

Delhi High Court

Krishan Gopal vs Union Of India And Ors. on 18 May, 2012

Author: A.K.Sikri

* THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) No. 7130 OF 2011

% Judgment Reserved on: 31.01.2012
Judgment Delivered on: 18.05.2012

KRISHAN GOPAL

. . . PETITIONER

Through : Dr. Sarabjit Sharma, Ms.Anu
Tyagi, Advocates

VERSUS

UNION OF INDIA AND ORS.

... RESPONDENTS

Through: Mr. Sumeet Pushkarna, Adv. for UOI Mr. Amitesh Kumar, Adv. for UGC Mr. S.C. Dhanda,
Adv. for JNU + W.P.(C) 7939/2011 Reserved on: 14.02.2012 Pronounced on:18.05.2012
DAMAYANTI V.TAMBAY Petitioner Through: Mr. C. Mukund, Adv.

versus

UNION OF INDIA AND ORS.

... RESPONDENTS

Through: Ms. Manjusha Wadhwa, Adv. for
UOI
Mr. Amitesh Kumar, Adv. for
UGC
Mr. S.C. Dhanda, Adv. for JNU

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. In both the petitions, the petitioners are the employees of Jawaharlal Nehru University working as Deputy Librarian and Directors of Physical Education (DPE). They are seeking a declaration that their status be treated as that of a teacher and, therefore, the Notification dated 31.12.2008 vide which retirement age of teachers is fixed at 65 years should be made applicable to them also. Since this Notification specifically excludes library staff as well as staff of physical education, prayers are also made for declaring the exclusionary part of the Notification as unconstitutional.

2. Vide impugned Notification dated 31.12.2008, the Ministry of Human Resource Development (Department of Higher Education), Government of India has decided to revise the pay scales and other service conditions of the teachers in Central Universities. Since we are not concerned with revision of pay scale or other service conditions but the limited scope of these writ petitions is confined to the re-fixation of the age of superannuation for teachers, we hereby reproduce that part of the Notification:

"8. Other terms and conditions:

(a) to (e) xxx xxx xxx

(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice- Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

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

(ii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible

persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education."

3. A reading of the aforesaid extracted portion of the Notification would clearly demonstrate that the age of superannuation for teachers in the Central educational institutions has been increased vide Notification dated 23.3.2007 "for those involved in class room teaching". Rationale given is that the same is done "in order to attract eligible persons to the teaching careers and to retain teachers in service for a longer period". Further rationale stated in sub-para (3) is that this enhancement in 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. This very sub-para unambiguously and in no uncertain terms, specifically excludes the categories of librarians and DPEs. It is also mentioned in respect of these librarians and DPEs that their present age of superannuation, namely, 62 years would remain and no increase is permissible in these two categories.

4. Dr. Sarabjeet Sharma, learned counsel appearing for the petitioner in WP(C) 7130/2011 (who is working as Deputy Librarian in JNU) has submitted that librarians and DPEs have always been treated at par with teachers and are in fact covered by the category of teacher and, therefore, excluding them from the aforesaid benefit amounts to invidious discrimination and violates the rights of the petitioners under Article 14 of the Constitution of India. In order to buttress his submission that the librarians and DPEs are to be construed as teachers, he has drawn our attention to the following material:

(i) UGCs letter dated 18.1.1961 to the Registrar of University which pertains to the revision of salary scales of librarians in Universities and colleges under the 3rd Five Year Plan. This communication mentions that the UGC had decided to upgrade the salary scales of library staff in the universities and colleges and "Professionally qualified library staff are for purposes of salary revision be treated as academician staff". It is, thus, submitted that right from 1961, library staff has been treated as academic staff, i.e. teachers.

(ii) Vice Chancellor, University of Delhi had constituted a Committee known as P.C. Mukherji Committee to consider recognition of Librarians as Teachers of the University. The said Committee submitted its report recording its finding that definition of teacher as stated in the University of Delhi Act, 1922 can include librarians as teachers under the category of other persons imparting instructions in University or any College or Hall. The definition of teacher and Teachers of the

University as per Section 2(g) and 2(h) of the DU Act, 1922 is as under:

"(g) Teachers includes Professors, Readers, Lecturers and other persons imparting instruction in the University of in any College or Hall;

(h) Teachers of the University means persons appointed or recognized by the University for the purpose of imparting instruction in the University or in any College."

The Committee had referred to various reference sources to ascertain the broader definition of the term instruction and was convinced that in view of the nature of the duties performed by the librarians, they can rightly be recognized as teachers imparting instructions through the media of library and that imparting of instruction was being done by them as part of their normal duties.

(iii) Letter No. F.2-1/82/4.1 dated 15.12.1982 of Ministry of Education and Culture on the subject of upgradation in salary scales of Librarians; Directors/Instructors of Physical Education and Documentation Officers in universities and colleges as per which representations from various quarters suggesting acceptance of parity in their pay scales with those of teachers was accepted and the scales of Librarians, DPEs, etc. were also upgraded to make it equivalent to that of teachers.

(iv) UGCs D.O. letter No. F.1-49/83/CP/MP dated 14th December, 1983 to the Vice Chancellor, University of Delhi examining the issue of extension of Merit Promotion Scheme to the Directors/Instructors of Physical Education and the Demonstrators and in the aforesaid letter, the University of Delhi was communicated that the UGC had, inter alia, agreed that the Merit Promotion Scheme be extended to DPEs declaring them as teachers and it was also agreed that same principle be made applicable to librarians etc. as well without affecting the fact they are non-vacation academic staff".

It was pleaded by Mr. Sharma that librarians are treated as academic staff though in the category of non-vacation as they were not entitled to vacation which other teachers teaching in class rooms. Except that, DPEs/Librarians were treated as teachers and on the aforesaid communication of UGC, the Executive Council of University of Delhi has also decided on 30th January, 1984 recognizing librarians etc. as teachers of the University. He also referred to letter dated 16th March, 1992 addressed by UGC to Registrar, Pondicherry University as per which Assistant Librarians/ Documentation Officer, Deputy Librarians and Librarians were given the status of teaching staff.

(v) Mr. Sharma, also relied upon the UGCs circular letter dated 3rd March, 2007 addressed to the Registrar of all Central/State/Deemed Universities on the subject of Career Advancement Scheme and as per this letter, Ministry of Human Resource Development had approved the age of superannuation of Deputy Librarians/DPEs as 62 years. Predicated on this letter, submission of Mr. Sharma was that when the age of superannuation of teachers was increased from 60 to 62 years, the same benefit was also extended to librarians as well as DPEs as well.

(vi) Reference was also made to orders dated 21st January, 2011 passed by the Directorate of Education, Government of NCT of Delhi as per which the post of librarian has been declared as teaching post for all purposes making librarians entitled to avail all the benefits applicable to the teaching category in prospective manner.

5. In order to bolster his submission that librarians are to be treated as teachers, he argued that the post of librarian itself is a teaching post as the very function of the librarian is teaching and aiding in learning process of students, research scholars and even teachers. The fact is that Librarian performs both teaching and research role as they formally and informally instruct students, advice and assist factually and are themselves involved in the research. The librarians in the universities have always been treated at par with the teachers in respect of scale of pay, career advancement/merit promotion scheme and age of superannuation. That the qualifications, eligibility and criteria for appointment, promotion, Career Advance Scheme, Academic Perform Indicators (API) and Weightage Point (WP) required to develop Performance Appraisal Scoring System (PASS) and job requirements are the same for Asstt. Professor/Associate Professor and Professor as per the UGC Notification issued on 30 June 2010. The university librarian has been organizing, coordinating and conducting UGC academic staff college Refresher Course in the field of Library and Information Science for lectures in the library and information science, university assistant librarians and college librarians. The university librarian is the member of academic council and the University Court. The librarian of the university has been a member of selection committee of University for selection of Lecturer, Readers and Professors in library and information science. The Senior Library Staff members guide/supervise and evaluate the Ph.D. Research Scholar works in the field of Library and Information Science as the Teachers in other discipline.

6. Mr. Sharma also attacked the rationale/justification given in the impugned Notification for increasing the age of superannuation of teachers but excluding therefrom Librarians and DPEs. He pointed out that the main reason given by the respondents for increase in the age of teachers was that good teachers were not available and reason for not extending the benefit to the librarians and DPEs was that in so far librarians and DPEs are concerned, they were in abundance and surplus. He submitted that on both counts, the Librarians and DPEs were entitled to the benefit

as these conditions applied in their cases with much more force. On the contrary, argued the learned counsel, qualified eligible candidates for lectureship were available in abundance. He referred to the UGC Annual Report, 2008-09 available on its website as per which, 54456 qualified eligible candidates for lectureship were available. Mr. Sharma argued that in contrast, a survey conducted by the UGC itself showed that there was dearth of librarians and out of 165 universities, only 69 (that is 42%) universities had the professional librarians occupying the seat of a librarian. He, thus, argued that when the very basis of increasing the age for teachers was applicable to these cases, there was no reason not to extend the benefit thereof to librarians and DPEs.

7. Mr. Sharma summed up his arguments by making a passionate plea that post of librarian had always been treated as that of a teacher and when the benefits accorded to the teachers, be it pay scale or merit promotion or even increase of age on earlier occasions, had been extended to the librarians, there was no reason for not putting librarians at par with teachers on this occasion.

8. Mr. Sharma also referred to the judgment of the Supreme Court in P.S. Ramamohana Rao v. A.P. Agricultural University & Anr., 1997 (5) SLR 106 wherein the Court held as under:

"5. For the purpose of deciding the above issue arising between the parties, it is necessary to refer to the relevant provisions of the Act and the Regulations. Sub-clause (n) of Section 2 defines 'teacher' as follows:

"teacher" includes a professor, reader, lecturer or other person appointing or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher.

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9. Neither the Act nor the rules and regulations specify the duties and functions of a Physical Director. We have, therefore, to go by the material available in the affidavits filed by the parties to decide that question. In the additional counter affidavit filed on behalf of the University in the High Court, it is stated in paragraph 7 as follows:

I further submit that the duties of the Physical Directors in this University. in brief, are as follows:

(a) to arrange Games and Sports daily in the evenings for the students.

(b) to look after the procurement of sports material and the maintenance of the sports grounds.

(c) to arrange Inter-class and inter-Collegiate tournaments.

(d) to accompany the student Teams for the Inter- University tournaments.

(e) to guide the students about the rules of the various games and sports.

10. From the aforesaid affidavit it is clear that a Physical Director has multifarious duties. He not only arranges games and sports for the students every evening and looks after the procurement of sports material and the maintenance of the grounds but also arranges inter-class and inter-college tournaments and accompanies the students team when they go for the inter-University tournaments. For that purpose it is one of his important duties to guide them about the rules of the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said rules and practices they will not be able to play the games and participate in the sports in a proper manner. Further, in our view, it is inherent in the duties of a Physical Director that he imparts to the students various skills and techniques of these games and sports. There are large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these games apart from the rules applicable to these games.

11. Having regard to the above-said material before us. we are clearly of the view that the appellant comes within the definition of a teacher in Sub-clause (n) of Section 2 of the Act."

9. Another judgment on which he placed reliance was again a decision of the Supreme Court in the case of State of Karnataka v. C.K. Pattamashetty and Anr., (2004) 6 SCC 685 and particularly on the following passage therefrom:

"4. The respondent filed a writ petition before the Karnataka High Court, inter alia, for issuance of a writ of or in the nature of mandamus directing the University to treat him as a Lecturer contending, inter alia, that he had been appointed as an Honorary Visiting Professor to participate in the teaching work of the Department of Library Science without any financial commitment by an office order dated 20-9-1986 and as such he would be deemed to be a "teacher of the University"

within the meaning of the provisions of Section 2(8) of the Karnataka State Universities Act, 1976 (for short "the Act"). It was further contended that in terms of the said appointment as Honorary Visiting Professor he has been participating in the teaching work.

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8. Learned counsel appearing for the respondent, on the other hand, would draw our attention to the definition of "teacher" as contained in the statutes framed by the University, to show that thereunder not only salaried employees of the University appointed as Professor, Reader or Lecturer or other teachers of the University, but also the Professors, Readers or Lecturers or teachers of the University appointed by the University to work on honorary basis would come within the purview thereof.

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13. The "statute" framed by the University in exercise of its powers under Section 35 of the Act also defines "appointed teachers" to mean:

"Appointed teachers of the University shall be either:

(a) Salaried employees of the University appointed as Professors, Readers or Lecturers or other teachers of the University, or

(b) Professors, Readers or Lecturers or teachers of the University appointed by the University to work on honorary basis."

14. A bare perusal of the aforementioned definition would, thus, clearly show that the appointed teachers with the University have been categorised in two categories; one who are salaried employees and the others who work on honorary basis. Those who were appointed to work on honorary basis, therefore, cannot be placed in the same class as that of the salaried employees. In that view of the matter, we are of the opinion that the respondent herein, who was appointed to work as visiting Professor on honorary basis, could not claim the financial benefits of the salaried employee of the University as a Lecturer or other teachers of the University."

10. Mr. C. Mukund, Advocate, appeared for the petitioner in W.P.(C) No.7939 of 2011 who is also working in Jawahar Lal Nehru University as Director of Physical Education. He advanced the following propositions:

(i) DPEs falls in the same category as teacher and is not different from a teacher. He, in fact, is treated as teacher.

(ii) Even when the impugned notification include those teachers who are involved in class room teaching, DPEs satisfies this condition as well.

(iii) The rationale given by the respondents in increasing the age of teachers was self-contradictory. On the one hand, it is mentioned that it is done because of shortage of teachers and on the other hand, the same notification gives the reason that enhancement of age would attract no talent. Submission was that if it was to attract new talent, then there was no need to enhance the age of teachers.

Mr. Mukund also submitted that if the reason of shortage of teacher is to be accepted then the same should be made applicable to the DPEs as well inasmuch as University Grant Commission has itself accepted that there was shortage of DPEs.

(iv) Once it is accepted that DPEs are also teachers, which according to Mr. Mukund the impugned notification impliedly accepts, then carving out another category from that class of teacher was discriminatory as held by the Supreme Court in P.S. Ramamohana Rao (supra).

11. Mr. Mukund also referred to the reasons given by the learned Single Judge while granting interim order in favour of the petitioner allowing the petitioner to continue even beyond the age of 62 years. His submission was that even when this interim order was not binding, the petitioner could refer to the discussion contained therein in support of his submission.

12. Dilating upon the aforesaid proposition, Mr. Mukund referred to communication dated 23.3.2007 vide which Central Government decided to enhance the age of superannuation from 62 to 65 years in teaching posts in Central funded institutions in higher and technical education. He submitted that this communication does not exclude DPEs or librarians. According to him, mistake had occurred while implementing this order. For this he referred to communication dated 31.12.2008 of the Central Government, which pertain to scheme of revision of pay of teachers, etc. on the recommendations of VIth Central Pay Commission. He submitted that when the UGC issued its regulation dated 28.6.2010. The stipulation contained in the aforesaid communication dated 31.12.2008 were without any application of mind. With respect to age of superannuation, following was stipulated:

"(f)	Age of Superannuation:
(i)	In order to meet the situation arising out of shortage

of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007 for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice-

Chancellors of Central Universities from sixty five to seventy years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

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

(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education."

(emphasis supplied)

13. His submission was that though in the earlier order dated 23.3.2007, DPEs/Librarians were not excluded, however, in this communication, the highlighted words were added thereby limiting the benefit to those teachers who were involved in classroom teaching and specifically excluding librarians and DPEs on the purported ground that there was no shortage in this category.

He, thus, argued that once the benefit was confined to those teachers involved in class room teaching, there was an implied admission that librarians and DPEs were also teachers who were denied the benefit under the wrong notion that they were not involved in class room teaching. He also argued that by mentioning that librarians and DPEs excluded because there was no shortage of the said teaching staff who were not to be given the benefit as there were no shortage in this category whereas there were shortage of teachers. His further submission was that in any case, both the grounds were factually incorrect inasmuch as DPEs are involved in class room teaching, there is a shortage of such persons.

14. In order to demonstrate the DPEs were involved in class room teaching as well, Mr. Mukund submitted that the duties expressly or otherwise, discharged by the petitioner are not different from teachers of other disciplines, which can be best appreciated when the multifarious duties of the petitioner are perused.

15. According to Mr. Mukund, Jawaharlal Nehru University in its affidavit had not denied the aforesaid duties discharged by the petitioner.

16. Mr. Amitesh Kumar, learned counsel appearing for UGC, Mr. S.C.

Dhanda, learned counsel appearing for JNU and Mr. Sumeet Pushkarna who appeared for Union of India, countered the aforesaid submissions of Mr. Sharma. Leading the counter attack, Mr. Amitesh Kumar opened his arguments by submitting that the directions of the UGC, based on the decision taken by the Central Government, were conveyed to all Central Universities for increasing the age of superannuation of teachers and for this purpose, all the universities were supposed to amend their recruitment rules as well. In so far as JNU is concerned, his submission was that the librarians and DPEs had always been treated as classes different and separate from teachers. In the counter affidavit filed on behalf of JNU, it was highlighted that the nature of duties of teacher was altogether different from that of non-teaching staff in which librarians and DPEs fell and simply by giving them the status of academic non-vacation staff or giving them the same salary or giving those other benefits similar to teachers would not make them teachers. It was further stated in the affidavit that a clear distinction was brought out in the impugned Notification between those engaged in class room teaching and the other staff, though treated as teachers in some respect. Their nature of duties was different and the rationale stated in the notification, namely, dearth of qualified teachers was based on the studies which were factually correct and were wrongly disputed by the petitioners.

17. In order to show that in JNU, teachers were in different class than DPEs/Librarians, reference was drawn to the following provisions of the statutes of the University:

(i) Statute 26 stipulates two classes of teachers only, namely, appointed teachers of the University and recognized teachers of University. Clause 9 of the statute 26 further provided that no person shall be appointed or recognized as a teacher of the University except on the recommendation of a Selection Committee constituted for the purpose or except when appointed by the Executive Council under Statute 28.

(ii) Selection Committee is provided in Statute 27 and as per the table of the statute, there are different committees for academic staff and non-academic staff

(iii) Statute 29 provided for different conditions of service for teachers on the one hand and other staff on the other and librarian was included in the category of other officers. Likewise, under Statute 29A, if any other class was to be included in the category of teachers, special declaration for this purpose was needed.

18. Referring to Statutes 30 and 31 and Section 5 (7) and Section 9 (8) of the Act, it was pointed out that the provision for removal of teaching staff was different from that of other staff. He, thus, argued that as per JNU Act, 1966 and statutes, teachers were treated differently than the other staff not only in the matters of appointment but also other service conditions and also in the matter of their removal from service. Our attention was also drawn to the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for Maintenance of Standards in Higher Education, 2010. As per this document, pay scales, pay fixation formula and age of superannuation etc. of teaching staff was separate and distinct from the other class. He submitted that this distinction was even maintained in the impugned Notification which is clear from various provisions.

19. His submission, in the nutshell, was that the matter has to be examined with respect to the provisions of the Jawaharlal Nehru University Act, 1966 and the Statutes of the University as per which there are two categories of teachers, viz., a person who is appointed as a teacher or recognized as a teacher. In the present case, librarians and DPEs were neither appointed as teacher nor recognized or declared as teacher. There were separate promotion scheme, viz., Assured Career Progression scheme for these staff.

20. His further argument was that the communication dated 23.3.2007 was misread that the benefit of age enhancement was confined only to the teachers involved in class room teaching and the DPEs and librarians were not excluded initially. For this purpose, he referred to another communication dated 19.4.2007 which was issued within one month of the aforesaid communication wherein it was clearly mentioned that the enhancement of age of superannuation from 62 to 65 applies to those who hold posts equivalent to teaching positions, but are to actually engaged in teaching in the centrally funded institutions in higher and technical education. Following clarifications in this regard were issued:

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

(ii) The provisions of the Ministrys letter of even number dated 23.03.2007 mentioned above, shall not be applicable to any other categories employees in such institutions, notwithstanding the fact that the posts they hold may be considered as equivalent to teaching positions."

21. He, thus, submitted that even if DPEs and Librarians were treated as equivalent to teachers, they were specifically denied the benefit of enhancement of age of superannuation and it was the prerogative of the employer to frame such a rule and no person has any vested right to retire at a particular age. Learned counsel relied upon the judgment of the Supreme Court in the case of State of M.P. Vs. Ramesh Chandra Bajpai [(2009) 13 SCC 635] wherein the Physical Training Instructors were denied the claim of pay parity with teachers. He submitted that in the case, Court had specifically distinguished the judgment of P.S. Ramamohana Rao (supra) wherein the definition of teachers under Andhra Pradesh Agricultural University Act, 1963 specifically included them as teacher.

22. He also placed strong reliance of the Supreme Court judgment in the case of D.S. Nakara and Ors. Vs. U.O.I. and Ors. [1983 (1) SCC 305] in support of his submission that the class of DPEs and Librarians was distinct and separate from that of teachers and therefore, there was no question of discrimination. Following paras of the judgment were specifically referred to, which are as under:

"11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.) (1) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Art. 14, this Court speaking through Chandrachud, C.J. in Re. Special Courts Bill (2) restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

"3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or

characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

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15. Thus the fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

23. We have considered the submissions of learned counsel on both sides. At the outset, we would like to point out that fixing of retirement age of an employee is the prerogative of the Government. Thus, it is for the Government, as employer, to decide what is the appropriate age of superannuation of different classes of employees. Since this is the Executive function in which Courts have no role, Courts would be loath to interfere with such a decision of the Executive fixing age of retirement. In State of U.P. & Ors. v. Hirendra Pal Singh, (2011) 5 SCC 305, Supreme Court had explained this principle in the following manner:

"8. ...So far as the issue of reduction of age from 62 to 60 years is concerned, it has not been brought to the notice of the High Court that it is within the exclusive domain of the State Government to reduce the age even in Government services. So in case of purely professional engagement, the age could validly be reduced by the State Government unilaterally.

9. A Constitution Bench of this Court in Bishun Narain Misra v. The State of Uttar Pradesh and Ors., AIR 1965 SC 1567 held that new rule reducing the age of retirement from 58 to 55 years could neither be invalid nor could be held to be retrospective as the said rule was a method adopted to tide over the difficult situation which could arise in public services if the new rule was applied at once and also to meet any financial objection arising in enforcement of the new rule.

10. In Roshan Lal Tandon v. Union of India and Ors., AIR 1967 SC 1889, a similar view has been reiterated by this Court observing that emoluments of the Government servant and his terms of service could be altered by the employer unilaterally for the reason that conditions of service are governed by statutory rules which can be unilaterally altered by the Government without the consent of the employee. (See also B.S. Vadera v. Union of India and Ors., AIR 1969 SC 118; The State of Jammu and Kashmir v. Triloki Nath Khosa and Ors., AIR 1974 SC 1; B.S. Yadav and Ors. v. State of Haryana and Ors., AIR 1981 SC 561; and State of Jammu and Kashmir v. Shiv Ram

Sharma, AIR 1999 SC 2012.

11. In K. Nagaraj and Ors. v. State of Andhra Pradesh, AIR 1985 SC 551, this Court examined the amended provisions of Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance, 1983 by which the age of retirement was reduced from 58 to 55 years and this Court upheld the amended provisions being neither arbitrary nor irrational. The court further rejected the submission of the Appellants therein that the said amended provisions would have retrospective application taking away their accrued rights. (See also State of Andhra Pradesh etc. v. S.K. Mohinuddin, AIR 1994 SC 1474)."

24. As a fortiori, it also becomes the prerogative of the Government to enhance the age of superannuation. Furthermore, while doing so, it is again the prerogative of the Government/employer to increase the age of superannuation in respect of certain categories of employees only. However, it would be with one caveat. When age of superannuation is increased in respect of a particular class of employees, then it has to be made applicable to all employees falling in the same category as otherwise it would result in invidious discrimination. Thus, if certain categories of employees who belong to same class are left out, they can legitimately make grievance and question the decision of the Government on the ground that it amounts to hostile discrimination and is thus violative of Article 14 of the Constitution.

25. In the instant case, Government has increased the age of superannuation of teachers from 62 to 65 years but have not done so for Librarians and DPEs.

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. UGCs 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.

28. Having regard to the position of the JNU Act and statutes, counsel for JNU may be correct that the two classes are not treated as identical in all respects.

Though, this may be the finding on issue No.1, the outcome would depend upon the conclusion which we arrive at in respect of other issues discussed below as we have to keep in mind that the decision of UGC for enhancement of the retirement age is applicable across the board and is not dependent upon the definition of teacher in a particular university. It is because of the reason that in those universities where the definition of teacher includes Librarians and DPEs and they are treated at par, such universities have to give the benefit of enhancement of age to their Librarians and DPEs. However, the decision of UGC enhancing the retirement age of teachers is applicable in respect of all universities.

29. Having clarified this, we need to address neat issues, viz., whether DPEs and Librarians can fall in the same category as teachers, for the purpose of according the benefit of increase in age of superannuation?

At the outset, we would like to clarify that this issue is addressed with limited scope in mind, namely, entitlement of DPEs and Librarians to the enhanced age of superannuation as given to teachers. Here, we find that the petitioners are able to make out an arguable case. The events recorded above would show that whenever age of superannuation of teachers has been enhanced, the same benefit has always been extended to the Librarians and DPEs. This has happened right from the 1960s, if not earlier. Further, it has happened at the instance of UGC itself which means that such benefit is extended in all universities coming within the umbrella of UGC across the country. More importantly, while doing so, the UGC as well as Universities themselves have given the justification by stating that these Librarians and DPEs are to be equated with teachers for

extending the benefit of increase in age of retirement. Based thereupon, even some other benefits have been extended like merit promotion scheme in Delhi University etc. Same thing happened when the superannuation age of teachers was extended from 60 to 62 years.

30. It was highlighted by Mr. Mukund that DPEs perform multifarious duties which are as under:

- a. To teach students in theory about the norms and rules of various games.
- b. To guide and train students during practice of various physical exercises and during play of particular games in the field or indoor games.
- c. To look after the procurement of sports material and maintenance of the sports grounds.
- d. To arrange inter-class and inter-college tournaments. e. To arrange games and sports daily in the evening for students.

31. We may not be misunderstood to be saying that if such benefit was given in the past, these Librarians and DPEs acquire any vested right to seek such extension every time. However, what is emphasized by this Court is that the justifications are offered by the authorities themselves in extending the benefit of age of superannuation and at least for this benefit treating Librarians and DPEs as teachers.

32. In this backdrop, the question that now falls for consideration is as to whether the rationale given by the respondents in increasing the age of teachers is applicable in the case of DPEs and Librarians as well? Or, to put it otherwise, whether this is a valid justification in excluding Librarians and DPEs from the benefit of age extension?

As already noticed above, the reasons given for enhancing the age of superannuation of teachers are:

- (i) To attract eligible persons to the teaching career and to retain teachers in service for a longer period;
- (ii) The enhancement is intended for teachers engaged in classroom teaching to attract eligible persons to career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period.

At the same time, reason for denying this benefit to Librarians and DPEs is that there is no shortage in their categories. However, the UGCs own website shows that there is dearth of DPEs and Librarians. The contention of the petitioners appears to be correct when they argue that no survey has been conducted by any of the entities before coming to the aforesaid conclusion that there is no shortage of DPEs and Librarians. The petitioners have filed the data from the UGCs own website which recognizes the fact that nearly 52% of vacancies of DPEs are not filled and same is the position of Librarians and this fact was not disputed by the respondents. This website shows the following status of staff in library and physical education of the Ministry: Status of Staff in Library

and Physical Education in Universities Sanctioned Filled Vacant Vacant % EDUCATION PHYSICAL
EDUCATION PHYSICAL EDUCATION

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

34. These writs are disposed off with the direction that the matter shall be considered and fresh decision shall be taken within a period of two months from today. In the meantime, the petitioner in W.P. No.7130/2011, who is continuing in service by virtue of interim orders, shall be allowed to continue. Fate of the other petitioner in W.P. No.7939/2011 shall depend upon the fresh decision taken.

35. The petitioners shall also be entitled to costs quantified at `10,000/-

each.

ACTING CHIEF JUSTICE RAJIV SAHAI ENDLAW, J.

MAY 18, 2012/pk