

HIGH COURT OF TRIPURA
AGARTALA

WA No.94 of 2023

Dr. Soma Sarkar(Bhattacharya),
W/o Lt. Partha Pratim Bhattacharya,
Resident of Town Bardowali, Kalibari Road,
No.3, PO: Agartala, PS: West Agartala, District:West Tripura,
PIN: 799001

....Appellant(s)

Versus

- 1. The State of Tripura,**
Represented by the Commissioner & Secretary to the
Health & Family Welfare Department, Government of Tripura,
New Secretariat Complex, PO: Secretariat, PIN: 799010,
Agartala, District: West Tripura.
- 2. The Commissioner & Secretary** to the
Health & Family Welfare Department, Government of
Tripura, New Secretariat Complex, PO: Secretariat,
PIN: 799010, Agartala, District: West Tripura.
- 3. The Commissioner & Secretary** to the
Government of Tripura, Finance Department,
New Secretariat Complex, PO: Secretariat,
PIN: 799010, Agartala, District: West Tripura.
- 4. The Director of Health Services,**
Government of Tripura, PN Complex, PO: Kunjaban,
Agartala, PIN: 799006, District: West Tripura.
- 5. The Principal,**
Agartala Government Medical College, PO: Kunjaban,
PIN: 799006, District: West Tripura, Agartala.
- 6. The University Grant Commission,**
represented by its Secretary Bhadur Saha, Jafar Marg,
New Delhi-110002.

....Respondent(s)

For Appellant(s)	:	Mr. C.S. Sinha, Advocate
For Respondent(s)	:	Mr. D. Bhattacharya, GA Mr. D. Sarma, Addl. GA
Date of hearing	:	10.08.2023
Date of delivery of judgment & order	:	31.08.2023
Whether fit for reporting	:	Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT & ORDER

(Arindam Lodh, J.)

The appellant is before us being aggrieved by and dissatisfied with the judgment and order dated 28.04.2023 passed by a learned Single Judge of this Court in WP(C) 391 of 2021, whereby and whereunder the writ petition preferred by the writ petitioner, appellant herein was dismissed.

2. The core question which arises for consideration before us is as to whether the appellant, who is serving in the post of Librarian(Group-C Non-Gazetted) at Agartala Government Medical College & Hospital(for short, AGMC) on being selected through a process of selection, is entitled to the benefit of revised UGC Pay Scale *at par* the regular Faculty Members of the AGMC.

3. To resolve the controversy involved in the case and before answering the question emerging out of the pleadings and submissions made by the learned counsel for the parties, it is apt to mention the facts in brief, which are as follows:

3.1. Pursuant to an employment Notification dated 20.10.2009 issued by the Director of Health Services, Government of Tripura(respondent No.4) for filling up of different categories of vacant posts on fixed pay basis under the Health & Family Welfare Department, Government of Tripura, the writ petitioner/appellant appeared before the walk-in-interview for the post of Librarian, and on being selected she was issued offer-of-appointment vide Memo. dated 01.01.2010 with certain terms and conditions and on her

acceptance of the said offer-of-appointment, she was appointed to the post of Librarian on fixed pay basis for a period of one year vide order dated 22.01.2010, and she was posted at AGMC and directed to report for duty to the Principal, AGMC, Agartala. Thereafter, on her completion of five years of continuous service in the said post, she was accorded regular scale of pay, in the pay structure of Pay Band-2 of Rs.5,310-24,000/- with Grade Pay of Rs.2,100/-, fixing her basic pay at Rs.9,920/-, which was given effect from 25.01.2015, vide order 16.02.2015 issued by the Director of Health Services, Government of Tripura.

3.2. Thereafter, the writ petitioner/appellant has submitted representation dated 16.10.2019 addressed to the respondent No.4, Director of Health Services through the respondent No.5, Principal, AGMC praying for extending UGC pay scale of Rs.15,600-39,100/- to the post of Librarian, stating *inter alia* therein that UGC pay scale has been extended to all Faculty Members of the AGMC excluding the post of Librarian. It has also been mentioned in the said representation that the post of Librarian falls in academics, and as such, like the Librarian posted in Bir Bikram University of the State and other Librarians posted in various colleges of the neighbouring states, she should also be favoured with the UGC pay scale.

Thereafter also, she has submitted three more representations dated 27.11.2019, 31.12.2019 and 28.07.2020 on the same footing.

3.3. Her representations have been finally addressed to by the respondents vide communication dated 19.02.2020, rejecting her prayer for granting UGC pay scale.

3.4. It is pertinent to mention herein that while rejecting the prayer of the appellant-writ petitioner, the respondent No.4 in his communication dated 19.02.2020 has mentioned the following grounds for not extending the benefit of UGC pay scale to the appellant-writ petitioner, which are as follows:

*“(1) Although in the application the post of Librarian was claimed to belong to the academic discipline of the AGMC, the “Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999” of the MCI, as amended, categorizes the post of ‘Librarian/Dy. Librarian’ etc. as “Ancillary Services,” not as a mainstream academic post. Worthwhile it is to mention here that for the AGMC, the aforesaid Regulations lay down the accreditation-benchmarks to be attained. It therefore becomes amply clear that insofar as the AGMC is concerned, **the post of librarian is only subservient to the academic faculty, not an integral part thereof.** Seemingly, you’ve mistakenly equated your post with that existing in the universities/academic institutions where Library Science is a part of pedagogy, and taught as a distinct professional course.*

(emphasis supplied)

*(2) The Recruitment Rules(RR) for the post of Librarian was notified by the Health & F.W. Dept. vide Notification No.F.2(1-261)-MS/Estt/2014, dated 25-10-2016, wherein the post was classified as Group-C(Non-Gazetted), with the essential qualification being either degree or diploma in Library Science, besides being a graduate. ***It is therefore clear that even a graduate with diploma in Library Science is as much entitled to being appointed to the post of Librarian as is a degree-holder in Library Science.*** It is therefore fallacious to equate a post to which even a person with a diploma-qualification can legitimately be appointed with that existing in universities/academic institutions where the post of Librarian stands on equal footing with other faculties. Existence of the diploma-qualification as an eligibility qualification for being appointed to the post of Librarian in the Health & F.W. Dept., **coupled with condition that the post carries liability to serve anywhere in the State and not merely in the AGMC,** is a clear pointer to the non-academic character of the post. In the offer of appointment issued to you by the Director of Health services vide No.F2(1-185)-Ms/Estt/06(Vol-I), dated 01-01-2010, it was specified in no uncertain terms that the post of Librarian “***carries the liability to serve at any part of****

the State of Tripura,” and therefore it cannot be speciously claimed that the post of Librarian comes under the academic faculty of the AGMC. Nowhere in the offer of appointment or in the appointment letter was it mentioned that the post was meant specifically for the AGMC; rather the condition precedent was of your service-liability anywhere in the State. Possession of higher qualification than is requisite as per the Recruitment Rules framed for the post of Librarian cannot be interpreted as conferring any entitlement to you to a higher pay scale on par with academic positions whose recruitment criteria stand on a higher pedestal. **Unreservedly accepting all the conditions set down in the aforesaid offer of appointment, including that of service-liability across the State, you had communicated your acceptance of the offer vide your letter dated 13-01-2020, along with requisite attestation form.** Accordingly, you were appointed to the post of Librarian under the Health & FW Dept., vide Order No.F.2(1-185)-MS/Estt/2006(Vol-I), dated 22-01-2010, and was eventually posted at the AGMC. **Going by your service conditions, you are amenable to being posted anywhere else in the State, and not at the AGMC singly, as already stated.**

(emphasis supplied)

(3) The Notification issued by the Health & FW Dept. vide No.F.1(05)/MS/Estt/AGMC&H/Pay/F/18, dated 27.08.2019, providing for revision of pay scales of regular faculty members of the AGMC under the purview of the UGC on the recommendation of the 7th CPC, listed only the following posts as constituting the academic faculty: (a) Assistant Professor; (b) Associate professor: and (c) Professor/Principal and the administrative positions equivalent thereto. In Para 4, the Notification lays down that **“This will not extend to posts such as Basic Teachers(Tutor), Registrar/Senior Resident, Workshop Superintendent and other support staff/non-teaching posts.”** The post of Librarian in the Health & FW Dept., being in the bracket of Group-C(Non-Gazetted) with transfer liability throughout the State, evidently stands out of the purview of the pay-revision of the academic faculty members of AGMC on the UGC pattern.

(emphasis supplied)

In the light of the foregoing facts and circumstances, your claim to the UGC pay-scale appears clearly to be devoid of merit, unsustainable, and therefore rejected altogether hereby.”

3.5. The appellant/writ petitioner, being aggrieved by the communication dated 19.02.2020 rejecting her prayer for extending the benefit of UGC scale, has submitted another representation dated 01.06.2020 referring to ***Minimum Requirements for 100 MBBS Admissions annually Regulations, 1999*** issued by the Medical Council of India(MCI), wherein ***Regulation 4*** mandates that *every Medical college and Medical institution and its associated teaching hospitals for 100 MBBS admissions annually shall have the accommodation for teaching and technical staff and equipment for each department as given in the Schedule-I, II, III respectively and in Schedule-II of the Regulation, the various departments of the Medical Colleges along with its incumbents have been mentioned. In Schedule-II of the Regulation, the posts of Professors, Associate Professors, etc. are mentioned department wise, such as General Medicine, Tuberculosis & Respiratory Diseases, Dermatology Venereology & Leprosy, etc. and similarly, the post of Librarian is also mentioned in the Department of Central Library.* It has also been mentioned in the said representation that the Librarians in all Medical Colleges are getting UGC pay scales like Professors, Associate Professors and Assistant Professors. She has relied upon the notifications/advertisements of Assam Medical College, NEIGRIHMS Shillong, Mizoram Medical College, AIIMS New Delhi and AIIMS Bhubaneshwar claiming that UGC pay scale has already been extended to the Librarians of Medical Colleges.

3.6. The said representation has also been disposed of by the respondent No.4 vide Memo. dated 28.07.2020 *inter alia* rejecting her prayer stating therein that *as per notification vide No.F.1(05)MS/ESTT/AGMC&H/Pay/F/18 dated 27.08.2019, issued by the Health & FW Department, Govt. of*

Tripura providing revision of pay scale of regular faculty members of the AGMC under the purview of the UGC on the recommendation of the 7th CPC, listed only the following posts constituting the academic faculty: (a) Assistant Professor; b) Associate Professor; and c) Professor/Principal and the administrative positions equivalent thereof. It is also mentioned in the said Memo. that the posts, such as Basic Teachers(Tutor, Registrar/Senior Resident), Workshop Superintendent and other support staff/non-teaching posts are not considered as academic faculty and the post of Librarian in the Health Department being in the bracket of Group-C(Non-Gazetted) with transfer liability throughout the State, evidently stands out of the purview of the pay-revision of the academic faculty members of the AGMC on the UGC pattern.

3.7. Being aggrieved by and dissatisfied with the rejection of her prayer she has filed writ petition before this Court under Article 226 of the Constitution praying for revoking/rescinding the letter dated 18.02.2020 and Memo. dated 28.07.2020 and also for directing the State respondents to grant revision of pay scale to the writ petitioner/appellant under the purview of UGC *at par* the regular faculty members of the AGMC.

3.8. The learned Single Bench of this Court having gone through the records and upon hearing the learned counsel appearing for the parties had passed the impugned judgment dismissing the writ petition filed by the petitioner.

Hence, this intra-court appeal.

4. Mr. C.S. Sinha, learned counsel for the appellant submitted that in terms of the new Scheme of revision of pay of teachers and equivalent

cadres in universities and colleges as communicated by the Ministry of Human Resource Development, Department of Higher Education, Government of India vide letter No.1-7/2015-U.II(1) dated 02.11.2017, the Higher Education Department, Government of Tripura had introduced the said scheme for the teachers in all State Universities, General Degree Colleges, Institute of Advance Studies in Education, College of Teacher Education, Government Music College, Government Law College of the State vide notification dated 25.06.2019, but the Health & Family Welfare Department, Government of Tripura by issuing notification dated 27.08.2019 though extended the benefit of the said scheme for the regular faculty members of AGMC, but denied to extend the benefit of the scheme to the Librarian posted at AGMC. It was also argued by the learned counsel that the power of the State Government for modification of the said Scheme is limited in respect of pay scale and prescribing effective date of financial benefits. It was further argued that for across the states, the application of the Scheme of revision of pay scale of the Central Government is homogeneous, and therefore, the petitioner is entitled to get the benefits of UGC pay scale.

4.1. Learned counsel for the appellant tried to persuade us that the employees holding the post of Librarian in the Tripura University as well as in the MBB University are enjoying the UGC pay scale. As such, non-granting of UGC pay scale to the appellant/writ petitioner alike the Librarians of the Tripura University as well as the MBB University is nothing but an act of discrimination and arbitrariness in implementing the Scheme on the part of the respondents.

4.2. In support of his contention learned counsel for the appellant/writ petitioner has annexed the following communications/letters along with the writ petition as well as with the appeal:

(i) Letter of the MHRD, Government of India dated 02.11.2017(*Annexure-1* to the writ appeal), whereunder the guidelines for implementation of the Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the 7th CPC has been issued;

(ii) Extraordinary gazette Notification dated 18.07.2018(*Annexure-25* to the writ petition) issued by the UGC regarding UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018;

(iii) Notification dated 25.06.2019 issued by the Secretary to the Government of Tripura, Education(Higher) Department(*Annexure-24* to the writ petition) on the subject relating to Revision of pay scales of teachers in the State Universities, General Degree Colleges and Institute of Advanced Studies in Education, College of Teachers Education(CTE), Government Music College, Government Law College under the University Grants Commission on the recommendation of 7th CPC; and

(iv) Notification dated 27.08.2019 issued by the Secretary, Health & Family Welfare Department(*Annexure-10* to the writ petition), which is a communication regarding the revision of pay scales of regular faculty

members of AGMC under the purview of UGC on the recommendation of 7th CPC.

(v) Copy of the advertisement dated 19.09.2016 issued by the MBB University, copy of the Recruitment Rules for Librarian issued by the MBB University and a copy of the Tripura University Cadre Recruitment Rules(Non-Teaching Employees) issued by the Tripura University.

5. Per contra, Mr. D. Bhattacharya, learned GA appearing for the State respondents submitted that the service of the appellant/writ petitioner was governed by the relevant rules and order in force of the Health & Family Welfare Department and the Recruitment Rules(RRs) for the post of Librarian came to be notified vide notification dated 25.10.2016 wherein the post of Librarian in the Health & Family Welfare Department was classified as Group-C(Non-Gazetted) with essential qualification being either degree or diploma in Library Science, besides being a graduate, and the post carries liability to serve anywhere in the State of Tripura and not merely in the AGMC, and therefore it cannot be claimed that the post to which the appellant-writ petitioner was appointed as Librarian comes under the purview of academic of the AGMC. As per the Recruitment Rules framed for the post of Librarian it cannot be interpreted as conferring any entitlement to the appellant/writ petitioner to a higher pay scale *at par* the academic positions whose recruitment criteria stand on a higher pedestal. It was further contended that nowhere in the offer of appointment or in the appointment letter issued in favour of the appellant/writ petitioner it was mentioned that the post of Librarian was meant specifically for the AGMC. The post of Librarian in AGMC is only subservient to the academic faculty. The learned GA further

argued that the appellant/writ petitioner was/is equating her post mistakenly with the post which was/is in existence in other universities/academic institutions where Library Science is a part of pedagogy. The Government of Tripura in the Health & Family Welfare Department vide notification dated 27.08.2019 has decided to extend the new scheme of revision of pay as per communication dated 02.01.2017 issued by the Ministry of Human Resource Development Department, Government of India for the regular faculty members of AGMC wherein it was specifically mentioned that the said scheme would not be extended to the posts such as Basic Teachers(Tutor, Registrar/Senior Resident), Workshop Superintendent and other support staff/non-teaching staff.

5.1. Learned G.A. relying upon the decision of the Apex Court in the case of *Secretary, Finance Department & Ors. vs. West Bengal Registration Service Association & Ors.* reported in *AIR(1992) SC 1203* argued that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts should not enter upon the task of job evaluation which is generally let to expert bodies like the Pay Commissions, etc.

5.2. Learned G.A. also pressed into service the decision rendered in the case of *S.H. Baig & Ors. vs. State of Madhya Pradesh & Ors.* reported in *(2018)10 SCC 621* and argued that even if persons are holding same rank/designation and having similar powers, duties and responsibilities, but they can be placed in different scales of pay and cannot claim the benefit of the principal of equal pay for equal work.

5.3. Learned G.A. therefore prayed for upholding the judgment and order returned by the learned Single Judge of this Court.

6. We have carefully considered the rival submissions of the learned counsel appearing for the parties as well as the impugned judgment passed by the learned Single Judge.

6.1. There is no dispute that the appellant/writ petitioner was appointed initially on fixed pay basis through a selection process to the post of Librarian which is a Group-C Non-Gazetted post, and she was posted at AGMC with a direction to report for duty to the Principal, AGMC. It is also not in dispute that she accepted the offer of appointment knowing fully well that the said post of Librarian is a transferrable post and her service may be required anywhere in the State of Tripura. Undisputedly, she was granted regular scale of pay on completion of her five years of continuous service.

6.2. Dispute arose when the new Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges was introduced by the Ministry of Human Resource Development Department, Government of India following the revision of pay scales of the Central Government employees on the recommendations of the 7th CPC and the same was communicated to all the State Governments. The Health & Family Welfare Department, Government of Tripura vide notification dated 27.08.2019 had adopted the said Scheme notifying to extend the revision of pay scale to the regular faculty members of the AGMC and brought them within the ambit of the UGC Scheme, leaving behind the post of Librarian in exclusion. The claim of the writ petitioner/appellant is that since the post of Librarian falls in

academics, she should be extended the benefit of UGC pay scale alike other regular faculty members of the AGMC.

6.3. On the other hand, it is the contention of the respondents that the post of Librarian in terms of the *Minimum Requirements for 100 M.B.B.S. Admissions Annually Regulations, 1999* falls under ‘Ancillary Services’, not as a mainstream academic post and in so far as the AGMC is concerned, the post of Librarian is only subservient to the academic faculty, not an integral part thereof. Besides, the service of the appellant/writ petitioner is governed by the recruitment rules framed by the Health & Family Welfare Department, Government of Tripura. Further, she has not been appointed following the UGC Regulations to claim the benefit of UGC pay scale *at par* the Librarians of other colleges and universities.

6.4. In support of her claim that the post of Librarian of AGMC falls under the category of academics, the appellant/writ petitioner has referred to the *Regulation 4 of Medical College for 100 Admissions Annually Regulations, 1999*.

6.5. We have the opportunity to peruse Regulation 4 of the Minimum Requirements for 100 MBBS Admissions Annually Regulations, 1999(here-in-after referred to as ‘Regulation, 1999’), published in Part III, Section 4 of the Gazette of India dated 29th April, 1999.

Regulation 4 prescribed that:-

“4. Every Medical college and Medical institution and its associated teaching hospitals for 100 MBBS admissions annually shall have the accommodation for teaching and technical staff and equipment for each department as given in the Schedule-I, II, III respectively annexed with these regulations.”

In *Sub-Clause (III) of Clause(D) of Schedule II of the Regulations, 1999*, the staff requirement for ***ancillary services*** has been prescribed as under:-

“The staff in library shall consist of:

- 1. Librarian with a degree in Library Science 1*
- 2. Deputy Librarian 1*
- 3. Documentalist 1*
- 4. Cataloguer 1*
- 5. Library Assistants 4*
- 6. Daftaries 2*
- 7. Peons 2”*

6.6. On going through the aforementioned clause it comes to fore that the post of Librarian has been categorized and recognized as ‘*Ancillary Services*’. Whether the posts, which are recognized as ‘*Ancillary Services*’, are entitled to get the benefit of UGC pay scale has not been specifically mentioned in the new scheme of revision of pay. On receipt of the communication regarding the new scheme of revision of pay of teachers and equivalent cadres in universities and colleges, the Government of Tripura in the Higher Education Department vide notification dated 25.06.2019 notified the decision of the Government to revise the pay scales of teachers in the State Universities, General Degree Colleges and Institute of Advanced Studies in Education, College of Teacher Education(CTE), Government Music College, Government Law College. Under the said notification, the Higher Education Department granted revised pay scale to the post of Librarians in the State Universities. But on going through the notification dated 27.08.2019 issued by the Health & Family Welfare Department it is found that the benefit of

revision of pay scale was extended to the regular faculty members of the AGMC, whereas, the posts, such as Basic Teachers(Tutor, Registrar/Senior Resident), Workshop Superintendent and other support staff/non-teaching posts had not been included.

6.7. At this juncture, it may be reiterated that the learned counsel for the appellant/writ petitioner in course of his argument argued that the power of the State Government for modification of the Scheme is limited in respect of pay scale and prescribing effective date of financial benefits. According to learned counsel for the appellant/writ petitioner, the application of the Scheme of revision of pay scale of the Central Government is homogeneous which should be applicable for all the Librarians across the State, and therefore, the petitioner is entitled to the benefits of UGC pay scale.

6.8. With regard to the aforesaid submission advanced by the learned counsel for the appellant/writ petitioner, it would be apposite to reproduce hereunder para 16 of the communication dated 02.11.2017 issued by the Director, MoHRD, Government of India, which deals with the *applicability of the scheme*:

“16. Applicability of the Scheme:

(i) This Scheme shall be applicable to teachers and other equivalent academic staff in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by UGC and amendments thereof in this behalf. Universities implementing this Scheme shall be advised by UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

(ii) ### ### ##.

(iii) ### ### ##..

(iv) This Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions:

- (a) **Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited**, by way of reimbursement, to the extent of 50%(fifty percent) of the additional expenditure involved in the implementation of the pay revision, for the universities, colleges and other higher educational institutions funded by the State Government.
- (b) The State Government opting for revision of pay shall meet the remaining 50%(fifty percent) of the additional expenditure from its own sources.
- (c) The proposal for reimbursement on account of pay revision in State funded universities, colleges and other higher educational institutions shall be submitted in the prescribed format by the State Governments. The state bills preferred by the State Governments for reimbursement during 2017-18 and 2018-19 would be met to the extent of 50% of additional financial impact during these two years. There would be no central assistance thereafter.
- (d) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.01.2016 to 31.03.2019.
- (e) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 01.04.2019.
- (f) **Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 01.01.2016.**
- (g) **State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce pay higher than those mentioned in this Scheme, and shall give effect to the revised bands/scales of pay from 01.01.2016; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay as**

approved by the Central Government and not to any higher pay fixed by the State Government(s).

(h) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and pay scales mentioned herein above."

6.9. On plain reading of 16(i) of the scheme, it reveals that the scheme shall be applicable to teachers and other equivalent academic staff in all the Central Universities and Colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by the UGC. Clause (iv) of para 16 of the scheme deals with certain terms and conditions following which the State Governments may adopt and implement the Scheme to universities, Colleges and other higher educational institutions coming under the purview of State legislatures. Under the *proviso* of clause (iv) of para 16, it is clearly stated that it would have the wisdom of the State Governments whether to adopt and implement the scheme taking into consideration other factor and local conditions[16(iv)(g)].

6.10. We also feel it appropriate to reproduce hereunder the relevant portion of the notification dated 27.08.2019 issued by the Health & Family Welfare Department, Government of Tripura, which reads as under:

*"Government of Tripura
Health & Family Welfare Department*

F.No.1(05)MS/ESTT/AGMC&H/Pay/F/18/26562-77

Dated, 27th August, 2019

NOTIFICATION

Subject: Revision of pay scales of regular faculty members of AGMC under the purview of UGC on the recommendation of 7th CPC.

The Government of India, Ministry of Human Resource Development (MoHRD), Department vide their letter No.1-7/2015-U.II(1) dated 2nd November 2017, has communicated the new scheme of revision of pay of teachers and other academic staff in Degree Colleges under the purview of UGC with a copy to all the State Governments for taking necessary action. In the said letter it has been indicated that the scheme shall be applicable to teachers and other academic staff in Degree Colleges and other Degree level institutions under the purview of UGC.

The Government of Tripura, Education (Higher) Department has already notified the revision of pay scales for the teachers in the State Universities, General Degree Colleges, Institute of Advance Study in Education, CTE, Music College, Law College under the purview of UGC on the recommendation of the 7th CPC vide No.F.1(499)-DHE/Estt(G)/2017/728 dated 25th June 2019.

After careful consideration of the matter, the Health & Family Welfare Department, Government of Tripura has decided to extend this scheme of revision of pay as recommended by the Government of India for the regular faculty members of Agartala Government Medical College (AGMC) keeping in conformity with the ROP Notification of the Education (Higher) Department for the teachers in the State Universities, General Degree Colleges, Institute of Advance Study in Education, CTE, Music College, Law College under the purview of UGC on the recommendation of the 7th CPC.

This will not extend to posts such as Basic Teachers (Tutor, Registrar/Senior Resident), Workshop Superintendent and other support staff/non-teaching posts.

.....”

(emphasis supplied)

6.11. On going through the notification dated 27.08.2019, it reveals that the Government in the Health & Family Welfare Department after careful consideration of the scheme extended the benefit of revision of pay scale to the regular faculty members of the AGMC and considered it not necessary to extend the same benefit to certain category of posts, such as Basic Teachers(Tutor, Registrar/Senior Resident), Workshop Superintendent and other support staff/non-teaching posts.

6.12. The only plea of the respondents-State is that the post of Librarian in which the appellant-writ petitioner was appointed is a Group-C

non-gazetted post having liability to serve anywhere in the State, which is not only meant for the AGMC and the post is governed by the recruitment rules of the Health & Family Welfare Department. So, this post stands out of the purview of the pay-revision of the academic faculty member of the AGMC as per the UGC pattern.

6.13. To discuss further on the points of power of the State Governments for modification of the scheme and the application of the scheme of revision of pay scale by the State Governments, as agitated by the learned counsel for the appellant/writ petitioner, we may gainfully refer the decision of the Apex Court in the case of *Jagdish Prasad Sharma & Ors. Vs. State of Bihar & Ors.* reported (2013) 8 SCC 633 wherein the Apex Court held that the State Government is at liberty to frame its own laws relating to education in the State and is not bound to follow regulations framed by UGC, but where the State decides to adopt regulations framed by UGC, it is bound to abide by the stipulated conditions contained therein. The Apex Court further held that there can be no automatic application of regulations/scheme framed by UGC, in a State, without any conscious decision having been taken by State Government in that regard on account of financial implications and other consequences attached thereto. However, where State Government takes a conscious decision to adopt a UGC Scheme/Regulations, consequences envisaged in the regulations/scheme automatically follow.

6.14. In this context, it would be apposite to refer to the decision of the Apex Court in the case of *State of Madhya Pradesh through Principal Secretary & Ors. Vs. Seema Sharma*, reported in 2022 SCC OnLine SC 809, wherein the Apex Court has held that the fixation of scales of pay is a matter

of policy with which the courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect. The apex Court relying upon its earlier decision rendered in **Civil Appeal No.2661/2015** titled as **State of Uttarakhand vs. Sudhir Budakoti & Ors**, reported in **2022 SCC OnLine SC 420** has further held thus:

“25. Our attention has been drawn by Mr. Saurabh Mishra, learned counsel appearing on behalf of the Appellants to a recent judgment of this Court rendered on 07.04.2022 in Civil Appeal No. 2661/2015 (State of Uttarakhand v. Sudhir Budakoti), where this Court held as under:—

“14. A mere differential treatment on its own cannot be termed as an “anathema to Article 14 of the Constitution”. When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.

15. Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing the benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine.

*16. A larger latitude in dealing with a challenge to the classification is mandated on the part of the Court when introduced either by the Legislature or the Executive as the case may be. **There is no way, courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials.***

*17. The question as to whether a classification is reasonable or not is to be answered on the touchstone of a reasonable, common man's approach, keeping in mind the avowed object behind it. If the right to equality is to be termed as genus, a right to non-discrimination becomes a specie. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification thus certainly would not injure the equality enshrined under Article 14 when there exists an intelligible difference between two groups having a rational relation to the object. Therefore, an interference would only be called for on the court being convinced that the classification causes inequality among similarly placed persons. **The role of the court being restrictive, generally, the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.***

18. As long as the classification does not smack of inherent arbitrariness and conforms to justice and fair play, there may not be any reason to interfere with it. It is the wisdom of the other wings which is required to be respected except when a

classification is bordering on arbitrariness, artificial difference and itself being discriminatory. A decision made sans the aforesaid situation cannot be tested with either a suspicious or a microscopic eye. Good-faith and intention are to be presumed unless the contrary exists. One has to keep in mind that the role of the court is on the illegality involved as against the governance.”

26. This Court cannot interfere with the policy decision taken by the Government merely because it feels that another decision would have been fairer; or wiser as held by this Court in State of Madhya Pradesh v. Narmada Bachao Andolan reported in (2011) 7 SCC 639 and relied upon and re-affirmed in Sudhir Budakoti (supra)

27. For the reasons discussed above, the Appeal is allowed. The impugned orders of the High Court of Madhya Pradesh are se-aside.”

(emphasis supplied)

6.15. That apart, power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more *res integra*. The Apex Court in the case of ***Union of India vs. Indian Navy Civilian Design Officers Association & Anr.*** reported in **2023 SCC OnLine SC 173** held that *it has been consistently held by the Apex Court in plethora of decisions that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while determining the pay scale for a given post and the interference of the court was absolutely necessary to undo the injustice.* In this context, the Apex Court further held in paras 10, 11, 12, 13, 14 and 17 of ***Indian Navy Civilian Design Officers Association(supra)*** thus:

“10. In State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121, while answering the questions as to whether the Bench Secretaries in the High Court of Allahabad were entitled to pay scale admissible to the Section Officers and whether the creation of two grades with different scales in the cadre of Bench Secretaries who were doing the same and similar work was violative of the right to have “equal pay for equal work”. This Court observed as under:—

“18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be

left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

11. The afore-stated ratio was followed by this Court in Union of India v. Makhan Chandra Roy, (1997) 11 SCC 182. Again, in Secretary, Finance Department v. West Bengal Registration Service Association, 1993 Supp(1) SCC 153, the claim of Sub-Registrars of West Bengal Registration Service claiming parity in pay scale with Munsiffs on the basis that Sub-Registrars were conferred gazetted status, was examined by this Court. It was elaborately observed in para 12 as under:—

“12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time-consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v.) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v.) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a

firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

12. *In State of Haryana v. Charanjit Singh*, (2006) 9 SCC 321, a three-judge Bench in a referred matter considered whether the doctrine of "equal pay for equal work", was an abstract doctrine, and observed thus:—

"19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : AIR 1997 SC 1788 : (1997) 2 LLJ 667], Tilak Raj [(2003) 6 SCC 123 : 2003 SCC (L&S) 828], Orissa University of Agriculture & Technology [(2003) 5 SCC 188 : 2003 SCC (L&S) 645 : (2003) 2 LLJ 968] and Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

13. *In Union of India through Secretary, Department of Personnel, Public Grievances and Pensions v. T.V.L.N Mallikarjuna Rao*, (2015) 3 SCC 653, this Court reiterated the said position:—

"26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal

over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.”

14. In view of the afore-stated legal position, it clearly emerges that though the doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.

17. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.”

7. In view of the above authorities of law, we are not in agreement with the submission of the learned counsel for the appellant/writ petitioner that the State respondents have no authority to modify the scheme.

8. So far as the facts of the present case are concerned, it is not disputed that the appellant/writ petitioner was appointed in Group-C non-gazetted post following the recruitment rules framed by the Health & Family Welfare Department, Government of Tripura with certain terms and conditions therein including the liability to serve anywhere in the State. Furthermore, when the recruitment rules governing the posts of other faculty members in the AGMC who have been given the benefit of UGC pay scale are not similar, the duties and responsibilities of both the posts are also

different and the promotional avenues also have different duration having different criteria, in that event, this Court in exercise of its discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India cannot direct the State authorities to implement and/or adopt certain scheme, as a matter of policy, which is exclusively within the domain of the State.

9. As a sequel, according to us, in view of the notification dated 27.08.2019 issued by the Health & Family Welfare Department, Government of Tripura, the appellant/writ petitioner is not entitled to claim the benefit of revision of pay scale at par the regular faculty members of the AGMC. Accordingly, we find no error of law in the judgment passed by the learned Single Judge.

10. For the reasons stated and discussed here-in-above, we are of the opinion that the judgment and order dated 28.04.2023 passed by the learned Single Judge of this Court do not call for any interference.

Accordingly, the instant writ appeal stands dismissed.

(ARINDAM LODH, J)

(APARESH KUMAR SINGH, CJ)