

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WA.No. 721 of 2015 () IN WP(C).4317/2014

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AGAINST THE JUDGMENT IN WP(C) 4317/2014 of HIGH COURT OF KERALA  
DATED 26.11.2014

APPELLANTS/RESPONDENTS 2 TO 4 IN WPC.:  
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1. NATIONAL INSTITUTE OF TECHNOLOGY  
CALICUT, REPRESENTED BY ITS REGISTRAR  
NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT-673 601.

2. REGISTRAR,  
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS  
CALICUT POST-673 601.

3. DIRECTOR,  
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS  
CALICUT POST-673 601

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS/WRIT PETITIONERS-RESPONDENTS 1 AND 5 IN WPC.:  
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1. DR.ARUN C., AGED 36 YEARS,  
ASSOCIATE PROFESSOR, DEPARTMENT OF CIVIL ENGINEERING  
NATIONAL INSITUTUTE OF TECHNOLOGY  
CALICUT POST-673 601

2. DR.SUNIL JACON JOHN, AGED 40 YEARS  
ASSOCIATE PROFESSOR, DEPARTMENT OF MATHEMATICS  
NATIONAL INSITUTUTE OF TECHNOLOGY  
CALICUT POST-673 601

3. UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF HUMAN RESOURCES, SASTHRI BHAVAN  
NEW DELHI-110 001.

4. ABDUL NAZEER.A.,  
ASSOCIATE PROFESSOR  
DEPARTMENT OF COMPUTER SCIENCE & ENGINEERING  
NATIONAL INSITUTE OF TECHNOLOGY, NIT CAMPUS  
CALICUT POST-673 601.

R1,R2 BY ADV. SRI.M.RAMESH CHANDER (SR.)

R1,R2 BY ADV. SMT.DENNIS VARGHESE

R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.10.2015,  
ALONG WITH WA. 722/2015, WA. 725/2015 & WA. 1047/2015, THE COURT ON  
13-11-2015 DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC & P.V ASHA, JJ.**

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**W.A Nos.721, 722,  
725 and 1047 of 2015**

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**Dated this the 13<sup>th</sup> day of November , 2015**

### **JUDGMENT**

Asha, J.

All these Writ Appeals are filed by National Institute of Technology, Calicut (hereinafter referred to as 'NIT' for short), aggrieved by the direction of learned Single Judge to restore the pay in respect of the Writ Petitioners and to refund the amount recovered from them. Since the issues raised are common, all these appeals were heard together and are disposed of by this common judgment. The parties and documents referred to in this judgment are as described in W.P(c) No.4317 of 2014, judgment of which, is impugned in W.A.No.721 of 2015.

2. The Writ Petitioners were appointed as as Lecturers/ Assistant Professors in NIT, in various subjects, through direct recruitment between 01.01.2006 and 01.07.2009 i.e before implementation of pay revision bassed on 6<sup>th</sup> Central Pay Commission. They got their pay fixed in pay band 4 in October

**W.A Nos.721, 722, 725 and 1047 of 2015**

2

2009. Thereafter in Jan-February 2010, NIT re-fixed their pay in pay band 3 and recovered excess pay drawn by them, on the ground that there occurred a mistake in fixing their pay consequent to implementation of the orders on revision of pay as per the 6<sup>th</sup> Central Pay Commission orders. Aggrieved by this, the writ petitions were filed in 2012 and thereafter.

3. The 1<sup>st</sup> petitioner in W.P(C) No.4317 of 2014, ie. the 1<sup>st</sup> respondent in Writ Appeal No.721 of 2015, was appointed as per order dated 15.11.2007 in the scale of pay of Rs.12,000-Rs.18300 + D.P + D.A. Similarly, the other writ petitioners were also appointed before 2008 in the same scale of pay. Consequent to the pay revision ordered in implementation of 6<sup>th</sup> Central Pay Commission Report, the 2<sup>nd</sup> respondent issued Ext.P2 proceedings revising the pay of the teaching staff under them. Ext.P2 was stated to be in terms of the communication F.No.23-1/2008-TS II dated 18.08.2009 of Ministry of Human Resource Development Department (hereinafter referred to as 'MHRD'), produced as Ext.R2(b) along with the counter affidavit of 2<sup>nd</sup> respondent. As per Ext.P2, the pay of the teaching staff in NIT, Calicut was revised from 1.1.2006 and the allowances w.e.f

**W.A Nos.721, 722, 725 and 1047 of 2015**

3

1.09.2008. It was ordered that the revised pay would be disbursed from the month of October, 2009 onwards. Clause 3 of Ext.P2, provided as follows:

“3. Incumbent directly recruited Assistant Professor in the scale of Rs.12,000-18,800 will be re-designated as Associate Professor and shall be placed in PB-4 without any condition on the minimum pay as in the case of professors. The admissible Academic Grade Pay is Rs.9,000/-.”

Based on Ext.P2 order, petitioners were re-designated as Associate Professors and their pay was fixed in the pay band 4 of Rs.37,500-67,000 with academic grade pay (AGP) of Rs.9,000/-, and they were drawing their pay accordingly from October 2009 onwards. But their pay was re-fixed in Pay Band 3 i.e Rs.15,600-39,100 and AGP was reduced to Rs.8000/- from January-February 2010 onwards, designating them as Assistant Professors .

4. In fact in Ext.R2(b) issued by the MHRD relating to pay revision in Technical Universities like NIT, pay band 4 with the scale of pay of Rs.37,500-67,000 and AGP of Rs.9000/- and placement as Associate Professors was admissible for the directly recruited Assistant Professors who completed 3 years

**W.A Nos.721, 722, 725 and 1047 of 2015**

4

service as on 1.1.2006 in the pre-revised scale of Rs.12,000-18,300/-. The directly recruited Assistant Professors, who have not completed 3 years as on 1.1.2006, and those who were appointed after 1.1.2006, were to continue as Assistant Professors and to be placed at the appropriate stage in the Pay Band-3 (Rs.15,600-39,100) with AGP of Rs.8,000 w.e.f 1.1.2006 or the date of their joining, whichever is later. But the directly recruited Assistant Professors/Lecturers under the NIT Calicut, appointed on or after 1.1.2006, in the scale of pay of Rs.12,000-18,300/- had already been re-designated as Associate Professors and placed in Pay Band-4, ie. Rs.37,400-67,000 with AGP of Rs.9,000/-, as per Ext.P2, even though no such provision was available in Ext.R2(b) for such placement, before they completed 3 years service.

5. While so, the Board of Governors of the 2<sup>nd</sup> respondent discussed the issue regarding implementation of the pay revision on the basis of Ext.R2(b), as per memorandum dated 09.10.2009 read with pay revision orders on 6<sup>th</sup> CPC for teaching and other staff of NITIEs on conditions stipulated therein. Seeing that clause 3 of Ext.P2 order was incorrect, the Board of Governors,

**W.A Nos.721, 722, 725 and 1047 of 2015**

5

as per Ext.P4 proceedings, decided to correct that mistake and to place the Assistant Professors who have not completed 3 years in Pay Band 3 with AGP of Rs.8,000, in tune with Ext.R2(b). As per Ext.R2(b), the Lecturers were to be re-designated as Assistant Professors w.e.f 1.1.2006 or from their date of appointment whichever is later. Seeing the mistake occurred in clause 3 of Ext.P2, and the consequent fixation of pay, the Board decided to modify clause 3 and to re-fix the pay in the admissible pay band and to effect recovery of the excess pay drawn by persons like the petitioners. Accordingly, on the basis of Ext.P3 proceedings and decision of the Board of Governors in Ext.P4, petitioners were placed as Assistant Professors and their pay was re-fixed in pay band 3 with AGP of Rs.8,000/- in January 2010. Some of the aggrieved persons approached the NIT for restoration of pay through representations. Thereafter Writ Petitions were filed in 2012, challenging the orders of re-fixation, seeking orders for restoration of their pay based on Ext.P2 in Pay Band 4 with AGP of Rs. 9000/.

6. The NIT, Calicut filed counter affidavit pointing out that they have only corrected the mistake which was crept in,

**W.A Nos.721, 722, 725 and 1047 of 2015**

6

while implementing Ext.R2(b) order, according to which the directly recruited Assistant Professors/Lecturers were to be placed only in Pay Band-3 with Academic Grade Pay of Rs.8,000/- and it is only on completion of 3 years that, they are eligible to be designated as Associate Professors and to be placed in PB-4 with AGP of Rs.9,000/-. They further produced the undertaking furnished by the petitioners that, they are willing to refund the excess amount, if any, subsequently found as having drawn by them on account of any irregularity in fixation of pay. Therefore, it was stated that going by that undertaking, the action of the respondents/appellants herein in rectifying the mistake was perfectly legal and no notice was necessary for taking action, which the petitioners have already agreed.

7. Relying on Exts.P13 and P14 letters, the learned Single Judge found that the impugned re-fixation of pay as well as recovery were illegal and set aside the same and ordered to restore the pay of petitioners as fixed as per Ext.P2 and to refund the amount recovered from them. It was held that in view of the clarification issued in Exts.P13 and P14, the time frame of 3 years in Ext.R2(a) have no application to petitioners. It was

**W.A Nos.721, 722, 725 and 1047 of 2015**

7

further held that the issue as to the supposed discrepancy in Ext.R2(b) does not survive, in the light of the clarifications issued in Ext.P14. Accordingly it was held that the pre-condition of three years shall not apply to petitioners and Ext.R2(b) cannot be read in conjunction with Ext.R2(a). The orders Exts.P2, P3 and P4 were set aside and the 2<sup>nd</sup> respondent was directed to refund the excess pay recovered from them and to restore them all the benefits as Associate Professors with effect from 1.1.2006.

The operative portion of the judgment read as follows:

“ 13. It is evident that the respondents 2 to 4 filed their counter affidavit, perhaps, a previous of Exhibit P14, which came to be filed before this court after the respondents' filing their counter affidavit.

14. At any rate, in the light of Exhibit P13 and P14 clarifications, the issue as to the supposed discrepancy in Exhibit R2 (b) does not survive. Consequently Exhibit P2, P3 and P4 cannot be held to be valid. Accordingly they are set aside. Though there is an issue interconnected with the applicability of 6th CPC, namely the interse seniority between the petitioners on one hand and the 5th respondent on the other, I do not see any representation for the 5th respondent. At

**W.A Nos.721, 722, 725 and 1047 of 2015**

8

any rate, the issue regarding the relative seniority among these persons shall be determined in the light of the decision being rendered presently that the precondition of 3 years shall not apply to the petitioners and that Exhibit R2 (b) cannot be read in conjunction with Exhibit R 2 (a). As such the determination of the issue of seniority is left for the authorities.

15. In the facts and circumstances, the respondents 2 to 4 are directed to refund the salary earlier recovered as excess from the petitioners, apart from restoring all other benefits to the petitioners from the date of effective re-designation of the petitioners as Associate Professors i.e from 1.1. 2006 or from the date of initial appointment, as the case may be. xxxx”

8. It is aggrieved by this judgment that these appeals are filed contending that Ext.P13 is misinterpreted and Ext.P14 does not have any application in the case.

9. We heard the learned Senior Counsel appearing for the respective parties.

10. It is seen that Ext.R2(b) is an order issued by MHRD on 18.8.2009 addressed to “The Director, All Centrally Funded Technical Institution following the pay revision of Central Government employees on the recommendation of the 6<sup>th</sup> Central Pay Commission (6<sup>th</sup> CPC)”

**W.A Nos.721, 722, 725 and 1047 of 2015**

9

11. Paragraph 1 of the order reads as follows:

“1. For Indian Institute of Technology (IITs),  
Indian Institute of science (IISc) Bangalore,  
Indian Institutes of Management (IIMS),  
National Institute of Industrial Engineering (N  
ITIE), Mumbai and Indian Institutes of Science  
Education & Research (IISERs)”

12. Clause (i) thereof relates to Lecturers. Clause (ii) is in  
respect of Assistant Professors which provides as follows:

**“(ii) Assistant Professors:**

(1) Assistant Professors to be appointed in PB-3  
with AGP of Rs.8000/- p.m. For direct recruits,  
minimum pay in the Pay Band to be fixed at  
Rs.30,000/-.

(2) For appointment as Assistant Professor, one  
should have a Ph.D with first class or equivalent in  
the appropriate branch with a very good academic  
record throughout and at least three years’  
industrial/research/teaching experience, excluding  
however, the experience gained while pursuing  
Ph.D.”

13. Paragraph 2 of the order provides for the revised pay  
structure for other Centrally Funded Technical Institutions as  
follows:

**“2. For other Centrally Funded Technical  
Institutions.**

## **W.A Nos.721, 722, 725 and 1047 of 2015**

10

The pay structure and designation for all other for other Centrally Funded Technical Institutions will be the same as per the scheme of revision of pay of teachers etc in Universities, etc, as notified by the Ministry of HRD vide letter no 1-32/2006-U. I I-you. 1 (i) dated 31st of December 2008 and clarification issued thereon from time to time. However in the case of national institutes of technology (NITs), Indian School of Mines University (I S MU), Indian Institutes of Information Technology (IIITs) And Schools of Planning and Architecture (SPAs), the following accelerated promotion benefits will be given while maintaining the UGC pay structure and designation.

2 (a) Seven non-compounded advance increments shall be admissible at the entry-level of recruitment as Assistant Professor to persons possessing the degree of Ph.D. awarded in the relevant discipline.

(b) (i) An Assistant Professor possessing the degree of Ph.D. in the relevant disciplines and with regular service of 3 years at AGP of Rs. 6000 p.m. shall be eligible for moving to AGP of Rs. 7000 p.m.

(ii) an Assistant Professor possessing the degree of Ph.D. in the relevant discipline and with regular service of 3 years at AGP of Rs. 7000 p.m. shall be eligible for moving to AGP of Rs. 8000 pm

(iii) and assistant Professor for possessing the degree of Ph.D. in the relevant discipline and with

**W.A Nos.721, 722, 725 and 1047 of 2015**

11

regular service of 3 years at AGP of 8000 p.m  
shall be eligible for moving to AGP oh Rs. 9000  
p.m. and designated as Associate Professor.

14. Thus it can be seen that paragraph 1 of Ext.R2 (b) provides for the revised pay structure of the institutions named therein, which does not include NITs. However the revised pay structure of Assistant Professors is provided as PB3 with AGP of Rs.8,000/- and a minimum pay of Rs.30,000/- for the direct recruits in the said pay band.

15. Paragraph 2 specifically deals with other centrally funded technical institutions and it specifically provides for additional accelerated promotion benefits in the case of NITs, while maintaining the UGC pay structure and designations. The accelerated promotional benefits provided are 7 non-compounded advance increments at the entry-level of movement as Assistant Professor to those possessing Ph.D. It further provides that an Assistant Professor having Ph.D. in the relevant discipline and regular service of 3 years at AGP of Rs.8,000/- shall be eligible for moving to AGP of Rs.9,000/- per month. Ext.R2(b) does not provide for movement of an Assistant Professor as Associate Professor in pay band 4 or AGP of

**W.A Nos.721, 722, 725 and 1047 of 2015**

12

Rs.9,000 except on completion of 3 years service as Assistant Professor. In fact there is no separate provision for the incumbent Assistant Professors who have not completed 3 years service.

16. What is stated in paragraph 2 of Ext.R2 (b) is that the pay structure of other Centrally Funded Technical Institutions are governed by the Ministry's letter dated 31.12.2008, which is Ext.R2(a). Ext.R2(a) provides for 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 recommendation of the 6<sup>th</sup> Central Pay Commission. Paragraph 2 of this letter provides for revised pay scales, service conditions and career advancement scheme for teachers and equivalent positions. Clause (a) relates to that of Assistant Professor, Associate Professor/Professors in Colleges and Universities and read as follows:

(a)Assistant Professor, Associate Professor/  
Professors in colleges and universities:

(i) persons entering the teaching profession in universities and colleges shall be as assistant Professor and shall be placed in the pay band of Rs. 15,600-39,100 with AGP of Rs. 6000

**W.A Nos.721, 722, 725 and 1047 of 2015**

13

17. Clause vi provides that the pay of the incumbent to the post of Lecturer Senior Scale (ie. the unrevised scale of Rs.10,000-15,200/-) shall be re-designated as Assistant Professor and shall be fixed at the appropriate stage in the pay band of Rs.15,600-39,100/- based on the present-day, with AGP of Rs.7,000/-. In fact Ext R2(a) also does not provide for AGP of Rs, 8000/- to the Assistant Professors.

18. According to the appellants Ext.P2 order revising the pay to the petitioners was issued in the wake of Ext.R2(a). At the same time Ext.R2(b) provided for the revised pay structure of teaching staff of Centrally Funded Technical Institutions. When Ext.P2 was found to be repugnant to Ext.R2(b), appellants are liable to correct it. Either Ext.R2(a) or Ext.R2(b) does not provide for placement of incumbent Assistant Professors as Associate Professors in pay band 4 with AGP of Rs.9,000/-.

19. Clause xii of Ext R2(b) provides that Assistant Professors completing 3 years teaching service in the AGP of Rs.8,000/- shall be eligible subject to other conditions that may be prescribed by the UGC and University, to move to the pay band of Rs.37,400-67000 with AGP of Rs.9,000/-.

20. On examination of the aforesaid orders, it is clear that Pay Band-4 in the scale of pay of Rs.37,400-67,000/- with AGP of Rs.9,000/- is admissible only to those Assistant Professors with Ph.D who have completed 3 years' service. On the other hand, the revised scale of pay admissible to the incumbent Assistant Professors is pay band 3 i.e Rs.15,600-39,100/-.

21. But the learned single judge found that Ext.R2(a) or Ext.R2(b) are not relevant in the context, in view of Exts.P13 and 14.. As the learned Single Judge has set aside the impugned orders on the basis of Exts.P13 and P14, it is necessary to examine those proceedings.

22. Ext.P13 is a letter issued by the Ministry of Human Resources Development on 09.03.2010 referring to the orders issued by it on 18.08.2009 [Ext.R2(b)] and 16.09.2009 in respect of the revised pay structure of teaching and other staff consequent upon the pay revision of 6<sup>th</sup> Central Pay Commission. 1<sup>st</sup> paragraph relates to non-compounded advance increments. Paragraph 1(ii) relates to pay fixation, which reads as follows:

(ii) Assistant Professors

## **W.A Nos.721, 722, 725 and 1047 of 2015**

15

(1) To be appointed in PB-3 with AGP of Rs.8000/- p.m. For direct recruits, minimum pay in the Pay Band to be fixed at Rs.30,000/-.

(2) For appointment as Assistant Professor, one should have a Ph.D with first class or equivalent in the appropriate branch with a very good academic record throughout and at least three years' industrial/research/teaching experience, excluding however, the experience gained while pursuing Ph.D."

23. Paragraph ix provides for the academic grade pay to be given to faculties as Rs.6,000/-, Rs.7,000/-, Rs.8,000/-, Rs.9,000/-, Rs.9,500/- and Rs.10,000/- respectively, in variance of that given to the Central Government employees. Therefore directly recruited teachers on or after 1.1.2006 are entitled to get their pay fixed at the entry level of the revised pay and the AGP as prescribed as per the provisions in the CSS Revised Pay Rules, 2008. It also provides that fixation of pay, in the case of those who were in service upto 31.12.2008, is to be done in accordance with the terms given in CSS(RP) Rules, 2008 and the fitment table communicated in letter No.3-1/2009-U.I dated 4<sup>th</sup> June, 2009.

24. Ext.P14 is a letter issued by the Ministry of Human

**W.A Nos.721, 722, 725 and 1047 of 2015**

16

Resources Development dated March, 2013 addressed to the Directors of all NITs with respect to the incentives for acquiring Ph.D Degree, referring to its earlier letter issued on 31.12.2008 [Ext.R2(a)] pertaining to Universities and Colleges under UGCs, letter dated 18.08.2009 [Ext.R2(b)] relating to teaching and other staff in CFTIs, letter dated 09.03.2010 [Ext.P13) pertaining to advance increments and revised pay of teaching staff and letter dated 14.03.2012 pertaining to recruitment rules for faculties. Second paragraph of this letter relates to implementation of the scheme of incentives to teaching staff saying that the benefit of 3 non compounded advance increments were applicable to UGC institutions and not for CFTIs. It further refers to the writ petitions filed before the Jaipur Bench of Rajasthan High Court, seeking advance increment to Ph.D holders. Paragraph 3 thereof relates to the order passed by the Rajasthan High Court on 19.05.2012, whereby the MHRD was directed to take a decision as to whether the order dated 31.12.2008 had to be applied to NITs and Technical Universities throughout India and in case it was to be applied to all, those who have taken higher education while in service would be

**W.A Nos.721, 722, 725 and 1047 of 2015**

17

entitled to 3 non compounded increments. In case, the order dated 31.12.2008 was not applicable, MHRD was directed to clarify it to all and in that case it was directed that the benefit already given should not be recovered as it was extended by the NIT at their own level and not by fraud or misrepresentations by the petitioners. In terms of the directions of the Rajasthan High Court, the MHRD examined the matter and clarified that the letter dated 31.12.2008 is not applicable to CFTIs including NITs and that the letter from the Ministry dated 18.08.2009 was pertaining to CFIs and NITs. In Clause 3 thereof it was stated as follows:

“3. The Hon’ble Bench of Rajasthan High Court Jaipur vide order dated 19.05.2012 directed MHRD, Government of India to take a proper decision as to whether order dated 31.12.2008 has to be applied to NITs and Technical University throughout India. If it has to be applied, then all those who have taken higher education while in service, would be entitled to three non-compounded increments. If benefit as given out in the order dated 31.12.2008 is not applicable to the MNITs and Technical University, then it should be clarified to all concerns, but in that eventually, benefit already given should not be recovered as it was extended by the NIT at their own level and not

## **W.A Nos.721, 722, 725 and 1047 of 2015**

18

due to fraud and misrepresentation by the petitioners. The Hon'ble Court has disposed of the cases with the above direction.

In view of the above and keeping in view the Hon'ble High Court's Jaipur order dated 19.05.2012 the matter has been examined afresh and the following is suggested to adhere to it strictly.

i) The letter of UGC dated 31.12.2008 is not applicable to CFTIs including NITs. The letter from the Ministry dated 18.8.2009 was pertaining to CFTIs and NITs.

ii) Para 1(b) of the letter dated 9<sup>th</sup> March, 2010 stands modified to the extent that advance compounded increments would not apply to all categories of teachers, henceforth.

iii) Since Ph.D is a minimum qualification for entry into the 'regular' faculty cadre in any grade, there shall be no Ph.D increments (for the faculty already holding regular faculty positions with lower qualifications), as already decided by the NIT Council in its 3<sup>rd</sup> meeting (item no. 318) As provided in NIT statutes [clause 14(i)] the BGOs have the power to fix on the recommendations of the selection committee the initial pay of an an at a stage higher than the minimum of the scale in respect of posts to which appointments can be made by the Board under the provisions of the Act.

iv) The benefits already given would not be recovered from the academic staff of the institutes as directed by the Hon'ble Court and also as per

NIT Councils decision ”

25. What was clarified was that it was not necessary to grant the benefit of Ph.D increments for the faculties already holding regular faculty position with lower qualifications. In paragraph 4, it was provided that the benefits already given would not be recovered from the academic staff of the institute as directed by the court and also as per NIT Council's decision. That answer was in the context of eligibility as to advance increments.

26. From Ext.P14, we find that it was issued in terms of the direction issued by the High Court of Rajasthan, Jaipur Bench, wherein the issue in question was regarding the entitlement of non compounded increments to the Ph.D holders. From the judgment dated 19.05.2012 in a batch of writ petitions also it is seen that the issue raised therein was with respect to the withdrawal of the benefit of 3 non compounded advance increments, as seen from paragraph 2 of the judgment.

27. But in this case the issue is relating to the Pay Band as well as the AGP admissible to the teachers and placement as Associate Professors before completing 3 years. True that it is in

Ext P13 that the revised Pay Band and AGP for incumbent Assistant Professors are given I.e PB 3 and AGP of Rs. 8000/. But none of the orders relied on by the petitioners do not provide that an Assistant Professor, who was in service between 2006 - 2009 was eligible to get placed as Associate Professor and get their pay revised in the Pay Band-4, ie. Rs.37,500-67000/- with AGP of Rs.9,000/-. On the other hand, what is provided in the orders issued by the MHRD is to put them in the PB-3 with AGP of Rs.8,000/- with minimum pay in the Pay Band to be fixed at Rs.30,000/-. Ext.P14 clarifies that the order applicable in the case of petitioners is Ext.R2(b). The recovery referred to therein is with respect to the Ph.D increments.

28. In the above circumstances, we are unable to find anything in Ext.P13 or Ext.P14, to sustain the view of the learned Single Judge that the time frame of 3 years' service is not applicable for re-designation as Associate Professor in PB4 with AGP of Rs. 8000/ even if Ext.R2(a) or Ext R2(b) are not applicable. Hence we do not find any reasoning in setting aside Exts.P2, P3 or P4 or in directing restoration of the pay of petitioners and others and refund of amount recovered from

them. Therefore, we are unable to agree with the findings of the learned Single Judge.

29. On perusal of various orders issued by MHRD on revision of pay, we are unable to find any of the orders which provides for placement of an Assistant Professor as Associate Professor in pay Band 4 and AGP of Rs.9,000/- except after completion of 3 years as Assistant Professors. Therefore we find that 2<sup>nd</sup> respondent committed a mistake in placing the Assistant Professors like petitioners as Associate Professors and revising and re-fixing their pay in Pay Band 4 with AGP of Rs.9,000/-.

30. Further question to be examined is whether the re-fixation and recovery of excess pay drawn by the petitioners was justified, even without a notice to them. Relying on the judgment of the apex court in **Chandiprasad Uniyal & others V State of Uttarakhand & others** ((2012) 8 SCC 417), the learned Senior Counsel contended that the excess pay drawn by the petitioners can be recovered in the light of Ext.R2(c) undertaking of the petitioners furnishing their willingness for recovery of such amounts in the event of the fixation of pay being found erroneous and that the 2<sup>nd</sup> respondent has only corrected the mistake in

accordance with their eligibility as per rules. Contention of the petitioners is that recovery cannot be permitted in the light of Ext P14 letter and in view of the fact that they have not committed any default or fraud or misrepresentation for issuing Ext P2 order and for fixing their pay in PB4. It is also their case that their pay was re-fixed to their detriment and their placement as Associate Professors were withdrawn without any notice. Even though the learned counsel for the petitioner referred to various orders produced in the Writ Petitions, reply affidavits, etc, none of those orders support a fixation of pay as directed in Ext P2 in Pay Band 4 for the Assistant Professors who did not complete 3 years service.

31. However it is a case where the petitioners were not eligible for the higher scale or placement as Associate Professor and that Ext P2 based on which they were granted those benefits were not issued on any misrepresentation or on their contribution. When the mistake crept in Ext P2 was found out, it was incumbent on the 2<sup>nd</sup> respondent to correct the same on the basis of the relevant orders. In such a case, the principles in the judgment of the apex court relied on by the learned Senior

Counsel squarely applies. The relevant portion of the judgment **Chandi Prasad Uniyal v. State of Uttarakhand**, ((2012) 8 SCC 417), read as follows :

“13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as “taxpayers’ money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are

at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

32. Apex court was considering a batch of cases relating to recovery and re-fixation of pay of teachers in rectification of mistakes occurred while implementing the 5<sup>th</sup> and 6<sup>th</sup> pay commission orders. Apex court while upholding the same, held that unjust enrichment cannot be permitted. It is also pertinent to note that petitioners were not required to perform any additional duties on account of the placement as Associate Professors. Admittedly the petitioners have given their undertaking Ext R2(c) expressing their willingness for re-fixation of pay, refund of excess pay etc, as and when any mistake was detected, as in the cases considered by the apex court. The case of the petitioners do not come under that of exceptional categories. However we are of the view that fairness in action required that a notice was issued to them, before effecting re-

fixation and recovery as well as de-designation.

33. Now that the reasons for re-fixation are already made known to petitioners and their contentions are already in the pleadings before this court, we do not think that issuance of a notice will serve any purpose, especially when we have found that they were not entitled to any benefits as originally granted. Moreover the petitioners approached this court only in 2012, much after the re-fixation of pay and recovery were effected in early 2010. At this stage therefore we are not directing the appellants to undertake the empty formality of issuing notice or opportunity of hearing to petitioners.

We therefore set aside the judgment of the learned Single Judge and dispose of the Writ Appeals accordingly.

Sd/-  
**ANTONY DOMINIC**  
**Judge**

Sd/-  
**P.VASHA**  
**Judge**

rtr/