teacher.

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16. It is submitted that in the year 1991, the petitioner was designated as a Lecturer vide letter dated 11th January, 1991 issued by the Respondent University and this letter not only applies to the petitioner but was issued to designate all the other Directors of Physical Education in all Colleges falling under the Respondent University.

17. It is submitted that as per the terms of Ordinance VIII-7(4-C)(b)(ii), the petitioner was promoted to the post of a Reader vide letter dated 22nd January, 2001 by a duly constituted Selection Committee and accordingly, she received two advance increments as she had obtained a PhD at the time of the said promotion.

18. It is submitted that the Respondent University re-designated the petitioner as an Associate Professor vide its letter dated 8th March, 2010, wherein, her pay scale was revised retrospectively w.e.f. 1st January, 2006, and was further enhanced retrospectively vide letter dated 11th July, 2018.

19. It is submitted that when the petitioner requested an identity certificate from the Respondent College for issuance of passport, the Respondent College issued a certificate dated 2nd December, 2010, wherein her designation was stated as an Associate Professor.

20. It is submitted that the respondents have concealed the actual position held by the petitioner as the impugned order dated 24th August, 2023 itself refers the petitioner as an Associate Professor and not a Director Physical Education and pertinently, every other communication issued to the petitioner by the respondents addressed her as an Associate Professor and not a Director of Physical Education.



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21. It is further submitted that the petitioner being an Associate Professor was nominated as a 'Teachers Representative' in the governing body of the college from 1st August, 2022, for a year in the category of more than 10 years of service which is apparent from the minutes of the meeting with respect to EC meeting no. 1262 dated 18th August, 2022. Therefore, the petitioner's selection to the above stated body clearly infers the position she held for 10 years, i.e. the Associate Professor.

22. It is submitted that as per the Ordinance XVIII, promotion to a Lecturer in Senior Scale shall be carried out by a Screening/Evaluation Committee whereas promotion to a Reader shall be done by a duly constituted Selection Committee.

23. It is further submitted that the petitioner was not given any promotion as a matter of routine, rather her records including the interview, contributions of teaching, research, educational reforms, sports activities, and other forms of academic work done by her in the institution was considered and evaluated duly.

24. It is submitted that the Respondent University in its EC Resolution dated 10th April, 1974, and 29th May, 1995 noted that the post of 'Director in Physical Education' was recognized and re-designated as 'Lecturer' being recognized as Teachers under Section 2(g) of the University of Delhi Act, 1922 ("the Act" hereinafter) in college.

25. It is further submitted that even after the above said decision was duly noted by the Respondent University, the same was never made applicable to the post of Director Physical Education and the Librarians employed in the University.



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26. It is submitted that in the meeting of the Academic Council (“AC” hereinafter) dated 2nd November, 1981, it was resolved to re-designate the post of Director of Physical Education as Lecturers. Further, pursuant to the above stated AC resolution, the EC in its meeting dated 10th November, 1990, approved the above said AC resolution which is herein below for reference:

“127. Resolved that the following executive council resolution no 516 dated 26.12.81 adopted in the light of the academic council resolution no 178 dated 2.11.81 regarding directors of physical education be implemented and accordingly the directors of physical education in colleges be hereafter known as lecturers”.

27. It is further submitted that the petitioner was appointed as a Lecturer pursuant to the decision of the Respondent University and no more continued at the post of Director of Physical Education to which he was initially appointed in the year 1987.

28. It is submitted that the powers and authority of the EC and AC are provided under Section 6 of the Act, wherein, the councils have powers to appoint Readers, Lecturers, etc. based on the recommendation of the Selection Committee constituted for the said purpose.

29. It is submitted that pursuant to the letter dated 11th January, 1991, the above said resolutions of EC and AC were referred and it was intimated that the Directors Physical Education in Colleges are being re-designated as Lecturers.

30. It is submitted that a list of 15 Associate Professors in other colleges who are identically placed and are treated at par with the petitioner in terms of the aforementioned decisions of the Respondent



University have retired at the age of 65 years. Therefore, the impugned action of the respondents of superannuating the petitioner at the age of 62 years despite being an Associate Professor is arbitrary, discriminatory, unfair and violative of Article 14 of the Constitution of India.

31. It is submitted that having been appointed and continued for many years in accordance with the law and in compliance with the university's ordinance and statute, the petitioner's claim is supported by the doctrine of legitimate expectations, and therefore, the petitioner holding the post of an Associate Professor ought to retire at the age of 65 years.

32. It is submitted that a former Associate Professor namely Dr. P.P. Ranghanathan of PGDAV College was appointed as a Lecturer (Physical Education) in the year 1991 and retired at the age of 65 years, and in view of the same the petitioner is also entitled to be awarded parity as she is identically placed to the person mentioned above.

33. It is submitted that the petitioner has been taking classes and teaching two courses comprising of both theory and practical components and the same can be proved with the help of the course timetable placed on the record.

34. It is submitted that having been promoted from the post of DPE, and continuing at the post and nomenclature of Associate professor for many years, the respondents are, at this stage, estopped from claiming that the petitioner is not an Associate Professor and that she continues at the post of Director Physical Education.

35. It is submitted that the judgement passed by the Division Bench of this Court in *Jitendra Singh Naruka v. University of Delhi*, 2016 SCC OnLine Del 5893 is distinct from the facts of the instant petition as the



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petitioner therein being a DPE in the University was never re-designated as a Lecturer and performed functions in the form of administrative/ministerial/organizational only in the University and not a college which is under the administrative control of the Respondent University.

36. It is further submitted that there exists a distinction between a DPE College and DPE University as the former imparts instructions to the students enrolled in a particular college whereas, the latter performs merely administrative functions solely within the domain of the University. Thus, a DPE College is covered within the definition as provided under Section 2(g) of the Act and the EC rightly noted in its Minutes of Meeting dated 29th May, 1995 wherein, the DPE University has been excluded from the ambit of Section 2(g) of the Act.

37. It is submitted that the UGC Regulation dated 30th June, 2010 also draw a distinction between a DPE in a College and a DPE in the University wherein the qualifications, pay-scales, eligibility, and nature of job are distinct to one another. It is further submitted that Regulation 6.7.0 provides for promotion of a DPE College whereas no such provision exists for a DPE University. Thus, the two posts are distinct and cannot be used interchangeably.

38. It is submitted that vide its letter dated 8th April, 2016, the UGC provided for 65 years as the age of superannuation of Assistant Professor in Physical Education and the petitioner is covered under the said guidelines as she is fulfilling the conditions enshrined in the said letter.

39. It is submitted that the impugned orders are malicious, biased and an abuse of power which has caused grave injuries to the petitioner's



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fundamental rights inasmuch as the petitioner who admittedly holds the post of an Associate Professor is sought to be demoted three steps to the post of Director Physical Education, a post to which the petitioner was initially appointed and has been promoted subsequently after serving for more than two decades.

40. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

(on behalf of respondents)

41. *Per Contra*, the learned senior counsel appearing on behalf of respondents vehemently opposed the instant petition submitting to the effect that the impugned orders have been passed in accordance with law and the same do not violate any of the petitioner's fundamental or legal rights. Further, the present petition being devoid of any merits is liable to be dismissed.

42. It is submitted that the impugned Order dated 24th August, 2023 bearing ref. No. Gc/133-c/2023/25 and Executive Committee Resolution no. 20 dated 9th June, 2023 is well reasoned and is in consonance with the Ordinance, Statute and the law as settled by this Court in numerous petitions dealing with the superannuation of a Director Physical Education.

43. It is submitted that the instant petition is bad for non-joinder of necessary party as the petitioner has not impleaded University Grants Commission which is a necessary and proper party for complete and effective adjudication of the instant writ petition.

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44. It is submitted that the University of Delhi has been constituted under the Delhi University Act, 1922, by an Act of the Parliament therefore it is governed by the Act, Statute and Ordinances. Further, the UGC from time to time formulates service conditions of employees of the university and the affiliated colleges.

45. It is submitted that the issue raised by the petitioner in the instant petition with respect to the age of superannuation for Director Physical Education has been settled in the judgment dated 22nd September, 2022 passed by the Hon'ble Supreme Court in the case of ***Jitender Singh Naruka vs. University of Delhi & Ors., SLP No. 7279/2017***. Hence, the said issue has attained finality.

46. It is further submitted that the instant case is identical to the facts and issues already dealt with by the Division Bench of this Court, in ***Sudhir Kumar Taneja v. University of Delhi, 2023 SCC Online Del 2982***, and thus, the present petition is liable to be dismissed in light of the same.

47. It is submitted that the relief as prayed by the petitioner cannot be granted as the post of Director Physical Education and the Associate Professor fall into two separate cadres thus, the purported promotion of the petitioner from the post of DPE to Associate Professor is not in consonance with the University Statute, Ordinances and UGC guidelines.

48. It is submitted that the DHE vide its letter dated 19th April, 2007 clearly stated that enhancement of age of superannuation from 62 to 65 years was not applicable to other categories of employees, except the teachers who were actually engaged in teaching positions.



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49. It is submitted that Clause 8(f)(iii) of the UGC notification dated 31st December, 2008, issued by the DHE states that enhancement in age of superannuation was to meet the shortage of teachers and since no shortage with respect to DPE exists, the increase in age of superannuation cannot be made applicable to the post of DPE. Therefore, the above stated enhancement does not extend to the category of the petitioner who belongs to a different cadre altogether.

50. It is submitted that the UGC notified its Regulations of 2010 on 30th June, 2010, wherein the age of superannuation of DPE and Librarians was fixed at 62 years in Central Universities funded and maintained by the UGC. Further the above said regulations were adopted by the EC of the University of Delhi hence, would squarely apply to the instant petitioner.

51. It is submitted that a notification dated 30th June, 2010, was issued by the UGC, wherein, it was expressly stated that the age of superannuation shall be fixed in consonance with the notification dated 31st December, 2008, issued by the DHE.

52. It is submitted that as per the UGC the age of superannuation is 62 years for DPE as their post is that of 'academic non-vocation' and the petitioner is confusing the nomenclature of the post with the teaching post. As the Respondent College does not have a Bachelor's of Physical Education as a subject and thus, the question of appointment of the petitioner to the post of Associate Professor does not arise.

53. It is submitted that the UGC has time and again clarified that the age of superannuation of Director Physical Education in Physical Education is 62 years and therefore, DPE cannot be treated as Teachers



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in the college. Similarly, the UGC in its 2018 guidelines stated that an Associate Professor must devote at least a minimum of 14 hours of teaching whereas, the petitioner has never devoted such hours of teaching in her career as the predominant duties assigned to her consist of organising sports activities.

54. It is submitted that in the amended UGC regulation of 2010 and 2018, nowhere the nomenclature of the post of DPE to that of a Lecturer has been used interchangeably. Further, no provision to promote the DPEs to the post of an Associate Professors were inserted. The petitioner has always been a DPE, who due to some exigencies was assigned and tasked to perform various administrative duties and responsibilities. Thus, the petitioner cannot claim to be holding a teaching position.

55. It is submitted that the petitioner claims to be taking classes in some electives such as 'Gym Operations and Health & Fitness Elective Course', etc., and thus, she is a teacher within the definition as provided under the Act. It is submitted that the said contention of the petitioner is baseless as merely because the petitioner has been officiated in some teaching capacity, the same would not tantamount to her being engaged in an actual teaching position. Hence, it would not convert her appointment into a teaching post when the Respondent College does not have a Course in Bachelor's in Physical Education.

56. It is submitted that as highlighted by the petitioner that other similarly placed Associate Professors in other Colleges affiliated with the Respondent University have been granted enhancement in the age of superannuation from 62 to 65 years, whereas the same alleged benefit cannot be granted to the petitioner as the same mistake cannot be



repeated when the law in this regards is well settled by this Court thus, parity as sought by the petitioner cannot be extended.

57. It is submitted that the contention raised by the petitioner with regard to addressing her as an Associate Professor in the official communication, will have no bearing or create any legal right unless it is derived from any Statute, Ordinance or Regulation.

58. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the instant petition, being devoid of merit, may be dismissed.

ANALYSIS AND FINDINGS

59. Heard the learned counsel for the parties at length and perused the records.

60. It is the case of the petitioner that she was initially appointed by the Respondent College at the post of DPE in the year 1987 and subsequently an agreement of service to its effect was executed between the Respondent College and the petitioner on 25th August, 1989. Further in pursuance of the letter dated 11th January, 1991, the petitioner was re-designated as 'Lecturer' and was later on granted the 'Lecturer Senior Scale' dated 6th June, 1994. Thereafter, the petitioner was designated as a 'Reader' by way of promotion on 22nd January, 2001, and subsequently re-designated as an 'Associate Professor' on 8th March, 2010.

61. It is has been argued by the petitioner that she is a 'Teacher' under the definition of the Act, as she has been engaged in teaching electives and has been taking classes like any other teacher. The petitioner has assailed the impugned orders submitting to the effect that to superannuate the petitioner on attaining the age of 62 years with effect



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from 31st October, 2023 is against the law since the petitioner has been holding the post of Associate Professor. It has been contended that the impugned orders are discriminatory, illegal, arbitrary and violative of the fundamental rights of the petitioner. Lastly, the petitioner seeks parity with the similarly placed Associate Professors who have not been superannuated at the age of 62 years and have been allowed to continue until the age of 65 years.

62. In rival submissions, it has been contended by the respondents that the instant petition is bad for non-joinder as the UGC, which is a necessary party has not been impleaded by the petitioner. It has been further contended that the post of a DPE and an Associate Professor fall under two separate classes as the latter are teachers and just because some benefits in the form of nomenclature and pay scale are extended to the DPE's, it cannot mean to classify them under the definition of a 'Teacher'. The respondents have relied upon the notifications issued by the DHE which have been implemented by the UGC, wherein, the age of superannuation of DPE has been fixed at 62 years and a clear distinction is drawn between Associate Professor/Assistant Professor/Professors on one side and Librarians and DPE's on the other. Further, the age of superannuation of DPE's which is 62 years is no more *res-integra* as has been observed by the Hon'ble Supreme Court and this Court, and hence the instant petition is liable to be dismissed.

63. At this juncture, this Court finds it necessary to decide the instant petition by adjudicating upon *whether the impugned orders passed by the respondents, by virtue of which the petitioner has been superannuated at the age of 62 years, is liable to be quashed.*



64. Before delving into the merits of the instant case, this Court finds it appropriate to highlight the settled law in the context of issuance of a writ of certiorari under the extraordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India.

65. The Hon'ble Supreme Court in its recent judgment in ***Central Council for Research in Ayurvedic Sciences v. Bikartan Das, 2023 SCC OnLine SC 996***, observed two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly, when it comes to issuance of a writ of certiorari. The relevant portion of the said judgment is reproduced hereinbelow:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.



52. *The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.*

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65. *Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It*



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should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.”

66. Upon perusal of the above stated decision, the following can be summed with respect to the position as to what must be observed by a High Court while exercising an issuance of writ in the form of certiorari and the same can be fairly narrated via two cardinal principles of law. *Firstly*, the High Court does not exercise powers of an appellate authority and it does not review or reweigh the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put, certiorari is issued for correcting errors of jurisdiction exercised by the inferior Courts, for Courts violating principles of natural justice and for Courts acting illegally. Further, the Court issuing such a writ shall act in supervision and not in appeal.

67. Now advertent to the facts of the instant petition.

68. The petitioner was promoted to various posts after the initial appointment as DPE in pursuance of the Merit Promotion Scheme, 1987, (“MPS” hereinafter). It can be noted from the letters issued to the petitioner, that the said promotions were not through a properly constituted Departmental Promotion Committee (“DPC” hereinafter) instead the same were through the Screening-cum-Evaluation Committee constituted for the purpose of considering the petitioner’s promotion under the MPS.



69. The Division Bench of this Court in ***Sudhir Kumar Taneja v. University of Delhi, 2023 SCC OnLine Del 2982***, highlighted the above stated point of law and settled the law regarding which scheme and for what purpose were the DPEs promoted. The relevant paragraphs of the said judgment is reproduced herein below:

“34. Having regard to the aforesaid, one thing is clear, that the promotions under the MPS was only in respect of financial upgradation and certain other benefits and could not have been considered as substantive promotions granted by a regularly constituted DPC. As revealed from the records, there was no dearth of DPE's in the Delhi University and as such to avoid stagnation in such post, MPS was introduced whereby the incumbents were provided financial upgradation. It is not the case of the appellants that they have been promoted to the next higher post by a regular DPC after consideration of their past regular service in a particular grade. In other words, their substantive post remained the same all throughout till now.

35. It is also clear from the MPS and the various correspondences on record that the “promotions” under the MPS were primarily financial upgradations with certain other benefits and the appellants were unable to show even a single O.M., Notification or Circular granting them regular promotion to the next higher post despite a precise query by the Bench. All that the appellants have been addressing and referring to, are the letters issued to them under the MPS.”

70. The above stated judgement of ***Sudhir Kumar Jain (Supra)*** is identical to the facts in the instant dispute. The petitioners in the said case were also appointed as DPEs and subsequently were granted promotions via the MPS and hence, a clear comparison can be drawn with the instant petitioner as she too was promoted under the MPS.

71. Thus, from the above stated reasoning it can be summed up that the promotion awarded to the DPEs in Delhi University was in



consonance with the MPS which intended to grant financial upgradation and avoid stagnation as there was no dearth of DPEs at that time in the University. The Division Bench of this Court also highlighted that the promotions were not carried out by a duly constituted DPC which concludes that the substantive post remained the same all throughout.

72. Another aspect that has strongly been contended by the petitioner in the instant case is that the post of the DPE was re-designated as Lecturer and to substantiate the same reliance has been placed upon letter dated 11th January, 1991, pursuant to which the same was effectuated. Further, it has also been contended that due to re-designation to the post of Lecturer, promotion to the post of a Reader and further re-designation to the post of an Associate Professor makes it evident that the petitioner shall be considered a 'Teacher' under the Act, and thus, the applicable age of superannuation should be 65 years.

73. The Division Bench of this Court in the judgment dated 18th May, 2012, passed in the case titled as ***Damayanti Tambay v. Union of India & Ors., W.P.(C) 7939/2011***, dealt with a similar issue, i.e., whether the DPEs are 'teacher' within the meaning of Section 2(g) of the Delhi University Act, 1922. The relevant paragraphs of the judgement are reproduced hereinafter:

"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. 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."

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."

74. The Division Bench of this Court in ***Jitendra Singh Naruka (Supra)***, wherein the observations of the expert committee constituted were reproduced, observed that there exists no parity between Library and Physical Educational personnel on the one hand and Assistant Professor/Associate Professor/Professor on the other, therefore, the claim of enhancement of age of superannuation of Library and Physical and Educational personnel from 62 to 65 years is not justified. The relevant paragraphs of the judgement are reproduced hereinbelow:

"14. 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."*



15. 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 v. Union of India*. 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



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	Sanctioned posts	Filled	Vacant	% of vacancy
<i>Librarian</i>	38	19	19	50
<i>Deputy Librarian</i>	45	25	17	38
<i>Assistant Librarian</i>	187	130	57	30
<i>Director of Physical Education</i>	21	10	11	52
<i>Dy. Director of Physical Education</i>	11	10	1	9
<i>Assistant Director of Physical Education</i>		54	22	29

Vacancy positions of Librarians in Colleges

	Sanctioned posts	Filled	vacant	% of vacancy
<i>Govt</i>	145	140	5	3
<i>Aided</i>	279	266	13	5
<i>Non-aided</i>	22	22	0	0
<i>Total</i>	446	428	18	4

Vacancy position of DPEs in Colleges

	Sanctioned posts	Filled	vacant	% of vacancy
<i>Govt.</i>	74	72	2	3



Aided	163	157	6	4
Non-aided	10	10	0	0
Total	247	239	8	3

16. 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.”



75. Further, the Division Bench of this Court in ***Krishan Gopal vs. Union of India, 2015 SCC OnLine Del 7385***, observed that extension of certain benefits such as pay scales and career advancement would not amount to DPEs to fall under the definition of a ‘Teacher’ as the two are a separate class altogether. The relevant paragraph of the judgement is reproduced hereinbelow:

“5. The Division Bench did not agree with the stand taken by the librarians and DPEs that in law they were required to be treated as teachers. The Division Bench highlighted that if for some benefits, such as pay scales, career advancement schemes etc. they were equated with teachers would not mean that they would become teachers. The Division Bench noted that merely because in the past benefit given to one class was extended to the other would not make the other a part of the former. The Division Bench held that teachers formed a class separate from that of librarians and DPEs. The Division Bench recognized that it was the prerogative of the executive to determine the age of retirement, but lodged a caveat. The caveat being that when the age of superannuation of a class of employees was increased, it has to be made applicable to all employees falling in the same category, as otherwise it would result in invidious discrimination. It was held that if a reason existed for two classes, given benefit to only one would be a case of invidious discrimination.”

76. This Court also deems it necessary to deal with another important aspect which is the notification dated 31st December, 2008 issued by the DHE, wherein, the age of superannuation for the post of teachers and equivalent cadres was enhanced from 62 years to 65 years. The notification under para 8(f)(iii) noted that since there exists no shortage of Librarians and DPEs, the age of superannuation of both these categories shall remain 62 years.



77. The Division Bench of this Court in ***Kanchan Saini v. University of Delhi***, 2019 SCC OnLine Del 11984, observed that the DHE had already dealt with the aspects of ‘revision in pay’ and ‘enhancement in age of superannuation’ separately and it consciously granted only revision of pay to the DPEs. The relevant portion of the said judgement is reproduced hereinbelow:

“16. ... The further communication issued by the Government dated 31.12.2008 is in tune with the earlier two communications taken note of hereinabove. Even this communication clarifies that the age of superannuation was not raised in respect of Librarians and Directors of Physical Education, thereby excluding those who may be holding posts considered as equivalent to teaching positions, but not undertaking class-room teaching in respect of the subject of higher learning, in the centrally funded institutions for higher learning and technical education. The clause relating to “applicability of the scheme” contained in the communication dated 31.12.2008 shows that the Government consciously granted revision of pay even to Librarians and Directors of Physical Education, as granted to teachers engaged in classroom teaching in respect of subjects of higher learning and technical education, even though the age of superannuation of Librarians and Directors of Physical Education was not raised from 62 years to 65 years. Thus, the aspect of age enhancement for superannuation, and pay revision were treated separately.”

78. A Coordinate Bench of this Court in judgment dated 10th November, 2021, passed in ***Dr. Meera Sood vs. University of Delhi & Ors.***, W.P.(C) 5652/2019, elucidated on the aspect discussed herein above and stated that there exists no stipulation either in the Statutes or in the Ordinances which contemplates that a DPE can be re-designated as a Lecturer. A plane reading of the Ordinances clearly reveal that the



appointment of Teachers and DPEs are governed by separate Ordinances, without any provision of interchangeability. The relevant portion is reproduced hereinbelow:

“39. It is a conceded case of the petitioner that she was appointed as DPE in respondent No.2 / College on a permanent basis in the year 1983 and an agreement of service dated August 13, 1983, was executed between the respondent No.2 / College and the petitioner. The Resolution of the EC which has been forwarded to the College by the University vide its letter dated January 11, 1991, reads as under: -

“127. Resolved that the following Executive Council Resolution No.516 dated 26-12-81 adopted in the light of the Academic Council Resolution No.178 dated 2-11-81 regarding Directors of Physical Education be implemented and accordingly the Directors of Physical Education in Colleges be hereafter known as Lecturers.”

40. It appears that the subsequent Resolution of the EC dated November 10, 1990 (at page 98 of the writ petition) has not been sent to the College by the University. The same reads as under: -

“Ref. EC. Resolution No. 546 dated 26-12-81

xxx

xxx

xxx

The Council further resolved that the change of designation of Directors of Physical Education to that of Lecturers in Physical Education be processed according to the provisions contained in the Statutes and Ordinances of the University.”

41. The aforesaid Resolution clearly states that the change of designation of DPE to that of Lecturer in Physical Education has to be processed in terms of the Provisions contained in Statute and Ordinances of the respondent No.1 / University.

42. But Ordinance XII of the Ordinances of the respondent No.1 / University refers to the appointment of ‘Teachers’ in College. Clause 1A thereof reads as under: -

“1-A. Every whole-time teacher shall be engaged by a College as a member of its staff on salaries in the scales prescribed by the University for the various categories of its teachers.”



43. Similarly, Clause 2A and 2B thereof reads as under: -

“2-A. Promotion of College Appointed teacher (including Directors of Physical Education) under the Merit Promotion Scheme of 1987 as accepted by the Executive Council, shall be made in accordance with the eligibility conditions and in the manner prescribed in this scheme in this behalf.

2-B. Promotion of College Appointed Lecturers as Lecturers in Senior Scale / Reader's Grade (Selection Grade / Readers / Professors) shall be made under the Merit Promotion Schemes as accepted by the Executive Council, in accordance with the eligibility conditions under the relevant scheme.”

44. Similarly, Ordinance XVIII 4(5) relates to the appointment of the Librarian and the DPE in the College. The same reads as under: -

“(5) The appointment of the Librarian and the Director of Physical Education in the College shall be made by the Governing Body of the College by advertisement. The Selection Committee for recommending appointment of the Librarian and the Physical Director will be constituted as follows:

Librarian:

- 1. Chairman of the Governing Body or his nominee. (Chairman)*
- 2. One University representative on the Governing Body.*
- 3. University Librarian.*
- 4. Head of the Department of Library and Information Science.*
- 5. Principal of the College / Principal (Evening Classes) in case the Selection is for the evening classes.*

Three members inclusive of the Chairman and University Librarian or Head of the Department of Library and Information Science of the University shall form a quorum.

Director of Physical Education:

- 1. Chairman of the Governing Body or his nominee. (Chairman)*
- 2. One University representative on the Governing Body.*



3. Director of Physical Education of the University.
 4. Principal of the College - Principal (Evening Classes) in case the selection is for the evening classes.
 5. Two experts nominated by the Academic Council from out of the panel of names approved by it.
 6. Director of Physical Education in the College in case of selection of additional post of Director of Physical Education.
- Three members inclusive of the Chairman and an expert nominated by the Academic Council or the Director of Physical Education of the University shall form a quorum.”

45. There is no stipulation either in the Statutes or in the Ordinances at least nothing has been brought to my notice which contemplates a DPE can be re-designated as Lecturer. A reading of the Ordinances referred above, clearly reveal, the appointments of Teachers and DPE are governed by separate Ordinances, without any Provision of interchangeability. So, in the absence of any Provision in the Statue or Ordinances in that regard, the petitioner could not have been designated as Lecturer. Mr. Kumar is right in stating that the Resolution of 1981, as relied upon by Mr. Dutta, was in place when the petitioner was appointed as DPE in respondent No.2 / College, but still was appointed as DPE and not Lecturer and no challenge was made by the petitioner to her appointment as DPE. I may also state here that no order has been shown to me after the receipt of the communication dated January 11, 1991, re-designating the petitioner, who was working as DPE, as Lecturer / Senior Lecturer. Much reliance has been placed by Mr. Dutta on the communication issued to the petitioner showing her designation as Reader. The reliance is misplaced as the grant of designation is not permissible under Statue / Ordinances and shall have no effect in law. Similarly, all other communications on which reliance has been placed by Mr. Dutta would not help the case of the petitioner to establish that the petitioner is a teacher in the College and entitled to the benefit of Regulations 2010 of the UGC specifying the retirement age of a teacher is 65 years. Rather, there is a Resolution No.142 of the EC of the University of Delhi dated October 06, 2009, wherein it is



clearly stated that the age of retirement of the Registrar, Librarian, and DPE shall be on attaining the age of 62 years.”

79. Further, the Division Bench of this Court in ***Jitendra Singh Naruka (Supra)*** observed the following with respect to the guidelines issued by the DHE and reiterated by the UGC. The relevant paragraphs of the judgement are reproduced hereinbelow:

“24. 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.

25. 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.

26. 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

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

Amended

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.

27. 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.

28. 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. The age of retirement of the Registrar and Librarian shall be the completion of the age of 62 years. 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.

29. 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.”

80. It can be concluded from the above stated decisions of the Division Bench of this Court that the status of DPEs cannot be meant to fall within the definition of a ‘Teacher’. Further, the benefits which were extended to one class of person i.e., Associate Professor/Assistant Professor/Professors, cannot mean that the same must be extended to another class, i.e., DPEs. Hence, both classes/cadres cannot be equated at



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a similar footing because a Teacher and a DPE form two separate classes, therefore, the petitioner cannot claim parity *qua* the teachers.

81. Further, from the above stated amended Ordinance it can be summed up that the EC deliberately went ahead to amend the said resolution to include within its ambit the DPEs. Therefore, the petitioner's contention that the post of DPE was re-designated as 'Lecturer' and thus, shall be equated at par and should fall within the ambit of a 'Teacher' cannot be accepted. Having said that, insofar as a DPE is concerned, as noted under the 'EC Resolution 142', the age of superannuation shall be 62 years and the same shall be applicable to the petitioner as duly observed above.

82. Therefore, this Court is of the considered view that although the petitioner may have been promoted and given the nomenclature along with increase in the pay scale, yet the substantive post of the petitioner remained that of a DPE, since the promotions were carried out by a Screening-cum-Evaluation Committee under the MPS and not by a duly constituted DPC.

83. This Court also deems it necessary to state that the demarcation of two separate cadres (i.e. teachers on one hand and DPEs on the other) can be adduced from the reasoning stated by the Expert Committee specifically constituted to consider, whether the benefit of enhancement in age of superannuation shall be extended to the DPEs, and Librarians as has been extended to the teachers. The committee *inter alia* reasoned that since there is no shortage of supply of Physical Education staff in Universities as compared to the teachers, the DPEs cannot be brought



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within the ambit where the age of superannuation has been enhanced from 62 years to 65 years.

84. In this backdrop, this Court is of the considered view that since the above stated executive decision is taken to cater to the abundance of vacancies for teachers, the same cannot be extended to DPEs as no such abundance exists. Thus, such decisions shall be left for the executive body to consider and decide as per its requirements, since it is their prerogative as they are better equipped to take such policy decisions.

85. Further, the petitioner had strongly contended that identically placed people in other colleges falling under the Respondent University have been granted enhancement in age from 62 years to 65 years for superannuation. In this regard, this Court is of the view that the petitioner cannot assert negative equality. To put it another way, if there has been an incident of incorrect application of law or of actions that are against the law, it would not give rise to a positive and assertive cause of action for other people in identical circumstances, thereby, seeking the same relief.

86. In light of the above, it is beyond cavil that the issue raised by the petitioner is no more *res integra* and has been argued, tested and considered in various judgments passed by the Division Bench of this Court and thus, the same does not merit any intervention of this Court. A bare perusal of the said judgments makes it clear that the impugned EC Resolution No. 20 dated 9th June, 2023, and the impugned order dated 24th August, 2023, have been passed in consonance with the observations made therein.



87. Therefore, this Court is not inclined to grant to the petitioner a writ in the nature of certiorari to quash the impugned orders, as the same have been passed in consonance with the EC Resolution and also the judgements passed by this Court in cases discussed above. Accordingly, the petitioner having attained the age of superannuation on 31st October, 2023, has to be treated as superannuated.

CONCLUSION

88. In view of the discussions harboured hereinabove, the issue which arose for consideration by way of the instant writ petition is decided by holding that the petitioner was not promoted by a duly constituted Departmental Promotion Committee rather, she received promotion under the Merit Promotion Scheme which intended to extend financial upgradation in pay and it catered to the issue of stagnation at a position. The age of superannuation of DPE/petitioner is 62 years as provided by the UGC guidelines and thus, the petitioner/DPE do not fall within the meaning of a 'Teacher' under the Act, since they form two distinct cadres.

89. Therefore, this Court is of the opinion that the petitioner has not been able to make out any case to invite interference of this Court under its extraordinary writ jurisdiction.

90. In view of the above discussion on facts as well as on law, this Court does not find any cogent reason to grant the reliefs as prayed by the petitioner since there is no force in the propositions put forth before this Court.

91. Accordingly, the instant petition is dismissed being devoid of merits.



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92. Pending applications, if any, also stand dismissed.
93. The judgement be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 23, 2024
gs/db/ryp

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Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 25.01.2024
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