

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

% Judgment reserved on: 02.05.2023
Judgment pronounced on: 22.05.2023

+ **LPA 491/2019 and CM APPL.51372/2019, 51848/2019,
53827/2019, 54739/2019, 804/2020, 8697/2020 & 11605/2020**

SUDHIR KUMAR TANEJA Appellant

versus

UNIVERSITY OF DELHI & ORS Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Sunil J. Mathews and
Mr. Gaurav Lasiyal, Advocates.

For the Respondent: Mr. Mohinder J.S. Rupal & Mr.Hardik
Rupal, Advocates for Respondent No.1/
Delhi University.
Mr. Santosh Kumar & Mr. Kushagra,
Advocates for Respondents No.2 & 3.
Mr. Ravinder Agarwal & Mr. Lekh Raj
Singh, Advocates for Respondent No.4/
UGC.

+ **LPA 142/2022 and CM APPL. 38798/2022**

DR. MEERA SOOD Appellant

versus

UNIVERSITY OF DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Abhik Chimni, Mr. Mukul Kalhari
& Mr. Saharsh Saxena, Advocates

For the Respondent : Mr. Mohinder J.S. Rupal & Mr.Hardik

Rupal, Advocates for Respondent No.1/
Delhi University.
Mr. Santosh Kumar & Mr. Kushagra,
Advocates for Respondents No.2 & 3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. With the consent of the parties, LPA No.142/2022 is being taken as the lead matter, since the parties are *ad idem* to the fact that the out of the said connected two LPAs, the LPA No.142/2022 in the impugned order, has the advantage of detailed and comprehensive discussion of the issues encompassing the grievances of both the Appellants. Prayer in the appeals are as under:-

Prayer in LPA No.491/2019

“a. Set aside the Order dated 22.07.2019 passed by the Ld. Single Judge in Writ Petition (Civil) 7849 of 2019.”

Prayer in the LPA No.142/2022

“1. Order or direct to set aside the impugned judgement dated 10.11.2021 passed by the Hon’ble Single Bench in W.P. (C) no. 5652/2019 titled as “Dr. Meera Sood vs University of Delhi & Ors” of the Delhi High Court at New Delhi.

2. Order or Direct to set aside the order of superannuation of the Appellant at the age of 62 years vide Letter Dt. 27.03.2019 of the Respondent College as sent to the Appellant.

3. *Order or Direct the College to reinstate the Appellant in her service till the age of 65 years as per the UGC and MHRD guidelines.”*

2. The overlapping brief facts as culled out from the entire set of pleadings filed in both the appeals before this court are as follows:-

LPA - 491/2019 - Sudhir Kumar Taneja v. University of Delhi & Ors.

DATE	PARTICULAR
16.07.1984	Appellant was appointed as Director of Physical Education on a probation for a period of 1 year in Shyam Lal College (Eve.), University of Delhi (hereinafter referred to as “DU”).
04.04.1990	Appellant was appointed as a Permanent Teacher since 16.07.1984
10.11.1990	EC passed a resolution 127 by which designation of DPE was to be known as Lecturer.
06.09.1993	Dy. Registrar sent a letter to Respondent no.3 informing that Appellant has been approved and placed in the Senior Scale under Merit Promotion Scheme of 1987 (hereinafter referred to as “MPS”).
20.10.1997	The Asst. Registrar informed R.3 about approval accorded by the respondent no.1 university to the promotion of Senior Lecturers including the appellant w.e.f. 24.11.1996 as Reader under Merit Promotion Scheme 1987.
23.03.2007	MHRD wrote to Secretary, UGC that age of superannuation of all person who were holding teaching positions on regular employment against sanctioned post as on 15.03.2007 in respect of all centrally funded institutions in higher and technical educations shall be increased from 62 to 65 years.
19.06.2019	Reminder letter by the Appellant to Asst. Registrar in continuation seeking clarification regarding the age of superannuation of Associate Professor in Physical Education
15.07.2019	Respondent no. 3 issued office order stating that the appellant is to be superannuated 31.07.2019 i.e. at the age of 62 years

	instead of 65 years.
22.07.2019	The Ld. Single Judge dismissed the Writ Petition

LPA-142/2022- Dr. Meera Sood V. University of Delhi & Ors.

DATE	PARTICULAR
30.08.1983	Appellant was appointed to the post of Director of Physical Education (hereinafter referred to as “the DPE”) at Vivekananda Mahila College, DU.
10.11.1990	The Executive Council in their meeting passed Resolution 127 to change the designation of Director of Physical Education to Lecturer.
11.01.1991	The Dy. Registrar conveyed resolution 127 to the Principal of Vivekananda Mahila College.
24.06.1998	The Appellant was informed from the college that she has been promoted to the post of Reader under the Merit Promotion Scheme.
24.03.2005	Ministry of Human Resource and Development <i>vide</i> 24.03.2005 letter created the Department of Physical Education in the Respondent University. In year 2007 the university also introduced physical education as an academic course at undergraduate level and Appellant was also discharging duties as a Lecturer.
23.03.2007	MHRD wrote to Secretary, UGC that age of superannuation of all person who were holding teaching positions on regular employment against sanctioned post as on 15.03.2007 in respect of all centrally funded institutions in higher and technical educations shall be increased from 62 to 65 years.
14.09.2011	Registrar addressed to Principal intimating that Appellant has been appointed as Associate Professor on Deputation basis. The EC extended the deputation service of Appellant for 1 year. Vide letter dt. 25.11.2014 the acting principal of college informed the appellant that she has been appointed as Bursar.
31.12.2015	Assistant Registrar through letter sought clarification from UGC regarding age of superannuation of Assistant

	Professor/Associate Professor.
10.12.2018	The Governing Body of College was convened to discuss the superannuation of the Appellant. It was unanimously held that the age of superannuation of Appellant would be 65 years.
27.03.2019	The Officiating Principal of the College sent a letter to the Appellant about her superannuation and that her retirement at 62 years. The Governing Body also on 30.03.2019 also wrote to Principal expressing the shock regarding Appellant's superannuation.
31.05.2019	Appellant approached Hon'ble High Court under LPA 411/2019 whereby the Court permitted the appellant to continue service till decision of Learned Single Judge.
10.11.2021	Hon'ble High Court dismissed the W.P. 5652/2019

3. With variations in the dates of the eventualities that occurred with both the Appellants, the basic set of facts as admitted are already placed in the impugned order, and only the differential interpretation and reading and meaning thus precipitated from perusal of such documents and eventualities that occurred, is what on which the learned counsel for the Appellants are basing their challenge.

4. With such overlapping set of facts, the court now proceeds with the arguments and contentions of the parties which are enumerated as under.

APPELLANTS' CONTENTIONS:-

5. Learned counsel for the Appellant to make his submissions on the abovesaid aspect had formulated an entire itinerary for this court to visit and revisit once again in the same chronological order of factual eventualities which had actually led to change in the nomenclature of

the Appellants from the said post of Director of Physical Education to Reader, and had thus sought the consequential benefits which according to him arose in favour of the Appellants.

6. **INTERPLAY OF EC RESOLUTION - CHANGE IN DESIGNATION - RTI REPLY.**

6.1 Learned Counsel for the Appellant, invites attention of this Court to Section 6 of Delhi University Act, 1922 (hereinafter referred to “DU Act” in short) and at the outset submits that the power of Appointment lies with Executive Council under Statute 6 of the Delhi University Act, 1922. Statute 6(2) explains that Executive Council can from time to time appoint the Registrar, Librarian, Principals of Colleges and Institutions established by the University and such Professors, Readers, Lecturers and other members of the teaching staff as may be necessary.

6.2 Learned Counsel submits that based on the above, the Executive Committee of the Delhi University in the year 1981 and 1990 had passed two resolutions, *vide* which the designation of such persons already appointed as the Director in Physical Education, was redesignated as Lecturer.

6.3 Learned Counsel had argued that the same EC Resolutions were duly approved by the Visitor and had therefore orally sought for the production of documents of approval by the Respondents, claiming it to be a part of the internal correspondence of the Respondent which the Appellant could not get hold of.

6.4 Learned counsel further submits that the Appellant was promoted to the post of Lecturer (Senior Scale) on 13.03.1992 under Merit

Promotion Scheme and under the same scheme, Appellant was promoted to the post of Reader on 24.06.1998 *w.e.f.* 18.07.1994. The Appellant claims to be serving continuously thereafter without any break or detriment of any sort.

6.5 Learned counsel further points out that the post of Reader is synonymous with the nomenclature of Associate Professor and in furtherance of that invites attention of this court to RTI reply dated 28.04.2016 of the Registrar, University of Delhi specifically to the reply to point 4 and 5, wherein it was answered that the age of superannuation of the Associate Professor is 65 Years.

6.6 On this basis, learned counsel submits that that the MHRD Circular No. 1-32/2006-U.II/U(i) dated 31.12.2008 must be read harmoniously with the UGC Circular No. F.1- 13/2014(DC) dated 28.04.2016, MHRD Circular dated 23.03.2007 and the Delhi University Letter NO. CB-III/DPR/91 dated 11.01.1991, making it clear that Delhi University has consistently recognised the post of Associate Professor. He argues that when the same was duly resolved and the designation of the DPE was consequentially redesignated as Lecturer, the University itself had changed the regime of such appointments. He submits that the subsequent consequences must also be made applicable to the Appellants, in that, the age of the superannuation stipulated at 62 years be also enhanced to 65 years, as was also applicable to the post of Associate Professor-Reader.

6.7 The learned counsel submits that the Learned Single Judge *vide* the impugned order erred in not considering the EC Resolution dated 02.11.1981 and dated 10.11.1990 and letter dated 11.01.1991, which

were binding and being implemented through decisions of statutory bodies in the past.

7. **APPLICABILITY OF ORDINANCE XII vis-a-vis ORDINANCE XVIII**

7.1 Learned Counsel submits the Learned Single Judge had erred in considering the Appellants to be governed under Ordinance XVIII 4(5) whereas he submits that the Appellants are squarely governed under the Ordinance XII of the DU Act.

7.2 Learned counsel invites attention of this Court to Clause 1 and Clause 1-A of the Ordinance XVIII to specifically emphasize its applicability to the colleges and institutions, not funded either by the Government of India, or by the Delhi Administration. In furtherance, he submits that, rather, Ordinance XII Clause 2-A and 2-B is far more suited to govern such appointments of the Appellants as DPE, as the promotion of such DPE's under the Merit Promotion Scheme is recognized by the Executive Committee under the said provisions only.

7.3 Learned counsel further submits that even if taken as an exception that Ordinance XVIII is applicable, then the same would itself favour the case of the Appellants' as the Appellants were redesignated from Director of Physical Education to Senior Lecturer and finally promoted to Reader under the Merit Promotion Scheme. Therefore, the consequential change in age of retirement be also made applicable to the case of the Appellants. Learned counsel further submits that this would be a necessary corollary entailing from the conjoint reading of Clauses 4,5,6 and 7 of the Ordinance XVIII.

7.4 Learned counsel, based on this, argued that when teachers in academic courses are provided with the Career Advancement Scheme based on such clauses of Ordinance XVIII, the same equivalent treatment should also be meted out to the Appellants in the present case. He further argues that such change in regime was the result of the university's own decisions as per their own policies, ordinances and statutes and thus, the Appellants cannot be denied the relief through their own acts itself.

8. **MISPLACED RELIANCE ON JITENDER SINGH NARUKA**

8.1 Learned Counsel for the Appellant at the very outset submits that the reliance placed upon the learned Single Judge was clearly misdirected from its inception, in that, he submits that as per the facts of *Jitendra Singh Naruka vs. Delhi University and Ors* reported in **2016 SCC OnLine Del 5893**, the Appellant therein was appointed as the Director of Physical Education in the University and was neither appointed nor was shown to be an employee of any specific college. Based on that, he further submits that there is clear distinction in the nomenclature of the Appellant therein from the Appellants in the present case and therefore, the reliance so placed thereupon on the Acts, Statutes, and Ordinances were actually applicable on the university and not on the college *per se* and thus, such reliance is misplaced and misdirected.

9. **NO LEGAL/STATUTORY EMBARGO AGAINST ENHANCEMENT OF AGE OF SUPERANNUATION**

9.1 Learned counsel finally argues that Physical Education is being treated as an academic/teaching subject in the University as per MHRD

Letter dated 24.03.2005 and also the fact Appellants had spent their lives in the service of the University wherein they also undertook the same duties as that of the other Associate Professors in the same subject who climbed up the regime while starting as teachers coupled with the fact that the EC Resolutions still being in force, do not fall foul of the Act, Statutes, and Ordinances, the same can actually be a guiding light and paves the way for the University to grant the relief as sought by the Appellant.

9.2 Learned counsel further submits that the issue of recovery of salary on the basis that the age of superannuation being 62 years and the Appellant having continued till the age of 65 years would be unjust and onerous upon the Appellant. This is for the reason that the continuation of the Appellant upto the age of 65 years was under the orders of the Division Bench of this Court in LPA No. 411-2019. Though, it was fairly submitted by the counsel that the Appellant had given an undertaking to this Court that in case she does not succeed in the writ petition, then the salary/allowances paid to her in the interregnum would be returned by her to the University or else may be deducted by the University from her retiral benefits. The learned counsel submits that a lenient view may be taken.

RESPONDENT CONTENTIONS

10. *Per Contra*, Learned counsel for the Respondent at the very outset denied the assertion that EC Resolutions in question which were the basis of the claim of the Appellants, were duly approved and notified by the Visitor and had submitted that the although same were resolved by

the Executive Committee, but were not approved by the Visitor and therefore, was not in the statute book.

11. Learned Counsel for the Respondent College further submits that earlier prior to the year 2000 and just immediately thereafter, there was an acute shortage of faculties and therefore, just to make these jobs attractive and also to retain these faculty, it was specifically designed in such manner to the extent of increasing the age of superannuation. He submits that, however, the same did not impact the post of the Director of Physical Education in any manner whatsoever.

12. Learned counsel invites the attention of this Court to MHRD Scheme dated 31.12.2008, annexed as Annexure A - 23, specifically to page 285 of the paperbook to support the aforesaid contention and to further submit that by that time, there was no shortage of Librarians and DPE professionals, and therefore, the age of their superannuation was maintained at 62 years.

13. Learned Counsel further submits that, however, there was an amendment in the Ordinance XXVII vide EC Resolution No. 142 dated 06.10.2009, whereby the above said MHRD Scheme dated 31.12.2008 was duly accepted by the Executive Committee in Meeting held on 16.01.2009 approving the resolution to include Director of Physical Education within its ambit. Learned Counsel submits that prior to the amendment, the age of superannuation of such DPE's was 60 years only, which was then increased to 62 years.

14. Learned counsel for the Respondent College further emphasizes on the entire process for an incumbent being appointed as teacher, to

submit that, appointment or promotion in a specific cadre are governed by different legal regimes with stark differences.

15. He argues that when the cadre of professors is entirely different from that of Director of Physical Education, the mere redesignation of the DPE's as Lecturer/Reader for the purposes of re-fixation of pay to mitigate stagnancy, would not mean that the cadre itself was changed. He submits that it would be fallacious to apply the regime of one cadre to that of the other.

16. Learned counsel further argues that the substantive post of the Appellants still remains the same (DPE) even after such re-designation and thus the further consequential benefits as claimed to be entailing by such re-designation, as sought by the appellants, does not arise in their favour and is misplaced.

17. Learned Counsel for the Respondent submits that the issue in the present appeals are no more *res integra* and were already considered by the various Learned Division Benches of this Court which had passed judgements after due deliberation and consideration of the similar issues as urged by the Appellants herein. In that, he submits that the law is aptly settled after the detailed examination of each and every aspect of the issue and thus same was duly considered by the Learned Single Judge while passing the impugned order. He submits that the impugned order passed by the learned Single Judge does not suffer from legal infirmity of any nature whatsoever, as the same was passed while placing reliance upon various judgements passed by various learned Division Benches of this Court.

18. Learned Counsel also submits that the only issue relating to appointment and promotion of the professionals in colleges, in the DPE Cadre *vis-a-vis* Readers/Associate Professors duly appointed in the initial cadre as a Teacher as the substantive sanctioned post, coupled with the fact of redesignation and its consequences, which arises and may need clarification. Learned counsel submits this was never argued before the Learned Single Judge.

19. Learned Counsel further placed reliance upon the following judgements *Krishan Gopal v. Union of India* reported in **2012 SCC OnLine Del 2930**, *Krishan Gopal and Ors vs. Union of India and Ors* reported in **2015 SCC OnLine Del 7385**, *Jitendra Singh Naruka vs. Delhi University and Ors* reported in **2016 SCC OnLine Del 5893**.

PETITIONER's REBUTTAL

20. In rebuttal, Learned Counsel for the Appellants, draws attention of this Court to Page 155 of the paperbook in LPA - 491-2019, which is the internal letter dated 06.07.2011 of correspondence, issued by the Assistant Registrar of Delhi University to the Principal, Zakir Hussain P.G. Evening College, alongwith such similar letters issued for several other DPEs appointed in various colleges of University of Delhi to submit that the when the age of superannuation of such DPE in the said colleges was increased from 62 to 65 and the DPEs were superannuating at the age of 65 in a routine manner there is no rationale or reason as to why the Appellants are being denied the same benefit. According to the counsel, it is well settled that similarly situated persons ought to be treated similarly, whereas, the Appellants are being discriminated against.

ANALYSIS AND CONCLUSIONS:

21. This Court has considered the submissions as well as the documents placed on record by the parties.

22. At the outset it is relevant to peruse the Appointment Letter dated 09.09.1983 of the Appellant, wherein it is specifically mentioned that the Appellant was appointed as DPE against the original substantive post. The relevant extract is reproduced hereunder:

“With reference to your application dated 13.7.1983 and subsequently the interview held on 27.8.1983. I am pleased to inform you that you have been appointed as D.P.E. with effect from 30th August, 1983 in this college on the following terms and conditions, subject to the approval of the Governing Body of the College and subject to the University of Delhi recognizing you as a Teacher of the University:

You will be on probation for a period of one year with effect from the date of your joining the appointment and this probationary period may further be extended by not more than 12 months by the Governing Body.

2. You will receive an initial pay of Rs. 700/- P.M. in the pay scale of Rs. 700-40-1100-50-1600. In addition to pay, you will receive dearness, city compensatory and house rent allowances at the rate and according to the rules in force in Delhi University from time to time.”

23. It is also relevant to note that the promotions of the Appellants to various posts after the initial appointment as DPE was under the Merit Promotion Scheme, 1987. It is also of relevance to note that such promotion was not through a properly constituted Departmental Promotion Committee (hereinafter referred to as “the DPC”) but through the Screening cum Evaluation Committee constituted for the purposes of consideration of promotion under the MPS.

24. 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.

25. 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.

26. Another aspect which needs consideration is the argument that the post of DPE was redesignated as Lecturer and by way of promotions the appellants were promoted to the post of Associate Professor and Reader etc. On that basis, their contention is that the Delhi University once having redesignated the appellants as Lecturers from DPE considering them as equivalent to "Teachers" and granted promotions till the post of Associate Professor, the age of superannuation applicable to them would be 65 years as in the case of other Associate Professors of the DU and not 62 years.

27. The aforesaid argument is fallacious for many reasons. As observed above, under the MPS the appellants were only granted financial upgradation and coupled with certain other benefits, however were not considered as “Teachers” for the purpose of superannuation. That apart, the governing provision as applicable to the DPE’s was Ordinance XXVII which was amended by the DU vide the EC Resolution No.142 dated 06/10/2009 which specified the age of superannuation of Registrar and Librarian as 62 years. After such amendment, the said ordinance also included the DPE within its ambit. For the purposes of convenience, the unamended and amended Ordinance XXVII is extracted hereunder:

“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

<i>Existing</i>	<i>Amended</i>
<i>The age of retirement of the Registrar and Librarian shall be the completion of the age of 62 Years.</i>	<i>The age of retirement of the Registrar and Librarian and Director of Physical Education shall be the completion of the age of 62 years.”</i>

It is clear from the aforesaid amendment that the EC of the DU had consciously added the post of DPE to the said Ordinance despite the redesignation of DPE’s as Lecturers. In other words, the EC of DU

consciously did not equate the post of DPE with that of a “Teacher” and categorized the DPE’s alongwith the Registrar and Librarian which are clearly not “Teachers”.

28. That so far as the reliance upon the EC Resolution No.127 dated 10.11.1990 is concerned, the same was never approved by the Visitor, which is mandatory for such resolution for having the force of law as per Section 29(3) of the Delhi University Act, 1922 which is reproduced hereunder:-

“29. Statutes how made:

(1) On the commencement of the Delhi University (Amendment) Act, 1943, Statutes of the University shall be those set out in the Schedule.*

(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes :

Provided that the Executive Council shall not make, amend or repeal any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council:

Provided further that except with the prior concurrence of the Academic Council, the Executive Council shall not make, amend or repeal any Statute affecting all or any of the following matters, namely:

(i) the constitution, powers and duties of the Academic Council, and the other powers which may be conferred and duties which may be imposed on the Academic Council;

(ii) the authorities responsible for organising recognised teaching in connection with the University courses;

*(iii)******

*(iv)******

(v) *****

(ix) the conditions on the fulfilment of which the teachers of Colleges and Institutions may be recognised as teachers of the University.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow or return it to the Executive Council for further consideration.”

Thus, even the letter dated 11.01.1991 is of no significance so far as the change in original designation/ substantive sanctioned post of the Appellant is concerned. The said letter only specifies that the post of DPE will now be redesignated as Lecturer. The appellants have been unable to show from the records, if any such approval was obtained from the Visitor. It is clear from the above that for the purposes of authority, the EC Resolutions have to, necessarily, be granted approval by the Visitor. On a plain understanding of the aforesaid, it leaves no doubt in our mind that having failed to establish any such approval by the Visitor, reliance upon the EC Resolution No.127 dated 10.11.1990 is completely misplaced and is rejected.

29. Yet another relevant aspect which is of significance is that the Ministry of Human Resources vide its Notification dated 31/12/2008, had revised the post of teachers and equivalent cadres in the Universities and Colleges and had also enhanced the age of superannuation of teachers to 65 years. However, in respect of DPE's, in para (f) of the para “Age of Superannuation” and clause (iii), specified that, as there is no shortage of Librarians and DPE, the age of superannuation of these categories shall remain at 62 years. For clarity the same is extracted hereunder:

“(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.”

30. That apart from the above, the learned single Judge has correctly relied upon the judgement of the learned Division Bench of this Court in ***Jitendra Singh Naruka vs. Delhi University and Ors*** reported in **2016 SCC OnLine Del 5893** whereby in para 24 to 29 it was held as under:

“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.”

31. Thus, we reiterate the law as settled above and the case of the appellants is squarely covered by the aforesaid judgement. It is also relevant to note that the judgement in *Naruka's Case(supra)* was challenged by way of SLP(C) No. 7279/2017 titled as *Jitendra Singh Naruka vs. University of Delhi & Ors.* which was dismissed *vide* the order dated 22.09.2022. Thus, the said judgement has attained finality.

The ratio laid down by the learned Division bench of this Court in *Krishan Gopal and Ors vs. Union of India and Ors.* reported in 2015 SCC OnLine Del 7385 in an identical factual situation, had dismissed a similar plea of the DPE after considering the report of the Committee which was constituted after the 1st round of litigation initiated by *Krishan Gopal v. Union of India* reported in 2012 SCC OnLine Del 2930 and referred to in Para 8 of its judgement. Paras 8 as also the penultimate para 17 of *Krishan Gopal and Ors vs. Union of India and Ors* reported in 2015 SCC OnLine Del 7385 are extracted hereunder:

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

“Having extracted the above, the Committee noted that % of vacancies mentioned in the aforesaid 2 charts in the said paper written by aforesaid authors does not lead to any conclusion of shortage of the staff in Library and Physical Education in Universities. The aforesaid chart 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 of 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.:"

17. The data at the level of the university may show a multiplicity of reasons why similar posts are lying vacant at the level of the university, but in a matter of policy the Court cannot indulge in a micro analysis. As long as at the macro level the decision maker has applied the mind, the Court has to adopt the hands of approach, because as recognized by the Division Bench of this Court in its judgment dated May 18, 2012, age of superannuation of employees is within the discretion of the executive.

32. Further, learned Division Bench of this Court *vide* its judgement dated 16.12.2019 passed in LPA No.390/2019, titled as ***'Kanchan Saini vs. University of Delhi & Ors.,*** reported in **2019 SCC OnLine Del 11984**, held that:-

"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.”

(emphasis supplied)

33. From the above, it is beyond cavil that the issue raised by the appellants is no more *res integra* and has been argued, tested and considered by the learned Division Benches of this Court and thus need not detain us any longer.

34. The learned counsel for the appellants also submitted that in the case of a DPE employed with Zakir Hussain Evening College, Delhi University, he was permitted to superannuate at the age of 65 years. On that basis, learned counsel submits that the same standard may be applied to the cases of the appellants as well. The said arguments is noted only to be rejected, inasmuch as, there cannot be any application of negative equality. In other words, if an instance of wrong application of law or action contrary to and violative of law has occurred, it would not give rise to any positive and assertive cause of action to other similarly situated persons. Thus, the argument being fallacious, is held to be untenable.

35. Considering the fact that the Appellant Dr. Meera Sood had already rendered her services in the College in the same capacity in

pursuance of the order dated 31.05.2019 passed in LPA No. 411-2019 titled as “*Dr. Meera Sood vs. University of Delhi & Ors.*”, wherein although a specific undertaking to the effect that the salary/allowances may be refunded was duly made by the Appellant Dr. Meera Sood. Similarly, citing the said order dated 31.05.2019, Appellant Sudhir Kumar Taneja was also granted a similar interim relief *vide* the Order 30.07.2019 passed in LPA – 491-2019, which was later dismissed in default on 26.09.2019, restored thereafter and the interim relief so granted to him from 02.12.2019 was restored till it got suspended on 16.12.2019.

36. Thus considering the aforesaid facts, in the interests of justice, it would be prudent to direct the respondents not to recover the said amount from the Appellants for the service so rendered by them, although the consequential benefits accruing post superannuation shall be reckoned uptill the age of superannuation of 62 years only.

37. In that view of the matter, the appeals of the appellants fail, and as such are dismissed, though without any order as to costs.

38. Pending applications also stand disposed of.

SATISH CHANDRA SHARMA, C.J.

TUSHAR RAO GEDELA, J.

MAY 22, 2023/rl