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

Date of Decision: 19th August, 2026

CNR No. DLHC010292622019

+ **W.P.(C) 7579/2019, CM APPL. 31505/2019 & CM APPL. 45752/2021**

SUSHMA ASIJA AND ORS.

.....Petitioners

Through: Mr. Avadh Kaushik, Mr. Rishabh Kumar and Ms. Saloni Mahajan, Advocates.

versus

NATIONAL INSTITUTE OF EDUCATIONAL PLANNING AND ADMINISTRATION AND ANR.

.....Respondents

Through: Mr. Amitesh Kumar, Ms. Priti Kumari and Ms. Vipasha Jain, Advocates for R-1.
Mr. Sanjeev Sabharwal, SPC for R-2/UOI.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

The Controversy

1. This case is not really about a fresh claim to pay parity. That controversy has already travelled to the Supreme Court, first in ***Yogeshwar Prasad v. National Institute of Educational Planning and Administration***,¹

¹ (2010) 14 SCC 323



and later, in a different factual setting, in *Anjali Arora v. Union of India*.² The question that remains is narrower. Can four employees, whom NIEPA itself found to be similarly placed to the successful appellants in *Yogeshwar Prasad* and to whom it extended the same pay benefit for several years, be deprived of that benefit on the ground that the final direction in *Yogeshwar Prasad* confined relief to the appellants before the Supreme Court?

2. The answer depends on two connected considerations: first, what the Supreme Court has already held while construing these very NIEPA Service Regulations; and second, what the Respondents themselves recorded when they examined the cases of these four Petitioners. The Court is therefore not required to reopen the issue of equal pay in the abstract. Its limited task is to apply the law already declared to the Respondents' own assessment that the Petitioners were similarly placed.

3. The Petitioners challenge the communication dated 29th November, 2017 issued by the Ministry of Human Resource Development,³ declining to approve extension of the benefit of *Yogeshwar Prasad* to them; the subsequent direction dated 4th December, 2018 for recovery; the decision of the Board of Management of the National Institute of Educational Planning and Administration⁴ dated 28th March, 2019; and the office memoranda dated 1st July, 2019 proposing recovery of the amounts already paid. They seek continuation of the scale of Rs.1640-2900, or its corresponding replacement scale, from the respective dates on which they became eligible, together with consequential benefits.

The earlier litigation

² W.P.(C) 333/2018, decided on 11th February, 2019.

³ "MHRD"



4. Prior to the Fourth Central Pay Commission, Assistants and Senior Stenographers in NIEPA, like their counterparts in the Central Government, were placed in the scale of Rs.425-800. With the implementation of the Fourth Central Pay Commission, that scale was revised to Rs.1400-2600. Thereafter, an anomaly was removed for Assistants in the Central Secretariat Service and Grade C Stenographers in the Central Secretariat Stenographers Service by placing them in the higher scale of Rs.1640-2900 with effect from 1st January, 1986. The corresponding enhancement, however, was not extended to NIEPA employees.

5. The Service Regulations of NIEPA, approved by the Central Government, are important. Regulation 4(2) reads as follows:

“Group ‘A’ officers, other than faculty members and those on UGC grades of pay, Group ‘B’, ‘C’ and ‘D’ employees shall draw salary and allowances in such scales of pay as may be applicable to the corresponding categories of Central Government employees and be subject to such conditions of service as are or may be applicable to Central Government employees from time to time.”

6. NIEPA’s contemporaneous stand was consistent with this position. Its letter dated 19th December, 1994 to MHRD described their demand as genuine and relied upon the Service Regulations while seeking approval for placement in the scale of Rs.1640-2900. The request was repeated in 1995.

7. Assistants and Stenographers filed C.W.P. 805/1997. On 28th July, 1997, this Court directed NIEPA to extend to them the corresponding Central Government pay scales. On appeal, the Division Bench set aside that judgment on 31st May, 2002. Review petitions were also dismissed.

8. The matter eventually reached the Supreme Court in *Yogeshwar Prasad*. The reasoning on which the Supreme Court restored the benefit

⁴ “NIEPA”



assumes some importance in the present case. The Court did not undertake a fresh exercise of comparing the duties of the two sets of employees. It noticed the Service Regulations governing NIEPA, its own consistent stand regarding parity, and the fact that employees in these categories had historically drawn the same pay scales as their Central Government counterparts. The relevant part of the judgment reads:

“13. In our considered view, the Division Bench was not justified in setting aside the judgment of the learned Single Judge. It may be pertinent to mention that the Division Bench did not consider the service regulations of the National Institute of Educational Planning and Administration. The case of Appellant 1 herein was not even discussed or considered in the impugned judgment.

14. Mr Amitesh Kumar, learned counsel appearing for Respondent 1 Institute tried to make out the case that duties, responsibilities and obligations of the appellants were different to their counterparts functioning in the Central Secretariat and they were justified in not giving the same pay scale. But we do not find any merit in the submission because the respondent Institute’s stand all through was that the appellants be given the pay scale of Rs 1640-2900. At this stage, Respondent 1 cannot be permitted to take a somersault in this manner. The Union of India accepted the recommendations of the Vth and VIth Pay Commissions and are giving the appellants the same pay scale which their counterparts in the Central Government are getting. It may be pertinent to observe that these appellants were getting the same pay scale as was given to the employees of their categories in the Central Government up to 1-1-1986. The Union of India accepted the recommendation of the Vth and VIth Pay Commissions and are giving them the same pay scale then how only during the IIIrd Pay Commission their pay scale could be different and how their duties, obligations and responsibilities became different only for a brief period?

15. In our considered view, the appellants are entitled to get the benefit of pay scale of Rs. 1640-2900 which their counterparts were getting in the Central Government during the relevant period.”

9. The Supreme Court thus found the entitlement in the governing Service Regulations and in NIEPA’s own consistent treatment of the posts. Its rejection of the attempted distinction based on duties and responsibilities is significant. NIEPA had itself maintained that the appellants ought to



receive the scale of Rs. 1640-2900, and the Court did not permit it to take the opposite position once the dispute reached adjudication.

10. However, while allowing the appeals, the Supreme Court added the following qualification to its final order:

“However, the benefit of this order would be confined to the appellants in Civil Appeal Nos. 288-89 of 2005 and Civil Appeal No. 209 of 2007.”

11. This concluding qualification has triggered the present controversy. The Respondents read it as excluding all non-appellants from the benefit of *Yogeshwar Prasad*, even if they were otherwise similarly placed. That reading is difficult to reconcile with the reasoning that preceded the direction. In any event, the Supreme Court later considered the effect of this very qualification in *Anjali Arora*, where another set of NIEPA employees claimed the benefit of *Yogeshwar Prasad*. This is explained in the succeeding paragraphs.

12. Soon after the decision in *Yogeshwar Prasad*, the present Petitioners sought the same treatment. Their requests were placed before the Board of Management in its meeting held on 11th February, 2011. The agenda itself recorded the need to extend similar benefits to employees who were “similarly circumstanced” but had not been the appellants in *Yogeshwar Prasad*. The Board approved extension of the same benefit to “other similarly placed employees” at NIEPA, subject to approval of MHRD. The minutes record the decision in these terms:

“The Board also approved the extension of similar benefits as per the said Judgement to other similarly placed employees at NIEPA who were not appellant in the case with approval of MHRD, GOI.”

13. Pending a response from the Ministry, NIEPA issued Office Order No. 353 dated 2nd November, 2012. The order again described the four



Petitioners as “similarly placed” and provisionally extended the higher scale to them. It also made clear that the arrangement was subject to the final decision of MHRD. Subsequent orders refixed their pay and arrears were released.

14. MHRD did not decide the proposal for several years. Its eventual response came on 29th November, 2017. The communication records that the Department of Expenditure had not acceded to the proposal and quotes its response:

“since the action to extend the benefits of four persons was taken without approval of this department, this department has no comments on this proposal”.

15. MHRD then relied upon the fact that *Yogeshwar Prasad* had confined relief to the appellants and declined extension of the benefit to the four Petitioners. Significantly, the communication itself describes them as “04 similarly placed employees”.

16. A direction for recovery followed on 4th December, 2018.

17. Before the Board reconsidered the matter pursuant to the Ministry’s direction, the Supreme Court decided *Anjali Arora*. There, NIEPA employees invoked Regulation 4(2) and claimed the benefit of *Yogeshwar Prasad*. The objection that *Yogeshwar Prasad* had confined relief to the appellants was directly considered. The Supreme Court did not treat that limitation as an absolute bar. It held that the real question was whether the claimant was similarly situated to the successful appellants in *Yogeshwar Prasad*. Paragraph 5 reads as follows:

“5. But parity of pay scale can be granted to the Petitioners provided they were similarly situated as the appellants in the Yogeshwar Prasad (supra). If that be so, they would undoubtedly be entitled to be considered for grant of similar relief notwithstanding the observations in Yogeshwar



Prasad (supra) confining grant of relief to the appellants therein, in view of the Respondents having granted similar relief to others situated alike on 02.11.2012.”

18. That passage substantially answers the Respondents’ reliance on the concluding sentence in *Yogeshwar Prasad*. The limitation placed in that judgment remained relevant, but it was not an absolute bar. A person who was not an appellant could still be considered for the same relief if similarly situated. Significantly for the present case, the Supreme Court itself referred in this context to the relief which NIEPA had extended on 2nd November, 2012 to four employees who were not parties to *Yogeshwar Prasad*.

19. *Anjali Arora* ultimately failed on similarity. The claimants there had been appointed as Junior Stenographers or Stenographer Grade II, posts lower than Senior Stenographer or Stenographer Grade I held by the successful appellants in *Yogeshwar Prasad*. The Supreme Court held that the later acquisition of the same financial scale through ACP or MACP did not place the two posts at par. The claim failed, therefore, not because the claimants were non-parties to the earlier litigation, but because they did not satisfy the factual condition on which paragraph 5 proceeded.

20. That distinction brings the present case into focus. The Petitioners do not claim the benefit for service in a lower post merely because a later financial progression placed them in an equivalent scale. Their claim begins only from the dates on which they held the relevant posts of Assistant or Senior Stenographer. The issue, therefore, is whether, from those dates, they were similarly situated to the successful appellants in *Yogeshwar Prasad*.

21. On this aspect, the Respondents’ own record is significant. The agenda placed before NIEPA’s Board on 28th March, 2019 recorded that the



benefit had earlier been extended to four employees “who are similarly situated with the appellants (thirteen)”. It further noted that, in the light of *Anjali Arora*, those four employees “may be eligible for the benefit” notwithstanding the restriction in *Yogeshwar Prasad*.

22. Those four employees are the Petitioners before this Court.

23. In the counter affidavit, each of the Petitioners is shown as falling within the category eligible for the benefit. Sushma Asija is shown eligible from 1st January, 1986; Chander Prakash from 23rd November, 1995; Satish Kumar from 1st October, 1997; and Bharat Bhushan Jain from 2nd January, 2004. Those dates correspond to the stages at which they held the relevant post. The individual recovery orders proceed on substantially the same dates.

24. This is therefore not a case in which the Court is being asked to undertake a fresh evaluation of two sets of duties, qualifications or recruitment rules. Nor is the Court fixing a pay scale in the first instance. The relevant category has already been identified in the Regulations, *Yogeshwar Prasad* has dealt with the entitlement of employees of NIEPA in that category, and NIEPA has repeatedly identified these four Petitioners as similarly placed to the successful appellants.

25. The question, then, is what changed in 2019. The answer is not apparent from the record. The Board was specifically apprised of *Anjali Arora* and of the earlier finding that these four employees were similarly situated. Yet, its resolution dated 28th March, 2019 merely records that the Board “did not agree” with the proposal and directs compliance with MHRD’s communication dated 4th December, 2018. It identifies no distinction in post, recruitment, duties, qualifications or service conditions;



does not explain why the 2011 assessment, acted upon in 2012, had become erroneous; and does not engage with *Anjali Arora*. The office memoranda dated 1st July, 2019 simply carry that decision forward and direct recovery.

26. The 2017 decision of MHRD suffers from the same flaw. NIEPA's release of the benefit before receiving formal approval could certainly require scrutiny. But that fact could not, by itself, dispose of the proposal for approval. Approval cannot logically be refused merely because the action placed for approval had already been taken. The relevant question was whether approval ought to be granted; the communication does not answer it.

27. The Department of Expenditure's use of the words "no comments" cannot be treated as consent, as the Petitioners suggest. But the communication is equally not a finding that the Petitioners were differently placed from the successful appellants in *Yogeshwar Prasad*. Its only objection was that the benefit had been extended without prior approval. That objection concerns the manner in which the benefit was released; it does not answer the substantive question whether the Petitioners were entitled to it.

28. The material on prior approval is not one-sided. Regulation 6(A)(iii), as reproduced in NIEPA's correspondence, makes revision of a post's pay scale subject to Government approval, but dispenses with such approval where the adopted scale and allowances are identical to those applicable to the corresponding Central Government or UGC post, except in a general revision. On the other hand, MHRD's communication dated 9th March, 1998, issued while extending the Fifth Pay Commission recommendations to NIEPA's non-faculty staff, required prior approval before NIEPA altered or



modified pay scales.

29. It is unnecessary to decide, on a combined reading of these provisions, whether prior approval was in fact required. Office Order No. 353 dated 2nd November, 2012 itself extended the benefit provisionally, pending MHRD's approval and subject to its final decision. For present purposes, the Court may therefore assume, without deciding, that such approval was necessary.

30. Even if prior approval was necessary, its absence in 2012 only explains why the benefit was extended provisionally. It could not, by itself, justify refusal when the proposal was later considered. The real inquiry was whether the Petitioners were entitled to approval. After *Anjali Arora*, that inquiry could not be answered merely by saying that the Petitioners were not appellants in *Yogeshwar Prasad*. It turned on whether they were similarly situated to the successful appellants. On that question, the Respondents' own record is consistent.

31. This also answers any suggestion that the Petitioners seek equality in an illegality. They do not ask the Court to perpetuate an unlawful concession granted to somebody else. *Yogeshwar Prasad* recognised the substantive entitlement arising from the Service Regulations for the relevant categories in NIEPA. *Anjali Arora* subsequently explained that an employee similarly situated could seek the same relief despite the appellant-specific form of the earlier order. The question is thus one of lawful classification, not negative equality.

32. Respondent No. 1 has also relied upon *State of U.P. v. Arvind Kumar*



Srivastava,⁵ which states the normal rule that identically situated employees should receive similar treatment. It also recognises an exception where an employee has slept over the claim, acquiesced in the adverse action, and approaches the Court only after another employee succeeds. Where an earlier judgment was expressly *in personam*, a later claimant must therefore satisfy the Court that delay, laches or acquiescence do not defeat the claim.

33. The Petitioners cannot fairly be described as fence sitters. After *Yogeshwar Prasad* was decided on 21st October, 2010, they promptly approached NIEPA. Their claims were placed before the Board by February 2011, accepted, and provisionally implemented in November 2012, whereafter their pay was refixed. The proposal remained pending with MHRD for years and was rejected only on 29th November, 2017. Recovery followed in December 2018; the individual orders were issued in July 2019; and the writ petition was filed the same year. There is, therefore, neither acquiescence nor unexplained delay. The facts bear little resemblance to the prolonged inaction contemplated by the exception in *Arvind Kumar Srivastava*.

34. There is one part of the Petitioners' case which must, however, be corrected. Petitioners Nos. 1 and 3 were parties to W.P.(C) 7231/1999. The order dated 17th May, 2000 extended to them the benefit of the earlier Single Judge decision, but did so expressly subject to the result of the pending LPA and with liberty to seek revival thereafter. That order was therefore not a final adjudication in their favour. It was subsequently dismissed for non-prosecution on 17th August, 2005 after repeated non-appearance. The submission that the order dated 17th May, 2000 itself "attained finality" is

⁵ (2015) 1 SCC 347



therefore unsustainable.

35. That conclusion does not alter the result of the present case. Petitioners Nos. 1 and 3 do not require the order in W.P.(C) 7231/1999 to establish their present entitlement. Nor do Petitioners Nos. 2 and 4 require it. The present cause arises from the post *Yogeshwar Prasad* exercise undertaken by NIEPA, the finding that all four Petitioners were similarly placed, the subsequent payment made to them, and the later refusal and recovery decisions now under challenge. Their case must stand or fall on that material, and it stands on its own.

36. There is no good reason to remit the matter to MHRD for yet another consideration. The proposal was first approved by the Board in 2011. The Petitioners received the benefit in 2012. MHRD decided the matter only in 2017. The Supreme Court clarified the legal position in 2019. The Board reconsidered the matter thereafter, but did not identify a single factual distinction between these Petitioners and the successful appellants. A remand at this stage would simply restart an administrative process which has already consumed well over a decade, without leaving any factual issue to be examined.

37. Once the basis for treating the payments as excess disappears, the recovery orders cannot survive. It is therefore unnecessary to decide the matter on the broader equitable rule against recovery. In any event, *Yogeshwar Prasad* itself protected payments made without fraud or misrepresentation, a principle also reflected in *Syed Abdul Qadir v. State of Bihar*⁶ and *State of Punjab v. Rafiq Masih (White Washer)*⁷. Here, there is

⁶ (2009) 3 SCC 475

⁷ (2015) 4 SCC 334



no allegation of fraud, concealment or misrepresentation. NIEPA extended the benefit through a formal institutional decision after examining the Petitioners' representations.

38. The writ petition is accordingly allowed. The communication dated 29th November, 2017 issued by Respondent No. 2, the consequential communication dated 4th December, 2018, the decision under Agenda Item No. 20.19 taken by the Board of Management on 28th March, 2019, and the four office memoranda dated 1st July, 2019 are set aside insofar as they deny the Petitioners the benefit in question or direct recovery from them.

39. The Respondents shall extend to the Petitioners the benefit attached to the scale of Rs.1640-2900 and its corresponding replacement scales under the subsequent Pay Commissions from their respective dates of eligibility.

40. Consequential refixation under the succeeding Pay Commissions shall follow. Retiral and pensionary benefits, where applicable, shall also be recomputed on that basis. Respondent No. 1 is further directed to release all withheld gratuity and other terminal benefits to the retired Petitioners, based on the recomputed pay scales. Amounts already paid shall, of course, be adjusted while carrying out the exercise.

41. No recovery shall be made pursuant to the impugned orders. Any amount already recovered shall be restored to the concerned Petitioner within six weeks. The exercise of refixation and release of amounts found payable, including withheld gratuity, shall be completed within six weeks from today. In the circumstances, no interest is awarded on arrears. However, any amount required to be refunded under this paragraph shall carry simple interest at six per cent per annum if not restored within the stipulated period.



42. The writ petition is allowed in the above terms. The pending applications stand disposed of.

SANJEEV NARULA, J

AUGUST 19, 2026/hc