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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2005/1989
T.A. No.

198

DATE OF DECISION January 29, 1990.

Shri R.S.S.Shishodia

Petitioner

Shri G.D.Gupta

Advocate for the Petitioner(s)

Versus

The Administrator/Lt.Governor
Union Territory of Delhi and 2 others Respondents.

Shri M.M.Sudan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C.Mathur, Vice-Chairman (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.2005/1989.

January 29, 1990.

Shri R.S.S.Shishodia

Applicant.

Vs.

The Administrator/Lt. Governor,
Union Territory of Delhi and
2 others

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... Shri G.D. Gupta, counsel.

For the respondents ... Shri M.M. Sudan, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

This Application raises an important question in regard to the date of superannuation of teachers appointed in the Delhi Administration who are deputed to hold administrative posts of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director of Education in the Directorate of Education, Delhi Administration. There is no dispute that if they continued as teachers including that of a Principal of a School/College, their age of superannuation/retirement is 60 years. But when they hold any of the aforementioned posts of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director of Education, they are made to retire at the age of 58 years. A question arises : whether these teachers can be made to

retire at the age of 58 years instead of at the age of 60 years?

The applicant, Shri R.S.S.Shishodia was appointed as Principal on 29.7.1960 in the Directorate of Education by direct recruitment i.e. after his selection in open competition through Union Public Service Commission.

He was thereafter posted as Principal in various Government schools from time to time. He was promoted as Education Officer in 1976, and Deputy Director of Education in the year 1984 and as Joint Director of Education in the year 1988.

Admittedly, the age of superannuation/retirement of teachers of various grades including that of Vice-Principal and Principal is 60 years. However, in case of officers holding a post higher than that of the Principal viz. Education Officer/Assistant Director/Deputy Director / Joint Director and Additional Director of Education, the age of superannuation/retirement is maintained at 58 years.

The officers holding the above higher posts have approached the Department/Government for enhancing the age of superannuation/retirement in their case also on the ground that basically they remain teachers and on the basis of their experience in teaching, they are promoted to higher posts.

The applicant has stated that he was confirmed as

Principal but he did not receive any letter confirming him on the post of Education Officer. The subsequent promotions to the post of Deputy Director/Joint Director of Education were purely on ad-hoc basis and had not been made regular.

An Order dated 2.8.1989 (Annexure A-2) had been issued by the Directorate of Education, Delhi which indicates the names of 16 officers who were holding higher posts than that of the Principal were to stand retired from Government service with effect from the dates shown against each under column No.5. The name of the applicant has been shown at Sl. No.16 and against the date of retirement in Column No.5, 30.9.1989 was mentioned. His case was referred to by the Executive Councillor (Education) to the Lt. Governor for giving extension on the same grounds as have been given to two erstwhile officers, viz., S/ Shri S.K. Shukla, Additional Director and K.P. Raizada, Deputy Director of Education. But he did not hear anything and, consequently, on 26.9.1989, he made a representation to the Director of Education, Delhi Administration. He had not received a reply and thereafter filed the present Application under Section 19 of the Administrative Tribunals Act, 1985 on 29.9.1989. He has prayed for quashing the order dated 2.8.1989 to the extent of superannuation/retirement of the applicant on his attaining the age of superannuation/retirement with effect from the afternoon of 30.9.1989. He also prayed

that he was entitled to be granted extension in service upto the age of 60 years in the same way in which it has been granted to other similarly situated persons.

An interim prayer was also asked for that he may not be superannuated or retired from service with effect from the afternoon of 30.9.1989. The Division Bench hearing the admission case had also passed an interim order staying the operation of the order dated 2.8.1989.

A Misc. Petition was moved by the applicant for impleading the Union of India as one of the respondents. On this petition, notice was issued. On behalf of the Delhi Administration, a written statement in reply to the Application was filed. The substance of the reply was that prior to 1983, all teachers under the Delhi Administration used to retire at the age of 58 years. Subsequently, Government of India, Ministry of Education and Culture (Department of Education)- vide their letter dated 6.9.1983 (Annexure R-I to the reply) conceded the demands of the Delhi School Teachers to retire them at the age of 60 years. It was stated therein that this concession was only with regard to teachers and not to other administrative/Ministerial officers. The Delhi Administration had been pursuing the case with the Ministry of Education for giving the benefit of retirement to the supervisory category, but the Central Government has not

agreed to the same. Reference is made to the D.O. letter dated 23.2.1984 (Annexure R-II to the reply) received from the Director (UT), Government of India, Ministry of Education & Culture (Department of Education), New Delhi, wherein it was stated:

"For an employee to be entitled to retire at the age of 60 years, he must be squarely covered by the definition of "teacher" under the Delhi School Education Act, 1973. The category of employees under consideration are neither covered by the definition of "teacher" nor could they be classified as "teaching employees" as their functions do not include teaching in the school. it is not possible to extend the benefit of enhanced age of retirement of 60 years to the officers of the Supervisory cadre/other teaching based non-teaching cadre."

From 1.1.1986, on the recommendation of the Fourth Pay Commission and revised grade as approved by the Government of India, the pay scales of the Principals and the Education Officer/Assistant Director of Education were brought at par that is Rs.3000-4500 whereas the pre-revised grade of Principal was Rs.1100-1600 and the grade of Asstt. Director of Education/Education Officer was Rs.1200-1600. It was also stated that duties and responsibilities of the supervisory staff and Education Officer as assigned to these posts are that such officers are to formulate only the policy and take administrative decision as regards functioning of schools. No actual teaching is done by the supervisory cadre. Such benefit of age of retirement at 60 years had been given only to teachers as per

definition of Section 2(W) of the Delhi School Education Act and not to other categories. It was also pleaded that the contention of the applicant that once a teacher is always a teacher was devoid of any merits. Since the teaching category and supervisory category are two distinct and separate categories with altogether different functions and nature of duties. They also refuted the contention that since a teacher retires at the age of 60 years and administrative/supervisory officer from the quota of Principals could also retire at the same age after promotion to supervisory category was not tenable. It was also pointed out that a teacher has to do the teaching work and take classes but the supervisory staff is not called upon to do so. The extensions in service were granted to S/Shri S.K.Shukla and K.P.Raizada under different considerations. Due to proceedings in Court the vacancies could not be filled up and as such, they were given extensions. After the receipt of Ministry's letter, a policy decision was taken by the Lt. Governor that it would not be appropriate to consider cases of extension of individual officers. The ultimate plea of the respondents is that the Application was without merits and must fail.

A rejoinder was filed by the applicant refuting the above contentions and reiterating the earlier pleas.

We have heard at some length both Shri G.D.Gupta,

learned counsel for the applicant and Shri M.M.Sudan, learned counsel for the respondents.

While Shri G.D. Gupta took the stand that teaching staff is a distinct class by itself as against the administrative officers who are deputed to the Education Department of the Delhi Administration. The teaching class of officers viz. the Principals who are deputed to be Education Officer/Deputy Director/Joint Director of Education are basically the teaching staff and they do not cease to be teachers merely because they are doing some supervisory work and in particular, regulate the working of the schools under the Delhi Administration. This supervisory work can only be done by persons having experience in teaching. They assess the teaching work done in schools and evaluate the competence of various teachers in those schools. What they are called upon to do is basically the assessment of teaching work and this could only be done by a teacher and not by an administrative officer who has no experience of teaching. The contention further was that as a teacher, he is liable to be superannuated at the age of 60 years, and not before.

Shri M.M.Sudan, learned counsel for the respondents on the contrary contended that once a Principal joins the rank of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director of Education by way of promotion, he ceases to be a teacher and does purely supervisory work. Since he

does not do any teaching work, he cannot be considered to be a teacher and, consequently, he is not entitled to the benefit of extended age of superannuation as a teacher. He cited an example of Group 'D' employee who retires at the age of 60 years but when he is promoted as Group 'C', he retires at the age of 58 years. Similarly, when a teacher is given promotion to the administrative rank, he retires at the age of 58 years and not at the age of 60 years.

Shri Sudan also pointed out that there are other administrative Officers in the Education Department of the Delhi Administration also holding similar ranks as Assistant Director/Deputy Director/Joint Director and Additional Director of Education and their superannuation/retirement age is 58 years. If there is a change in the age of superannuation/retirement of administrative/supervisory officers in the Education Department coming from the stream of teachers i.e. upto 60 years, a great anomaly would result inasmuch as the teacher category would retire at the age of 60 years and one coming from the administrative stream would retire at the age of 58 years.

Shri Sudan contended that a teacher ceases to be a teacher when he is promoted to an administrative position. He can always come to teaching position and continue till 60 years. If a Principal is confirmed, he can always get back the post as Principal. If he is a teacher, he can always be reverted and the position of teacher

cannot be carried with him when he becomes an administrative officer.

Shri G.D.Gupta referred to the Report of National Commission on Teachers which states about the status, working conditions and welfare of the teacher and made the recommendation in paragraph 46 that retirement age for all government and private school teachers including educational administrators should not be less than 60.

We were also referred to the copy of a D.O. letter written by Shri Kulanand Bhartiya, Executive Councillor (Education) to the then Minister for Human Resources (Annexure A-1.2 to the rejoinder) where it was mentioned that for the last five years nearly 40 Senior Principals have refused promotion and even those who have been promoted wanted to be reverted to the post of Principal. Consequently, policy making and implementation level experienced officers were not available.

After hearing the learned counsel for the parties and considering the matter, we are of the view that it would be basically in-appropriate to retire a Principal of the teaching staff at the age of 58 years merely because he has been promoted to the rank of Administrative/supervisory post. In our opinion, either the Union of India/Delhi Administration should make necessary changes to make the superannuation/retirement age of all such teaching staff promoted to administrative/

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supervisory rank of officers retire at the same age i.e. on the completion of 60 years or give option to all such administrative/supervisory staff promoted from the rank of Principal to revert to their confirmed original post of Principal so that they may continue in service till the age of 60 years. If the first of the two options is not possible immediately, the respondents should grant an option to such of the promotees who were in service on 30th September, 1989 either to remain in their promoted post or revert back as Principal of a School. We will now consider the reasons for coming to the above conclusion.

The first question to be considered is : who is a teacher? We have to refer to the Delhi School Education Act, 1973. It defines a teacher in Section 2(w) which reads as follows:

"teacher" includes the Head of a School".
Section 2(k) reads:

"Head of school" means the principal academic officer, by whatever name called, of a recognised school."

Section 2(a) defines "Administrator" and Section 3 vests the power in the Administrator to regulate education in school. We are further informed that a teacher under the above Act is a person who is working in schools in Delhi and takes certain classes each week. The Principal in a Delhi School takes 12 periods in a week whereas the Vice-Principal takes 24 periods in a week.

From the above, there is no doubt that a teacher like a Principal and Vice-Principal has to take certain number of periods every week, i.e. they do teaching work in classes. But, is the taking of classes the criteria for judging whether a person is a teacher or not ? We do not think that is the correct basis. In our opinion, a teacher is a person who has joined the profession of teaching and teaches in a school and may have risen through the ranks to be the head of a school i.e. a Principal. His work involves not only teaching but also large volume of administrative and supervisory work. Although a Principal has to do administrative and supervisory work, he does not cease to be a teacher. This is not disputed. Thus in spite of shouldering and doing a substantial amount of supervisory and administrative work, a Principal remains a teacher. He does not remain a teacher merely because he takes 12 periods in a week but his work is intimately connected with the teaching in the institution where he is the Principal. Although he has a lot of administrative work and responsibilities, he does not cease to be a teacher because of the nature of work. The cardinal thing, therefore, is the nature of work that a man does while he holds the post. Supervisory work by a person on promotion who has acted as a Principal is in the nature of an extension of the work as a Principal but covering a wider area, which may involve several schools or zones. The fact that he does that work capably and in an uniform manner is because of the fact of his

vast experience as a Principal in a school in Delhi. We are, therefore, of the view that the posts of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director of Education are all extension of the post of teacher when it is headed by a person who had once acted as a Principal under the Delhi Administration. He has the expertise of a teacher, as well as the expertise of an administrator of school. He supervises the work of all the teachers in the schools under his charge while he holds the post of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director. His field of operation is extended as he is promoted to higher posts and he is also involved in the process of policy formulation along with others. But he does all this in view of his experience as a teacher and as Principal.

The view that we take is supported by a judgment of the Delhi High Court in Smt. SHEILA PURI Vs. MUNICIPAL CORPORATION OF DELHI decided on 22.5.1985 (1985 (9)DJR 180) and another decision in BANWARI LAL SHARMA Vs. MUNICIPAL CORPORATION OF DELHI, decided on 27.2.1989, which follows the above mentioned decision. That was a case where a Headmistress in a school when it was taken over by the Directorate of Education, Delhi became an Inspectress of Schools along with four others and she was placed No.2 in the seniority list, but on a representation, she was

treated as seniormost. She was thereafter lowered in seniority on a representation made by another teacher. The school was placed under the Municipal Corporation of Delhi and the seniority dispute was decided on a reference to the Director of Education, Delhi. The question in that case was about the retirement age of the petitioner Smt. Sheila Puri. A Resolution was passed by the Municipal Corporation of Delhi wherein it had been stated:

"...teachers, officers and other employees transferred to the Delhi Administration along with schools w.e.f. 1.7.1970 be accorded to the extent that the age limit for retirement of officers and other employees will be 58 years and in case of teachers and class IV servants it will be 60 years."

The Division Bench posed the question before them in the following words:

"The petitioner was a teacher. She was a Headmistress of a school, then she became a School Inspectress, then became a Senior School Inspectress. If she is a Senior School Inspectress, does she cease to be a teacher? Does she become an officer and not a teacher? It seems to us that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the schools rather than teaching in the schools. It would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. We fail to understand how two sets of persons belonging to the same class should have different retiring ages if they are promoted or not promoted."

The same question arose in that case too that when a Headmistress was promoted, she would immediately retire at the age of 58 years and if she continued as Headmistress she will retire at the age of 60 years. Similar is the problem in the present case too. The Division Bench of the Delhi High Court in the above case has observed further:

"Furthermore, the word 'teacher' means a person in the teaching profession. The entry of such persons into service would normally be in lower grades. They would be promoted from say Assistant Teacher to Teacher and then Vice-Principal, Principal or Headmistress, and so on. They would then be promoted to the post of Inspector and there may be further posts like Senior Inspectors and so on. We cannot imagine an Inspector of Schools not being a teacher. A very concept of an Inspector is to see that the teaching is conducted in accordance with some standard practice and the progress of students is as desired. An Inspector or Inspectress must, therefore, be a teacher. Such a person does not cease to be a teacher by becoming an Inspector. An Inspector's job is not that of looking after the up-keep of the school, but to see that the teaching is done properly. We are of the view that such a person would remain a teacher even after promotion."

The plea of the petitioner, Smt. Sheila Puri that she was to retire at the age of 60 years and not at the age of 58 years was accepted by the Division Bench and it was directed that she be retained by the respondent Corporation till she reaches the age of 60 years.

This decision of the Delhi High Court has been upheld by the Supreme Court by its judgment dated 2.12.1988 in

MUNICIPAL CORPORATION OF DELHI Vs. SMT. SHEILA PURI

(Civil Appeal No.5051 of 1985).

The above decision no doubt supports the contention of the learned counsel for the applicant but a distinction may be noticed. Both in the case of Smt. Sheila Puri and Banwari Lal Sharma, (supra) the question before the Delhi High Court was of an Inspector/Inspectress of schools. They are certainly officers below the rank of Education Officer/Assistant Director/Deputy Director/Joint Director/Additional Director of Education under the Delhi School Education Act, 1973. It must also be borne in mind that all posts of officers in the rank of Assistant Director to Director/^{of Education} do not come from the stream of teachers. According to the chart produced by the Department of Education, it is evident that for the post of Inspector of Schools, the candidate must have teaching background.

On the other hand, the Recruitment Rules for the post of Asstt. Director of Education, Education Officer, Education Adviser in Delhi Police in the Directorate of Education, Delhi Administration indicate that persons are recruited 50% by direct recruitment and 50% by promotion. The promotion takes place from the rank of Principal, Govt. Higher Secondary Schools, Principals Teachers Training Schools, Sr. Counsellor, Science Consultant, Field Adviser, Lecturer, State Institute of Education, Research Officer and

Plan Evaluation Officer with three years service in respective grades. In the case of Inspectors, such a situation does not exist. They all come from the ranks of persons who have teaching experience and is a promotional post for the teachers. Whereas the factual position in respect of persons in the ranks of Education Officer, Assistant Director, Deputy Director, Joint Director, Additional Director consist of persons who have been teachers, Principals or Inspectors of Schools and also persons directly recruited as Education Officer and Assistant Director as well as persons on deputation from I.A.S., DANICS. It is, therefore, apparent that the present case is not exactly alike the case in the two decisions of the Delhi High Court, referred to above. A distinction has to be made.

Further point to be considered is that according to the definition of teacher, even a Lab. Assistant and a Librarian is included in the definition of teacher. But the Librarian ^{as} is not a teacher inasmuch he does not teach anyone in particular. Yet he is according to the Delhi School Education Act, 1973 a teacher. An Education Officer is chosen because of his experience as a teacher. In our opinion, a person does not cease to be a teacher merely because he is promoted to a higher post in the administration and supervision of education.

We can appreciate the anxiety of the Delhi Administration that for the same posts of Education Officer/Assistant Director/Deputy Director/Joint Director and Additional Director, there may be persons who have come either from the I.A.S. or DANICS without any background of teaching experience who would retire at the age of 58 years and there would be a difference vis-a-vis those who have teaching experience and have come from the rank of Principal if the latter are treated to be the teachers. We firmly believe that this is a

matter which must be considered by the Government and a firm decision taken. We are informed by the learned counsel for the parties that the matter is before the Government.

We are, however, of the view that if this relief cannot be granted to all those promoted officers to the rank of Education Officer/Assistant Director/~~Deputy~~ Director/Joint Director and Additional Director who come from the rank of Principal of a school under the Delhi Administration, they must be given an option to revert back as Principals in Schools and continue till the age of superannuation/retirement viz. 60 years. It goes without saying, if they exercise the option of reversion, they would be entitled to the pay, allowances and pension commensurate to the rank of Principal. They will not be entitled to the pay and allowances of the higher promotional posts. It is, however, made clear that during the period they held the promotional posts, they would be entitled to pay and allowances/^{of the post.} We further direct that the applicant in the present case will also be asked to exercise his option as to whether he would like to revert as Principal and if he gives his option to do so, he would be reposted as Principal and continued till the age of 60 years.

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With the above directions, we dispose of the Application. We order accordingly. We direct the parties to bear their own costs.

B.C. Mathur
20.1.90
(B.C. Mathur)
Vice-Chairman (A)

AB
(Amitav Banerji)
Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

29.1.90

OA No. 2005/89

Applicant through Shri G.D. Gupta, Counsel.
Respondents through Shri M.M. Sudan, Counsel.

After the pronouncement of the judgement in the O.A. today, Shri G.D. Gupta orally prayed that its operation may remain stayed for 4 weeks to enable him to move the Hon'ble Supreme Court by means of a special leave petition. He stated that unless the operation of the judgement is stayed for a limited duration, the respondents may pass orders, which will affect not only the applicant but many others. Shri Sudan appearing for the respondents objected to the above prayer.

Having heard learned counsel for the parties, we think that no harm will come if the operation of the judgement is stayed for a short while. The matter raised in the O.A. was an important one and would certainly concern quite a number of persons in the Education Department of the Delhi Administration. We think that it would be in the interest of justice to stay the operation of the judgement for 4 weeks only. We order accordingly.

Order (Dasti).



(B.C. Mathur)
Vice-Chairman (A)



(Amitav Banerji)
Chairman

SRD