

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 60 of 2021

Ref: WP(C) No. 374 of 2019

The Regional Institute of Medical Sciences (RIMS) Lamphelpat, Imphal through its Director, RIMS, Imphal, Manipur, P.O. & P.S. Lamphel, Imphal West District, Manipur Pin – 795004.

..... Appellant/s

- Versus -

1. Smt. Angom Rita Devi, aged about 56 years, w/o A. Mohendro Singh, resident of Yaiskul Chinngakham Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur Pin – 795001.

.....Principal Respondent/s

2. The Union of India, through the Secretary, Ministry of Health & Family Welfare, Govt. of India, New Delhi, 110011.
3. P. Songlianvung, the Section Officer (NE), Ministry of Health & Family Welfare (NE Division), Govt. of India, Nirmal Bhavan, New Delhi – 110011.

.....Proforma Respondent/s

B E F O R E

**HON'BLE MR. JUSTICE MV MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioner	::	Mr. BR. Sharmam, CGSC
For the respondents	::	Mr. Th. Khagemba, Adv and Mr. S. Samarjeet, Sr. PCCG.
Date of hearing	::	17.02.2023/21.02.2023/22.02.2023
Date of Judgment & Order	::	30.10.2023

JUDGMENT & ORDER (CAV)

A. Guneshwar Sharma, J.

[1] The brief fact of the case is that on the recommendation of a Selection Board, the respondent No.1/writ petitioner was initially appointed as Physiotherapist (Junior) in the Comprehensive Rehabilitation Centre of the Erstwhile Regional Medical College, Imphal [now, known as Regional Institute of Medical Sciences (in short, RIMS)] in the scale of pay of Rs. 640-30-850-EB-40-1410/- vide order dated 19.01.1987. After having served in the capacity of Physiotherapist (Junior) in the Regional Institute of Medical Sciences for more than 12 years, she was given financial upgradation in the scale of pay of Rs. 6,500-200-10,500/- pm under the Assured Career Progressive (ACP) scheme by the Director, Regional Institute of Medical Sciences, Imphal vide order dated 06.09.2000 issued by the Director, RIMS, Imphal. On the recommendation of the DPC meeting held on 19.08.2006, the respondent No.1/writ petitioner was promoted to the post of Senior Physiotherapist RIMS, Imphal in the same pay scale of Rs. 6,500-200-10,500/- pm vide order dated 25.08.2006 issued by the Director, RIMS, Imphal.

[2] The appellant (RIMS), Imphal was taken over by the Ministry of Health and Family Welfare, Government of India with effect from 01.04.2007, for which MoU dated 24.04.2007 was executed between the North Eastern Council (NEC), a statutory body having its office at Shillong (hereafter called

NEC) and the Ministry of Health and Family Welfare, Govt. of India, Nirman Bhavan, New Delhi.

[3] Consequent upon the taking over of the RIMS by the Union of India, the respondent No.1/writ petitioner submitted a representation dated 20.10.2008 raising all her grievances including a request to revise the pay scale at the range of Rs.8,000-275-13,5000/- pm in view of the Central Civil Service (Revised Pay) Rules, 1997 as the same is given to other Senior Physiotherapist working under the Ministry of Health and Family Welfare, Govt. of India. Thereafter, the respondent/writ petitioner submitted another representation dated 14.06.2010 to the Director, RIMS, Lamphel, Imphal requesting to dispose of her earlier representation dated 20.10.2008 specifically prayed for disposing of the earlier representation by passing a speaking order before giving effect of the 2nd Assured Career Progression Scheme (ACP). After submitting the said representation, the RIMS authority discussed the matter by placing it before the Grievance Redressal Committee and after due process the said committee approved and decided to afford the said pay scale of Rs. 8,000-275-13,500/- pm.

[4] The respondent No.1/writ petitioner submitted another representation dated 12.10.2010 to the Director, RIMS, Imphal, wherein she annexed a RTI reply thereby showing the pay scale of Sr. Physiotherapist as Rs. 8,000-275-13,500/- in other similarly situated Hospitals/Institutes. As no positive response came from the side of RIMS authorities, the respondent No.1/

writ petitioner preferred another representation dated 17.05.2012 with a prayer to revise her pay scale under ROP, 2006 corresponding with the pay scale of Rs. 8,000-275-13,500/- pm. The respondent No.1/writ petitioner again preferred another representation dated 09.06.2014 with a prayer to revise the pay scale of Sr. Physiotherapist held by her in the pay scale of Rs. 8,000-275-13,500/- p.m. w.e.f. 09.08.1999 and specifically mentioned about the granting of financial upgradation under the ACP Scheme and also about the RTI replies.

[5] Vide letter dated 27.02.2015, the Director, RIMS, Imphal addressed to the Secretary (H & FW), Ministry of Health & Family Welfare, Govt. of India, for considering the case of the respondent No.1/writ petitioner for grant of pay scale of pre-revised pay of Rs. 8,000-275-13,500/- (or 15,600-39,100 + GP 5400) for the post of Sr. Physiotherapist on the pattern of Safdarjung/Ram Manohar Lohia Hospital under the Ministry of Health and Family Welfare, Govt. of India. In the said letter, it was clearly mentioned that the request of the respondent/writ petitioner was placed in the meeting of the Standing Finance Committee of RIMS held on 22.09.2014 and the said Committee decided to refer the matter to the Ministry of Health & Family Welfare for taking a view in the matter. A reminder was also written on 16.05.2015 by the Director, RIMS, Imphal to the Deputy Secretary (NE), Ministry of Health & Family Welfare, Govt. of India. On 28.11.2015, the Director, RIMS, Imphal wrote a letter to the Deputy Secretary (NE), Ministry of Health & Family Welfare, Govt. of India for rectification of pay scale of Health Educator,

Lecturer in Statistics & Demography, Sr. Physiotherapist and Sr. Occupational Therapist on the line of other institutes under the Ministry of Health & Family Welfare, Govt. of India, followed by a letter dated 20.05.2016 addressed to the Secretary (H & FW), Ministry of Health and Family Welfare, Government of India and a reminder dated 19.08.2016 was also sent in that regard. On 20.07.2016, the Director, RIMS, Imphal wrote a letter to the enquiry made by the Ministry of Health and Family Welfare, Govt. of India letter dated 09.06.2016, thereby giving an exhaustive reply with regard to the service conditions and financial upgradation of the petitioner and one Smt. Th. Subadani Devi, Sr. Occupational Therapist. The Ministry of Health and Family Welfare, Govt. of India was also requested to consider the matter of the respondent No.1/writ petitioner and Smt. Th. Subadani Devi, Sr. Occupational Therapist for granting the pay scale of Rs. 8000-13500/- instead of Rs. 6500-10500/- pre-revised scale (or Rs. 9300-34800 + GP Rs. 4600/-).

[6] On 01.10.2016, the Deputy Director (Admn.), RIMS, Imphal wrote a letter to the Deputy Secretary (NE), Ministry of Health & Family Welfare, Govt. of India requesting for considering the case of the respondent No.1/writ petitioner and one Smt. Th. Subadani Devi, Sr. Occupational Therapist for granting the scale of promotional grade i.e. Rs. 8000/--13500/- instead of Rs. 6500-10500/-. A copy of the extract of the Standing Finance Committee (SFC) meeting held on 22.09.2014 was also enclosed in the above said letter. In pursuance to the above said letter of the Deputy Director (Admn.), RIMS,

Imphal, the Section Officer (NE), Ministry of Health and Family Welfare (NE Section), Govt. of India by its letter dated 26.10.2016 asked the Director, RIMS, Imphal to submit a complete facts/records in a clear picture with Recruitment Rules for the post of Sr. Physiotherapist and Sr. Occupational Therapist for the institutes of (i) AIIMS, New Delhi, (ii) PGIMER, Chandigarh and (iii) JIPMER, Puduchery. On 10.11.2016, the Director, RIMS, Imphal wrote a letter addressed to the Deputy Secretary (NE), Ministry of Health and Family Welfare, Govt. of India giving a detailed picture of the grievances of the respondent/writ petitioner and Smt. Th. Subadani Devi, Sr. Occupational Therapist including the details of Recruitment Rules of some of the Institute under the Ministry of Health & Family Welfare. But nothing substantial seems to have happened thereafter.

[7] Being aggrieved by the inaction on the part of the appellant, the respondent No.1/writ petitioner filed a writ petition being WP(C) No. 213 of 2017 praying for directing the Ministry of Health and Family Welfare, Govt. of India to give approval sought for by the RIMS, Imphal vide letter dated 20.05.2016 and 10.11.2016 and also for issuing a writ of mandamus directing the respondents to revise the pay scale of the petitioner at the pay scale of Rs. 8000-275-13500/- on the same pattern as provided in Safdarjung Hospital, New Delhi, Dr. Ram Manohar Lohia Hospital, New Delhi, Jawaharlal Institute of Post Graduate Medical Education and Research, Puduchery (JIPMER) and Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER)

with effect from 09.08.1999 with 18 % interest. The above said writ petition was disposed of on 06.08.2018 by directing the authorities to consider the claim of the respondent No.1/writ petitioner for grant of CCS (Revised Pay) Rules, 2008 in terms of the notification dated 24.11.2008 by making necessary verification.

[8] The respondent No.1/writ petitioner challenged the RIMS's order dated 21.01.2019 issued in compliance of the Hon'ble High Court order dated 06.08.2018 passed in WP(C) No. 213 of 2017 wherein it was stated that the revised pay band and grade of the post of Sr. Physiotherapist under the CCS (Revised Pay) Rules, 2008 as on 01.01.2006 i.e. Rs. 9300-34800/- + GP of Rs. 4200/- as specified under column 5 & 6 respectively of the First Schedule against the grade specified under column 3 and further stated that the respondent No.1/writ petitioner was granted the pay scale of Rs. 9300-34800/- with GP of 4200/- after adoption of the Central Civil Services (Revised Pay), 2008 at RIMS, Imphal vide notification dated 24.11.2008. Subsequently, the scale of pay of the respondent/writ petitioner was revised to the Scale of pay of Rs. 9300-34800/- + GP of Rs. 4200/- w.e.f. 01.01.2006 in pursuance of the order dated 13.11.2009 of the Ministry of Finance.

[9] Being aggrieved by the order dated 21.01.2019 issued by the RIMS, Imphal, the respondent No.1/writ petitioner challenged the same by way of the instant writ petition being WP(C) No. 374 of 2019 and the Hon'ble High Court set aside the said order and directed the RIMS, Imphal to fixed her pay scale notional as Rs. 8000-13500/- for the period from 01.04.2007 to

23.11.2008 in terms of the Central Civil Services (Revised Pay) Rules, 1997 being implemented by the RIMS, Imphal vide notification dated 13.01.1998.

[10] RIMS filed counter affidavit to the writ petition filed by the respondent No.2/writ petitioner stating that RIMS is a society registered under the Societies Registration Act, Manipur. Its affairs are governed by the statutory provisions as contained in the Memorandum of Association (MOA), Rules & Regulations and Bye-Laws of the Institute. It is stated in para 12 of the counter affidavit that the pay scale given to the post of Senior Physiotherapist, RIMS Imphal is based on the recruitment rules of RIMS and hence, pay scale enjoyed by Senior Physiotherapists in other Medical Colleges/Institutes under the Ministry of Health and Family Welfare, Govt. of India cannot be granted as '..... the Recruitment Rules in terms of educational qualification, experience, etc. may vary from institute to institute.' It is further stated that vide approval letter dated 06.01.1998 of the Chairman, Executive Council, RIMS, the Central Civil Services (Revised Pay) Rules, 1997 was implemented for the employees of RIMS by way of a Memorandum dated 13.01.1996 subject to the terms and conditions mentioned therein. The pay scale for the post of Senior Physiotherapist was fixed as Rs.6500-200-10500/- wef 01.01.1996. When the respondent No.1/writ petitioner was promoted to the post of Senior Physiotherapist after granting the benefit of ACP on completion of 12 years of service, she was given pay scale of Rs.6500-2—10500 as per existing rules. After RIMS was transferred to the Ministry of Health & Family Welfare wef

01.04.2007, no revision of pay scale of the employees of RIMS was not undertaken in parity with those employees under the Central Government. The employees of RIMS were brought over to the pay scales as prescribed in the Central Civil Services (Revised Pay) Rules, 2008 based on the pay scale prevailing in RIMS as on 01.01.2006. It is admitted in para 16 of the counter affidavit that '.... once the 6th CPC is made to operate/adopt in the RIMS, the pay structure of the RIMS prevailing before such adoption ceased to exist and the pay structures as provided in the 5th CPC has to be taken into account for fixing the pay scale to be given to various posts as provided in the adopted 6th CPC'. It is averred that the Grievance Redressal Committee is not competent to approve the increase in the pay scale of the employees of RIMS. It is further stated in para 7 of the counter affidavit that any proposal submitted by RIMS for increase in the pay scales of any post duly recommended by the Standing Finance Committee and the Executive Council, has to be examined by the Ministry of Health & Family Welfare, Govt. of India considering parameters/guidelines attached to the post in consultation/concurrence of the Integrated Finance Division (IFD) and with the approval of the Competent Authority, the proposal is then sent to the Ministry of Finance, Department of Expenditure for its concurrence/final approval.

[11] In the rejoinder affidavit, the respondent No.1/writ petitioner has stated that the pay scales of all the employees of RIMS were revised when Revision of Pay (ROP) 1996 came into effect and was adopted at par with the

Central Government employees. Pay scale of the respondent No.1/writ petitioner has to be fixed as per the ROP as provided in the Central Civil Services (Revised Pay) Rules, 1997 which has been adopted by RIMS by its Memorandum dated 13.01.1998. She has been claiming the pay scale of Senior Physiotherapist should be Rs.8000-275-13500 as provided in the Central Civil Services (Revised Pay) Rules, 1997 as adopted by RIMS. It is highlighted that all throughout 2014, RIMS authorities have been supporting and accepting her claim by way of various communications/letters (Annexures- A/9 colly, A/10, A/11 colly, A/12, A/13 & A/15 to the writ petition) sent by RIMS to the Central Government to the effect that the pay scale of the respondent No.1/writ petitioner should be Rs.8000-275-13500 in place of Rs.6500-10,500/- on her promotion to Senior Physiotherapist. The effective date of adopting the 5th CPC by RIMS is 01.01.1996 and the pay scale of Senior Physiotherapist should be Rs.5500-175-9000, but she was wrongly given only Rs.5000-8000 pay scale contrary to the pay structure as provided in the 5th CPC. Accordingly, she was given ACP in the wrong scale of Rs.6500-200-10500 instead of actual scale of Rs.8000-135000 pre-revised. It is also stated that the correct and entitled pay scale of Senior Physiotherapist as accepted by RIMS is Rs.8000-275-13500 (or Rs.9300-34800 + GP Rs.5400) and they are bound to give her the said correct pay scale. It is submitted that RIMS authorities cannot now take a contrary stand which is inconsistent with their earlier views as proposed to the Central Government.

[12] The respondent No. 2/Union of India did not file any counter affidavit before the learned Single Judge, but chose to file an affidavit-in-opposition in the appeal where it is stated that transaction of Business Rules provides that no department shall, without the prior concurrence of Ministry of Finance, issue any orders which may relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or to any other conditions of their service having financial implications. It is stated that grant-in-aid of RIMS, Imphal is released from consolidated fund of India and any proposal bearing financial implication may require prior approval of Ministry of Finance. As per Ministry of Finance's OM dated 20.06.1984, all the proposals of upgradation of existing posts are treated as proposals for creation of new posts in a near pay scale and as per Ministry of Finance's OM dated 03.05.1993, Group A posts below the level of JS, Group B and Group C posts require approval of Finance Minister. Further it is stated that the respondent/writ petitioner, retired Sr. Physiotherapist is not similarly situated with the Central Government Employees as the recruitment qualification of Sr. Physiotherapist of RIMS and other Autonomous Institute under the Central Government are not same including the functional consideration in terms of OM dated 13.07.2017 and subsequent OM dated 26.07.2017 issued by the DoE. Moreover, it may be noted that the respondent/writ petitioner was promoted to the post of Sr. Therapist w.e.f. 25.08.2006 as per the notified recruitment rules of the post and the recruitment rules can be amended for pay scale upgradation

in consultation with Department of Expenditure prospectively. RIMS in its appeal have also mentioned that no revision of pay scale of any staff of the RIMS was done partly with those of other staff employed under Union of India.

[13] In para 6 of the impugned judgment dated 31.08.2021 in WP(C) No. 374 of 2019, learned Single Judge framed the short question to be consideration as below:

“[6] From the pleadings as aforesaid, the short question that arises for consideration by tis Court, is whether, in facts and circumstances of the case, the petitioner was entitled to the pay scale of Rs.15,600-29,100 + GP Rs.5400 fixed for the Senior Physiotherapist in the Central Civil Services (Revised Pay) Rules, 2008 adopted by the RIMS, Imphal. If the answer is in affirmative, whether the petitioner would be entitled to the benefit of the said pay scale with effect from 01.01.2006 or not?”

[14] It may be pointed out here that in the impugned order, the pay scale of Rs.15,600-39,000 + GP Rs.5400 [corresponding to Sl. No.17 of First Schedule appended to Notification dated 24.11.2008 issued by RIMS adopting Central Civil Services (Revised Pay) Rules, 2008] is wrongly written as Rs.15,600-29,000 + GP Rs.54,000. This may be due to inadvertence and it is clarified that the 29,000 be read as 39,000 in the impugned order.

[15] Before the learned Single Judge, it has been submitted on behalf of the writ petitioner that she was entitled to the pay scale of Rs. 15,600-39,100 +GP Rs.5400 fixed for the post of Senior Physiotherapist in the Central Civil

Services (Revised Pay) Rules, 2008 on the ground that on the date of enforcement of Rules of 2008, she was already working as Senior Physiotherapist and all Senior Physiotherapists working in similarly situated Hospital/Institutes were given the said pay scale as prescribed in the pay rules. On the other hand, it has been submitted on behalf of RIMS that the writ petitioner was entitled to the pay scale as fixed in the Central Civil Services (Revised Pay) Rules, 2008 corresponding to the pay scale which she was enjoying on the date of adoption of Rules of 2008. As the writ petitioner was getting the pay scale of Rs.6500-200-10500 fixed vide Office Memorandum dated 13.01.1998 (which was not challenged by her), she would be entitled to the corresponding pay scale of Rs.9300-34,800 with GP of Rs.4600 as fixed in the Central Civil Services (Revised Pay) Rules, 2008.

[16] In para 9 of the impugned judgment, learned Single Judge has observed that after taking over of the management of RIMS by the North Eastern Council (NEC) from 01.04.1995, no pay commission was constituted to fix or revise the pay scales of its employees. It was only on 13.01.1998 that RIMS issued an OM by which the Central Civil Services (Revised Pay) Rules, 1997 (corresponding to 5th CPC) was adopted and implemented with certain modifications. The pay scale for the Senior Physiotherapist therein was fixed at Rs.6500-200-10500 and the writ petitioner was given the said pay scale at the time of her promotion to the post of Senior Physiotherapist. When RIMS was taken over by the Central Government wef 01.04.2007, it became an

autonomous body under the Ministry of Health & Family Welfare, Govt. of India and its employees would be entitled to the pay scale as fixed in the Central Civil Services (Revised Pay) Rules, 1997 which was given to the Central Government employees. Due to the failure of both RIMS and Central Government to take a policy decision in this regard, the employees of RIMS were getting pay scale at a lower level. Consequently, when the Central Civil Services (Revised Pay) Rules, 2008 were adopted and implemented in RIMS, it revised the pay scale of the writ petitioner from the lower pay scale which she was enjoying at that time and not from the pay scale which she was entitled to as fixed in the Central Civil Services (Revised Pay) Rules, 1997. Accordingly, the writ petitioner was denied the pay scale of Rs.8000-275-135—as fixed in the Central Civil Services (Revised Pay) Rules, 1997 even after RIMS was taken over by the Government of India. It has been held that denial of higher pay scale as enjoyed by employees of similar Hospitals/Institutes under the control of Central Government would be violation of the doctrine of equality as enshrined in Article 14 of the Constitution of India.

[17] Regarding the plea that RIMS requires prior approval from the Central Government specially with respect to revision and upgradation of pay scale of its employees, learned Single Judge has considered this aspect minutely in para 12 of the impugned judgment. The issue is as to whether prior approval of the Ministry of Health & Family Welfare, Govt. of India is required before any policy decision is taken by RIMS. Reliance has been placed to a

decision of a Division Bench of this Court in order dated 22.04.2021 in WA No. 42 of 2020. Clause IV of the Memorandum of Association of RIMS provides the overall management of the Institute is entrusted to (i) Board of Governors, headed by the Union Minister of Health & Family Welfare and (ii) Executive Council headed by the Secretary, Ministry of Health & Family Welfare, Govt. of India. Clause 8 of the Rules and Regulations of RIMS deals with the power of the Executive Council and Clause 8(iii) vests in the Executive Council the management and administration of the Institute and has the powers and functions as enumerated under sub-clauses (a) to (m). Under sub-clauses (a) to (l), the Executive Council is empowered to control the overall management; approval of budget estimates including revised and supplementary; approval, creation, upgradation and abolition of post & revision of pay scales and allowances; etc. Only sub-clause (m) mandates prior concurrence of the Ministry of Health & Family Welfare, Govt. of India with respect to the power to amend bye-laws, rules and regulations of RIMS. It is observed that the order in WA No. 42 of 2020 has attained finality. Relying on the above referred findings, learned Single Judge is of the view that prior approval of the Ministry of Health & Family Welfare, Govt. of India is not required to be sought in all policy decisions except in respect of those relating to amendment of bye-laws and rules & regulations. It is held that the Executive Council is the competent authority empowered, so far revision of pay scales and allowances is concerned as per sub-clause (c) to Clause 8(iii) of the Rules and Regulations

of RIMS. It is further held that inaction of both RIMS and Central Government for redressal of the grievances of the writ petitioner for a long time and denying the same by order dated 21.01.2019 is highly unfair and hit by provisions of Article 14 of the Constitution of India. Learned Single Judge also held that principle of estoppel would be attracted against RIMS as it could not take a-U turn from its written recommendations in favour of the writ petitioner sent to Central Government for consideration. The stand of the RIMS to the effect that Grievance Redressal Committee is not competent to take a decision in respect of the increase in the pay scale of the writ petitioners is not fair and unreasonable.

[18] In para 14, learned Single Judge has held that the writ petition is entitled to the relief prayed in the writ petition. It is observed that on 25.08.2006 when the writ petitioner was promoted to the post of Senior Physiotherapist, the Central Civil Services (Revised Pay) Rules, 1997 was adopted with modification by RIMS vide the OM dated 13.01.1998. The pay scale fixed as per the OM dated 13.01.1998 for Senior Physiotherapist was Rs.6500-200-10500 and the writ petitioner was granted the said scale. With the taking over of RIMS by the Central Government wef 01.04.2007, the pay scale of the Senior Physiotherapist ought to have been changed to the pay scale of Rs.8000-275-13500 in accordance with the Central Civil Services (Revised Pay) Rules, 1997 at par with Senior Physiotherapists of similarly situated Hospitals/Institutes under the control of the Central Government. The same was not done by RIMS

as well as the Central Government. It has been further held that the writ petitioner is entitled to the corresponding pay scale of Rs.15,600-39,100 + GP Rs.5400 when the Central Civil Services (Revised Pay) Rules, 2008 was adopted by RIMS vide Notification dated 24.11.2008. Since the writ petitioner was not promoted to the post of Senior Physiotherapist on the date of implementation of the Central Civil Services (Revised Pay) Rules, 1997 wef 01.01.2006 and she was promoted only on 25.08.2006, in para 15 of the impugned judgment, learned Single Judge directed RIMS to notionally fix the pay scale of the writ petitioner (i) as Rs.8000-275-13500 for the period from 01.04.2007 to 23.11.2008 in terms of the Central Civil Services (Revised Pay) Rules, 1997 adopted in RIMS vide OM date 13.01.1998, (ii) Rs.15600-29,100 + GP Rs.5400 for the period from 24.11.2008 to date on which the Central Civil Services (Revised Pay) Rules, 2008 adopted by RIMS, and thereafter notionally fix the corresponding revised pay scales till the date of superannuation. The whole exercise was directed to be completed within a period of three months, failing which interest @ 6% per annum would be accrued. Accordingly, the writ petition was allowed vide judgment & order dated 31.08.2021 in WP(C) No. 374 of 2019.

[19] Being aggrieved by the impugned judgment & order dated 31.08.2021 in WP(C) No. 374 of 2019, RIMS preferred the present writ appeal amongst on the following grounds:

(a) Learned Single Judge has wrongly directed RIMS to fix the pay scale of the writ petitioner as Rs.8000-275-13500 for the period from 01.04.2007 to 23.11.2008 in terms of the Central Civil Services (Revised Pay) Rules, 1997 without challenging the pay fixed by RIMS for the post of Senior Physiotherapist in RIMS in the initial appointment as Rs.6500-10,500 + GP Rs.4200.

(b) Learned Single Judge has failed to appreciate the detail reasons given in the order dated 21.01.2019 for fixation of the pay scale of the writ petitioner in the post of Senior Physiotherapist.

(c) The direction to fix pay scale of Senior Physiotherapist in RIMS in terms of pay scale of AIIMS, PGI Chandigarh is without any basis.

(d) Learned Single Judge has failed to distinguish that order dated 22.04.2021 in WA No. 42 of 2020 is not applicable to the present case.

[20] Heard Mr. BR Sharma, learned counsel for the appellant/RIMS, Mr. Th. Khagemba, learned counsel for the respondent No.1/ writ petitioner and Mr. S. Samarjeet, learned Sr. PCCG for respondent No.2/UOI.

[21] First submission of Mr. BR Sharma, learned counsel for the appellant is that the writ petition was enjoying the pay scale of Rs.6500-200-10500 on her promotion to the post of Senior Physiotherapist under the 5th CPC with the adoption of the Central Civil Services (Revised Pay) Rules, 1997 in RIMS vide OM dated 13.01.1998. Without challenging the said pay scale by the writ petitioner, learned Single Judge was wrong in directing the RIMS to grant

pay scale of Rs.8000-275-13500 under the Central Civil Services (Revised Pay) Rules, 1997 on taking over of RIMS by Central Government. The corresponding pay scale for Senior Physiotherapist under the Central Civil Services (Revised Pay) Rules, 2008 would be Rs.9300-34,800 + GP Rs.4600 on adoption of the Central Civil Services (Revised Pay) Rules, 2008 by RIMS with the adoption of the Central Civil Services (Revised Pay) Rules, 2008 vide Notification dated 24.11.2008. It is also pointed out that the writ petitioner has never challenged the adoption of 5th and 6th CPCs in RIMS and hence she is not entitled to the higher pay scale as granted by the learned Single Judge.

[22] The second submission of Mr. BR Sharma is that the writ petitioner cannot claim parity of pay with other Central institutes/hospitals such as AIIMS, PGI Chandigarh, etc. as there are differences in the service rules and nature of works. He has pointed out that RIMS has only 528 beds while AIIMS has 2200 beds. His third submission is that the writ petitioner was already given ACP on completion on 12 years of service and she was already enjoying a higher pay scale and hence nothing prejudice has been caused to her. Reliance is place on the decision of Hon'ble Supreme Court in the case of **Mewa Ram Kanojia v. AIIMS : AIR 1989 SC 1256 @ Para 4** which held that the principle of 'equal pay for equal work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities. It is open to the State to prescribe different scales of pay for different posts having different qualifications, duties and responsibilities of the

post. It is submitted that Senior Physiotherapists in RIMS are different and cannot be compared with those of other institutes due to difference in rules and nature of works and duties. Learned counsel further refers to another decision in the case of **Hukum Chand Gupta v. Director General, ICAR: (2012) 12 SCC 666 @ Para 20 & 21** which upheld different pay scales for the employees working at headquarters and those working at institutional level. In that case, the employees working at headquarters are governed by a different set of rules and hierarchy of posts and promotional avenues are different. It was held that merely because any two posts at the headquarters and at the institutional level have same nomenclature, would not necessarily require that same pay scale on the said two posts and different pay scales would not violate the principle of equality before law. It is also pointed out that any upgradation of pay scale will require concurrence of Finance Ministry, Govt. of India. It is prayed that the impugned order be set aside being non-consideration of the points raised herein above.

[23] Per contra, Mr. Th. Khagemba, learned counsel for respondent No.1/writ petitioner submits that the writ petitioner is claiming for rectifying/granting the pay scale from Rs.6500-10500 pre-revised scale (or Rs.9300-34800 + GP Rs.4600 revised) to Rs.8000-13,500 pre-revised (or Rs.15,600-34800 + GP Rs.5400 revised). As per 5th CPC the pay scale of Senior Physiotherapist is Rs.8000-275-13,500 on adoption of the Central Civil Services (Revised Pay) Rules, 1997 in RIMS vide OM date 13.01.1998. It is

stated that the corresponding pay scale in 6th CPC is Rs. Rs.15,600-39,100 + GP Rs.5400 as indicated in Sl. No.17 of First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. It is pointed out that the Central Civil Services (Revised Pay) Rules, 2008 was adopted in RIMS vide Notification dated 24.11.2008. Mr. Khagemba, learned counsel draws the attention of this Court to First Schedule appended to Rules of 2008 where the pay scale of Rs.15,600-39,100 + GP Rs.5400 was provided as corresponding pay scale of Rs.8000-275-13500 and the writ petitioner is claiming a pay scale adopted by the RIMS which is similar with the pay scale prescribed in the Central Civil Services (Revised Pay) Rules, 2008. Due to lapse/inaction of RIMS, the writ petitioner could not enjoy the higher pay entitled to her as per 5th CPC as well as 6th CPC. It is stated that as admitted by RIMS in para 16 of its counter affidavit, on adoption of 6th CPC, the pay structure of RIMS prevailing on the date of such adoption ceased to exist and hence the writ petitioner is entitled to the pay scale prescribed under the Central Civil Services (Revised Pay) Rules, 2008.

[24] Mr. Th. Khagemba, learned counsel has raised the plea of estoppel on the ground that RIMS authorities have been canvassing the plea of the writ petitioner to the Ministry for granting pre-revised pay scale of Rs.8000-13500 instead of Rs.6500-10500 on her promotion to Senior Physiotherapist by way various letters sent to the Ministry. Now, RIMS authorities cannot take a U-turn and plead that she is not entitled to the said

pay scale as proposed by them. Reliance is placed on the decision of **Joint Action Committee v. Director General of Civil Aviation reported as (2011) 5 SCC 435 @ Para 11 & 11** holding that law does not permit a person to both approbate and reprobate. It is also submitted that new plea to the effect of non-challenge to pay scale in 5th & 6th CPCs has been taken for the first time in writ appeal and the same deserves to be rejected at threshold. Learned counsel refers to the decision in the case of **Adbul Khader v. Tarabai: (2011) 6 SCC 199 @ Para 18,19 & 20** that having failed to raise the plea before Single Judge, the same cannot be raised before Division Bench. It is prayed that the writ appeal may be rejected being devoid of any merit and the findings and directions of the learned Single Judge in the impugned judgment and order be upheld.

[25] Relying on the affidavit filed in writ appeal, Mr. S. Samarjeet, learned Sr. PCCG for the Union of India has supported the submission of Mr. BR Sharma, learned counsel for RIMS. It is submitted that RIMS is an autonomous body and recommendations of the Central Pay Commission are not automatically applicable to such body. Referring to the Government of India (Transaction of Business) Rules, 1961 (as amended upto 03.04.2020), it is pointed out that without the prior concurrence of Ministry of Finance, no department shall issue any orders relating to the number or grade of posts, or to the strength of a service, or to the pay or allowances of Government servants or any other conditions of their service having financial implications. It is also

stated that any proposal bearing financial implication may require prior approval of the Ministry of Finance. It is prayed that the writ appeal be allowed.

[26] Perused the materials on record and considered the submissions made at bar along with the case laws cited.

[27] It is seen from the above discussion that RIMS has not constituted any Pay Commission for its employees and recommendations of the Central Pay Commission are adopted from time to time with necessary modification. RIMS was taken over by the Ministry of Health & Family Welfare, Govt. of India wef 01.04.2007. At that time the writ petitioner was working as Senior Physiotherapist in RIMS on promotion vide order dated 25.08.2006 issued by the Director, RIMS in the pay scale of Rs.6500-200-10500. Vide OM dated 13.01.1998, the recommendations of the Central Civil Services (Revised Pay) Rules, 1997 was adopted in RIMS. Hence, the writ petitioner was entitled to the pay scale of Rs.8,000-275-13,500 for the post of Senior Physiotherapist on the adoption of the Central Civil Services (Revised Pay) Rules, 1997. But such revision was not made by the RIMS as well as the Central Government and as such the writ petitioner continued in the lower pay scale of Rs.6500-200-10500. On adoption of the Central Civil Services (Revised Pay) Rules, 2008 in RIMS by Notification dated 24.11.2008, the pay scale of the writ petitioner was wrongly fixed as Rs.9300-34800 + GP Rs.4200 and later on upgraded to FP Rs.4600 instead of the correct pay scale of Rs.15,600-39,100 + GP Rs.5400

as mentioned in First Schedule of the Notification dated 24.11.2008 adopting 6th CPC in RIMS.

[28] We are of the considered view that the wrong fitment of the pay scale of the writ petitioner at the scale of Rs.9300-34,800 + GP Rs.4600 in the Central Civil Services (Revised Pay) Rules, 2008 adopted in RIMS is due to the inaction/lapses of the authorities concerned for their failure to upgrade her pay scale of Rs.8000-275-13500 (pre-revised) on her promotion to the post of Senior Physiotherapist and on adoption of the Central Civil Services (Revised Pay) Rules, 1997 in RIMS vide OM dated 13.01.1998. RIMS as well as the Central Government cannot take the plea that the writ petitioner is not entitled to the pay scale of Rs.15,600-39,100 + GP Rs.5400 as she did not challenge the earlier fitment to the scale of Rs.6500-200-10500 in the Central Civil Services (Revised Pay) Rules, 1997 and the adoption of 5th & 6th CPCs in RIMS. In the case of **Chandi Prasad Uniyal v. State of Uttarkhand: (2012) 8 SCC 417 @ Para 15**, Hon'ble Supreme Court held that '*..... the excess payment made due to wrong/irregular pay fixation can always be recovered*'. The ratio of Chandi Prasad Uniyal (supra) is that wrong fixation of pay scale can be corrected at any stage and excess payment, if any, can be recovered from the employee except in some special cases where there will be hardship to the employee. As a corollary, deficient payment has also to be made to the employee, if his pay scale has wrongly been fixed by the employer at a lower scale. We do not find any merit in the plea

of RIMS as well of the Central Government to the fact that since the writ petitioner did not challenge the wrong fitment of her pay scale to a lower level on her promotion to the post of Senior Physiotherapist, she cannot claim to the pay scale of Rs. 15,600-39,100 + GP Rs.5400 in the Central Civil Services (Revised Pay) Rules, 2008 as adopted in RIMS vide Notification dated 24.11.2008.

[29] On close scrutiny, we also do not find any merit to the stand of RIMS and the Central Government that no policy matter affecting financial aspect of any department shall be taken without prior concurrence of the Ministry of Finance, Govt. of India and hence the pay scale of Rs.15,600-39,100 + GP Rs.5400 will not be applicable to RIMS for the post of Senior Physiotherapist. It is an admitted fact the recommendations of 6th CPC have been adopted by RIMS with enforcement of the Central Civil Services (Revised Pay) Rules, 2008 vide Notification dated 24.11.2008. The said pay scale is shown at Sl. No.17 of the First Schedule appended to the Notification dated 24.11.2008 issued by the Chairman of the Executive Council of RIMS in exercise of powers conferred by Rule 6.1.3 of its Constitution and Bye-Laws. Writ petitioner is not claiming a different and higher pay scale not provided in the First Schedule. It is also a fact that the Central Civil Services (Revised Pay) Rules, 1997 & 2008 were made by the President exercising the powers under Article 309 of the Constitution. In other words, the recommendations of 5th & 6th CPCs have been enforced by following statutory procedures as prescribed in

this regard. The same have been adopted by RIMS vide OM dated 13.01.1998 and Notification dated 24.11.2008 by the Executive Council in exercise of power conferred on it by its bye-laws. As discussed earlier, a Division Bench of this Court held in order dated 22.04.2021 in WA No. 42 of 2020 that in view of Clause 8(iii)(c) & (m) of the Rules and Regulations of RIMS, the Executive Council is the competent authority for revision of pay scale of its employees and prior concurrence of Ministry of Health & Family Welfare, Govt. of India is mandatory for amendment of bye-laws, rules and regulations. These findings have attained finality and it does not lie in the mouth of RIMS as well as Central Government that recommendations of CPC cannot be enforced in RIMS without approval of both Ministries of Health & Family Welfare and Finance.

[30] The authorities of RIMS are very unfair and unethical to the cause of the writ petitioner. From the very beginning, they are canvassing to the Ministry on her behalf for upgradation of her pay scale to Rs.8000-275-13500 in the Central Civil Services (Revised Pay) Rules, 1997 and to Rs.15,600-39,100 + GP Rs.5400 in the Central Civil Services (Revised Pay) Rules, 2008 as evident from their letters and correspondence with the Ministry of Health & Family Welfare, Govt. of India. Suddenly, they took a somersault and took a stand that she was not entitled to the higher pay scale as claimed by her. It is the settled proposition of law that a person, that too an authority established under law, cannot approbate and reprobate in the same transaction at different time according to its benefit [Kindly see **Union of India v. Subrata Das: (2020)**

12 SCC 784]. Accordingly, we are of the view that RIMS cannot take a different stand altogether in the litigation, after supporting the case of the writ petitioners.

[31] The plea of non-applicability of equal pay for equal to the writ petitioner as compared to similar employees in other central institutes/hospital is raised on the misconception that she is claiming a pay scale not provided in the relevant rules. As seen from First Schedule appended to the Notification dated 24.11.2008 issued RIMS with the approval of its Executive Council for adopting the Central Civil Services (Revised Pay) Rules, 2008, the pay scale of Rs.16,500-39,100 + GP Rs.5400 is provided at Sl. No.17. Hence, the writ petitioner is claiming a pay scale adopted by RIMS itself and she is relying on similar pay scale given to persons similarly situated like her in other central institutes as an example. The case laws cited by Mr. BR Sharma are not applicable in the facts of the present case.

[32] In view of the observations and findings arrived as above, we are of the considered opinion that the writ appeal is without merit and accordingly dismissed. Parties are directed to bear their own cost. As pointed in para 14 above, in the impugned judgement, the pay scale of Rs.15,600-39,100 + GP Rs.5400 for Senior Physiotherapist has wrongly been recorded as Rs.15,600-29,100 + GP Rs.5400. It is clarified that the correct pay scale be read as Rs.15,600-39,100 + GP Rs.5400. The directions of the learned Single Judge as recorded in para 15 of the impugned judgment be complied within a period

of three months from the date of receipt of this judgment. It is clarified that the Ministry of Health & Family Welfare, Govt. of India has to sanction/bear the additional amount entitled to the respondent No.1/writ petitioner, as RIMS is autonomous body 100% funded by the Central Government. Registry is directed to send a copy of this judgment to the appellant for doing needful.

JUDGE

JUDGE

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