

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

Date of decision: September 14, 2015

+ **W.P.(C) No. 7622/2014**

SIS KAUR

..... Petitioner

Through: Mr. Shanker Raju, Adv. with Mr.
Nilansh Gaur, Adv.

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Mr. Mohinder J.S.Rupal, Adv.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The present petition has been filed by the petitioner challenging the communication dated February 27, 2014, whereby the request of the petitioner dated September 2, 2013 for grant of 2nd financial upgradation under MACP has been rejected on the ground that she had availed two financial upgradations so far and the 3rd financial upgradation will be given to her on the completion of 30 years of continuous service with effect from September 1, 1993.

2. Some of the few facts are, the petitioner initially joined the respondent-University on December 7, 1990 as Technical Assistant in

the pay scale of Rs. 1400-2300. On September 11, 1992, the Executive Council of the respondent-University accepted the recommendation of the Cadre Review Committee, revising the pay scale of Senior Technical Assistants from Rs. 1640-2900 to Rs. 2000-3500 with effect from January 1, 1986. The relevant recommendation is as under:

“The Committee took note of the fact that the core pay scale of Professional Assistants in the University is Rs. 1640-2000. As ascertained, Professional in all other central universities viz. Delhi University, AMU, Jamia Milia, IGNOU, BHU, Visha Bharti, University of Hyderabad, NEHU and Pondicherry University are also working the same core of pay scale of Rs. 1640-2900. It was therefore felt that the core scale of the post, or any other post should not be changed without consulting the UGC. However, in order to remove any cadre imbalances, it was decided to recommend that the existing Professional Assistants who possess pay scale of Rs. 2000-3500 as personal to them w.e.f. the date of approval by the Vice-Chancellor (i.e. 21.11.94) without payment of any arrears.

On the same analogy, the pay scale of Sr. Technical Assistants as revised from Rs. 1640-2900 to Rs.2000-3500 w.e.f. 1.1.1986 on the recommendations of the Cadre Review Committee and approved by the E.O. on 11.5.92 should be treated as personal to them without affecting the core scale of pay”.

3. Pursuant to a special drive for making recruitment of SC candidates, the petitioner was appointed as Senior Technical Assistant on September 1, 1993 in the pay scale of Rs. 2000-3500. With effect from September 1, 1993, the pay scale of the petitioner was revised from Rs.

2200-4000 under scheme for upward movement. Pursuant to the recommendations of the 5th CPC, the pay scale of the petitioner was revised to Rs. 8000-13,500. It is a conceded position that the MACP scheme has been implemented by the respondent-University for its staff. It is the case of the petitioner that after completion of 20 years of service in one scale without any promotion, the petitioner represented for grant of 2nd MACP in Pay Band-III in Grade Pay of Rs. 6600. By the impugned order, the request of the petitioner was rejected.

4. The respondent in its counter affidavit do not dispute the aforesaid facts. It is the case, on merit, that the grant of scale of Rs. 2000-3500 to the petitioner with effect from September 1, 1993 was treated as personal to her without affecting the core scale of pay of Rs. 1640-2900 of the Senior Technical Assistant. According to the respondent, the grant of scale of Rs. 2000-3500 instead of Rs. 1640-2900 is a first financial upgradation which needs to be taken into consideration for grant of MACP. In other words, it is the respondent's case that the petitioner having been granted two pay scales of Rs. 2000-3500 and Rs. 2200-4000 w.e.f. September 1, 1993, though the core scale of pay was Rs. 1640-2900, the petitioner is entitled to the 3rd financial upgradation under MACP only after the completion of 30 years of service i.e. August 31, 2023.

5. Mr. Shanker Raju, learned counsel appearing for the petitioner would submit that the grant of scale of Rs. 2000-3500 cannot be treated as financial upgradation. According to him, the appointment of the petitioner having been made in the scale of Rs. 2000-3500 with effect from September 1, 1993, the stand of the respondent that the core scale being Rs. 1640-2900, has no relevance. He concedes to the fact, that grant of scale of Rs. 2200-4000 is a financial upgradation. In other words, it is his case that only one financial upgradation has been granted which entitles the petitioner 2nd financial upgradation with effect from September 1, 2008 or in the alternative, September 1, 2013 i.e. after completion of 20 years.

6. Even though the petitioner has pleaded discrimination inasmuch as one Mr. Baljeet Singh has been granted the benefit, as sought for by the petitioner in the present petition, Mr. Raju has not urged the said ground during the oral submission. Thus, I take it that the petitioner has given up the case seeking parity qua Mr. Baljeet Singh.

7. Mr. Raju has also filed a brief submission wherein he has referred to a judgment passed by this Court in the case of ***Department of Social Welfare and Women and Child Development, GNCTD and Ors. Vs. Supervisor's Welfare Association and Ors., W.P.(C) 4907/2011, decided on February 29, 2012*** in support of his contention that

placement of an incumbent on the recommendation of the Committee shall not be treated as promotion/upgradation in view of the clarification issued by DoPT dated October 3, 2001, referred in the judgment.

8. On the other hand, Mr. Mohinder J.S.Rupal, learned counsel appearing for the respondent has drawn my attention to the averments as made by the respondent in its counter affidavit, which I have already noted above. In sum and substance, it is his submission that the grant of pay scale of Rs.2000-3500 is a financial upgradation inasmuch the scale of the post of Senior Technical Assistant was otherwise Rs. 1640-2900. He has also read to me the recommendation of the Cadre Review Committee which I have already reproduced above. He states, the petitioner would not be entitled to the benefit of the 2nd financial upgradation under MACP. In his synopsis, Mr. Rupal has stated that the petitioner has not challenged the E.C. resolution dated January 12, 1995 wherein it was resolved that the scale of Rs. 2000-3500 should be treated personal to them without affecting core scale of pay. It has also been stated that in terms of clause 3(vi) of the MACP scheme, personal pay scales resulting into financial benefits of higher scales have to be adjusted against MACP scheme.

9. Having heard the learned counsel for the parties and considered the submissions filed by them, the only question which arises for

consideration is whether the grant of pay scale of Rs. 2000-3500 should be treated as a financial upgradation. The recommendation of the Cadre Review Committee has already been reproduced above. From the perusal of the said recommendation, it is noted that the Committee decided that core scale of the post i.e. Rs. 1640-2900 should not be changed without consulting University Grant Commission (UGC). However, in order to remove any cadre imbalances, it was decided to recommend the existing personnel, who possesses the qualification prescribed for the Senior Technical Assistant, the pay scale of Rs. 2000-3500 as personal to them with effect from the date of approval by Vice Chancellor. The recommendation only pre-supposes that Senior Technical Assistant possessing the qualification of the post be granted the pay scale of Rs.2000-3500. The question whether grant of the said scale on possession of the qualification is to be considered as a promotion or upgradation. A Clarification 35 issued by the Government of India on October 3, 2001, is of relevance, which I reproduce as under:

<i>Point of doubt</i>	<i>Clarification</i>
<i>Whether placement/ appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalize the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradation applicable under the ACP Scheme?</i>	<u><i>Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be</i></u>

	<u>treated as promotion/upgradation. (emphasis supplied)</u> Where, however, rationalization/ restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre - structured/pre -rationalised grade, then this will be taken as promotion/upgradation If the rationalised/restructured grades require possession of a specific nature of qualification and experience, not specified for the existing posts in pre -rationlised set up, and existing incumbents in pre - rationalised scales/pre -structured grades, who are in possession of the required qualification/ experience are placed directly in the rationalised upgraded post, such placement will also not be viewed as promotion/upgradation. However, if existing incumbents in the pre - rationalised grades who do not possess the said qualification/ experience are considered for placement in the corresponding rationalised grade only after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation. Where placement in a higher grade involves assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation. Where only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved, in the upgraded post will also be treated as promotion/upgradation and offset against entitlements under the ACPS. For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment ' D ' Section) giving all relevant details.
--	---

10. From the perusal of the clarification reproduced above, it is noted that the posts which are placed in a higher scale of pay with or without change, in the designation, without requirement of any new qualification for holding the post in higher grade specified in the Recruitment Rules for the existing post and without involving any change in the responsibility and duties, the placement of all the incumbents against such upgraded posts is not to be treated as promotion/upgradation. The Committee had only recommended that those incumbents, who possesses the qualification of the post, Senior Technical Assistant be given the scale of Rs. 2000-3500. Suffice to state, no new qualification has been insisted upon for grant of scale of Rs. 2000-3500. It is not the case of the respondent that with the grant of scale of Rs. 2000-3500, there is a change in the responsibility or duties. It is also not the case of the respondent that only part of the posts were placed in higher scale and rest are retained in the existing grade. The scale of Rs. 1640-2900 was considered as a core scale because the higher scale was affected without concurrence of the UGC and at the level of the Vice Chancellor. That apart, the contention of Mr. Raju that the concept of upgradation would not be applicable to the petitioner as her appointment as Senior Technical Assistant with effect from September 1, 1993 was in the scale

of Rs. 2000-3500, is appealing inasmuch the petitioner has never been appointed in the scale of Rs. 1640-2900 as a Senior Technical Assistant so as to construe the grant of scale of Rs. 2000-3500 as an upgradation/personal to her. No doubt, when the advertisement was issued, the same was issued for the post of Senior Technical Assistant in the scale of Rs. 1640-2900, but, while giving appointment on September 1, 1993, the following decision was taken:

*“JAWAHARLAL NEHRU UNIVERSITY
ACADEMIC & ESTABLISHMENT-I*

The post of Sr. Technical Assistant in question has been advertised in the scale of Rs. 1640-2900 and the Selection Committee has selected the candidate on that analogy.

Since the scale of Sr. Technical Assistant has been revised to Rs. 2000-3500/- w.e.f. 1-1-86 it is for orders, whether we may issue offer in the scale of Rs. 1640-2900 or Rs. 2000-3500 to Ms. Sis Kaur, who has been selected as STA.

Submitted please.

1/9/93

The offer has to be made in the revised core scale of STA i.e. Rs. 2000 to Rs.3500/- as appointed by UGC.

Attested

7/8/14
Jawaharlal Nehru University
New Delhi-110067”

It is clear the appointment of the petitioner was in the scale of Rs. 2000-3500. Insofar as the submission of Mr. Rupal that the petitioner has not challenged the E.C. resolution dated January 12, 1995, is concerned, the petitioner is not required to challenge the same, moreso, when her appointment was in the scale of Rs. 2000-3500, which is clear from the aforesaid para. Insofar as the submission of Mr. Rupal that in view of clause 3(vi) of the MACP scheme, stipulating personal pay scales resulting in financial benefits of higher scale, would be adjusted against MACP scheme is concerned, the grant of scale of Rs. 2000-3500 cannot be termed as a personal pay scale at least in the case of the petitioner as she was appointed in the said scale, which is different from Rs.1640-2900/-. Accordingly, the present petition is allowed. The grant of scale of Rs. 2000-3500 cannot be treated as a financial upgradation. The petitioner is entitled to be considered for 2nd financial upgradation under the MACP on completion of 20 years of service in accordance with the instructions. The benefits thereof shall be granted to the petitioner within a period of two months from the date of receipt of the copy of the order.

11. The petition is disposed of in the above terms.
12. No costs.

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 14, 2015
akb