

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

+ **W.P. (C.) No.1688/2008**

% **Date of Decision: 14.01.2010**

Union of India & Ors. Petitioners
Through Sh. R.V. Sinha, Advocate.

Versus

Mahabir Singh Gosain & Ors. Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

The petitioners, Union of India, Director General, Military training & others have challenged the order dated 8th November, 2007 in OA No. 140/2007 titled Mahabir Singh Gosain and Others vs. Union of India directing petitioners to give pay scale of Rs.8000-Rs.13,500 to the respondents with all consequential benefits in view of the order passed in OA No. 537/1989 and petitioner's letter dated 11th August, 1997.

The respondents are the demonstrators in the colleges and institution of Defense and they had sought grant of assured career progression at par with their counterparts in University Grants

Commission. They had challenged the order dated 13th July, 2006 which was passed by the petitioners pursuant to order passed in OA No. 453/2005.

The respondents had sought pay scale of Rs. 1740-3000 contending inter alia that they are performing identical functions as performed by the demonstrators in Jawahar Lal Nehru University and other colleges run by Government of India. It was asserted by the respondents that the method of recruitment and minimum qualification prescribed for the post was same and rather the demonstrators of Army Cadet Colleges were also required to possess experience in addition to their possessing a degree in science.

The plea of the respondents in OA no. 537/1989 for grant of pay scale of UGC, was allowed by Allahabad Bench of the Administrative Tribunal and the petitioners were directed to grant scale of pay of Rs.1440-3000 to the respondents recommended by the University Grants Commission from the date benefit of UGC scales of pay had been extended to other members of the teaching staff of the Army Cadet College.

The order passed in OA no. 537/1989 was not set aside or modified. The respondents thereafter claimed arrears of personal pay scale of Rs. 2200-4000 and filed yet another original application bearing

OA no. 843/1998 which was decided on 29th July, 2003. The petitioners in the said OA had admitted that the respondents were paid UGC scale of Rs.500-900 w.e.f 1st June, 1983 and it was also admitted that any benefit accrued there from would also be applicable to respondents on the basis of grants of such benefits under the UGC scale. The petitioners were therefore directed to pass appropriate orders within four months from 29th July, 2003.

The order passed by the Administrative Tribunal dated 29th July, 2003 is as under:-

- “6. Since, respondents have now admitted that applicants were paid the U.G.C. scale of Rs. 500-900 w.e.f 01.1.1983, it goes without saying that any benefit which accrued therefrom in accordance with law would be available to the applicants on the basis of such grant of U.G.C. scale. The necessary orders, if not passed by the respondents to this effect, shall be passed by them within the same period of 4 months from the date of receipt of a copy of this order. With the above direction the O.A. is disposed of with no order as to costs.”

The petitioners thereafter, however, denied extension of ACP Scheme to the respondent as per the pay scale under UGC despite the order passed in OA No. 453/2005. It was decided on 10th April, 2006 holding that whatever was contained in the recommendation of UGC on 8th October, 1992 without modification, mutatis mutandis has been extended to the teaching staff of Defense. The petitioners, therefore, were directed to re-examine the claim of the respondents strictly in

accordance with their own letter issued in 1997 and having due regard to their own observation for granting UGC scale of Rs.2200-4000.

The petitioners, however, rejected the claim on the ground that the recruitment rules of demonstrators in UGC are different with that of the petitioners and only the pay scales were granted to the respondents on the directions of the Tribunal and therefore the respondents are not entitled for claim of pay scales of assured career progression scheme. Aggrieved by the order of the petitioners turning down their request for grant of assured career promotion scheme, OA No. 140/2007 was filed, which was allowed by order dated 8th November, 2007 which is impugned by the petitioners in the present petition.

This has not been disputed by the petitioners that the order passed in OA No. 537/1989 granting the pay scale of UGC was not challenged by the petitioners. In the circumstance, the petitioners cannot be allowed to contend that UGC pay scales were granted on the directions by the tribunal and therefore despite granting the UGC pay scale, for grant of pay scales under Assured Career Progression Scheme, the scale granted by the UGC cannot be applied to the respondents. The UGC scales were granted to the respondents after considering the functions of the respondents vis-à-vis functions of demonstrators in the institutions under UGC, their method of recruitment, minimum qualification and the fact that the respondents/

demonstrators of Army Cadet College were required to possess experience in addition to their possessing a degree in science.

The tribunal has noted that the letter dated 11th August, 1997 by the Government to the Chief of Army staff. The letter stipulates that career progression in the case of lecturers will be adopted in the institutions of NDA and IMA, however, same would be subject to such conditions as were applicable to UGC contained in its scheme. The learned counsel for the petitioners is unable to explain that if the pay scales under career progression of UGC is applicable to the lecturers than why pay scales under career progression will not be applicable to the demonstrators of defense institutions especially since pay scales had already been granted pursuant to the orders of the Tribunal which were not challenged. The Learned counsel for the petitioners is also unable to give any cogent reason for not applying the pay scales under career progression to the demonstrators in contradistinction to the lecturers. Why pay scales under career progression of UGC scheme is applicable to the lecturers of defense colleges and not to the demonstrators of defense colleges has not been explained nor there are any grounds to distinguish the two in the facts and circumstances.

In these circumstances on the ground that UGC scales were granted to the respondents pursuant to the orders of the Tribunal and

now the respondents are not entitled for Assured Career Progression as applicable to UGC, cannot be sustained.

Considering all the facts and circumstances there is no such illegality or irregularity in the order of the Tribunal which will require interference by this Court. There is no error in the order dated 8th November, 2007 in OA No. 140/07. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

JANUARY 14, 2010
'ss'

MOOL CHAND GARG, J.