

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: March 10, 2016

1)

CWP No.5615 of 2001

Dr.Mahesh Chander and others

.... Petitioners

Vs.

The State of Punjab and others

.... Respondents

2)

**CM No. 12466 of 2010 and RA No. 151 of 2011 in
CWP No.20054 of 2009**

Dr. Satpal Jindal

.... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr.Satya Pal Jain, Senior Advocate, with
Mr.Dheeraj Jain, Advocate, and
Mr. Vijay Chaudhary, Advocate,
for the petitioners in CWP No.5615 of 2001
Mr.Rajesh Garg, Senior Advocate, with
Ms. Nirmata Shergill, Advocate,
for the petitioner in CWP No.20054 of 2009.

Mr.Suvir Sehgal, Addl.AG, Pujnjab

Mr.Sameer Sachdeva, Advocate,
for respondents No.3 and 4.

To be referred to reporter: Yes.

AMOL RATTAN SINGH, J.

In these two petitions filed in different years, the 4 petitioners
in CWP No.5615 of 2001 and 1 in CWP No.20054 of 2009, are seeking the

benefit of higher pay scales than the ones granted to them, claiming on the basis of service rendered by them in private, Government aided colleges, prior to the services rendered in the colleges where they are now serving.

Both these petitions have a long and chequered history, especially CWP No. 5615 of 2001, as would be detailed herein after. In fact, the second petition, i.e. CWP No. 20054 of 2009, already stands decided by a co-ordinate Bench vide its order dated 23.08.2010 and only the review application filed by the respondents-State against that order, and the application for modification of that order, filed by the petitioner, are to be decided by this Court. However, since CWP No. 5615 of 2001 has been remitted back to this Court by the Supreme Court, and the issue involved is common to both, details of the pleadings even in the second petition (CWP No. 20054 of 2009) are felt necessary to be reproduced.

CWP No.5615 of 2001

2. The facts are first being taken from CWP No.5615 of 2001, being the older case and one which has been remitted by the Supreme Court for redetermination.

The four petitioners are all working as Lecturers in the Arya College, Ludhiana, which is a Government aided private college.

3. Petitioner No.1, Dr. Mahesh Chander, was appointed as a Lecturer initially at Lajpat Rai Memorial College, Jagraon, affiliated to the Punjab University, as is the respondent Arya College, on a pay scale of Rs.300-600, which was increased to Rs.700-1600 w.e.f. 01.01.1973. He joined the respondent Arya College on 20.08.1985, after resigning from his previous college but his pay scale and emoluments were protected on the

basis of an approval stated to have been granted by the Director of Public Instructions (Colleges) Punjab, i.e. respondent No.2.

Petitioner No.2, Suresh Kumar, initially joined as a Librarian at Hindu College, Amritsar, on 11.10.1974, also in the pay scale of Rs.300-600, as was meant for Lecturers, after which he was given the revised grade of Rs.700-1600 w.e.f. 01.04.1980. He, thereafter, was selected as a Lecturer in the respondent college on 18.02.1985, after resigning from his previous college. His pay scale and emoluments too are stated to have been similarly protected.

Petitioner No.3, J.K.Bhandari, initially joined as a Lecturer at S.D.College, Hoshiarpur, on 01.08.1973, in the pay scale of Rs.300-600, revised to Rs.700-1600 in that college itself and thereafter, joined the respondent college on 24.07.1981, again with protection of pay as is stated in the petition.

The 4th petitioner, Roshan Lal Behl, initially joined as a Lecturer at G.T.B. National College, Dakha, on 08.07.1982, in the scale of Rs.700-1600 and thereafter in the respondent college with protection of emoluments. No date of his joining the Arya College is given in the petition.

4. All the four petitioners had earlier filed CWP No.17354 of 1994 in this Court, seeking a writ of mandamus to the respondent State, to give the benefit of the past service rendered by them in the other colleges, for the purpose of granting them senior/selection grade. The writ petition was allowed by a Division Bench, on 20.11.1995 with the following order:-

“In the result, the writ petition is allowed. The decision of the respondents not to grant the senior scale to the petitioners is

declared illegal. The respondents are directed to consider the cases of the petitioners for grant of senior scale for the cadre of Lecturers in accordance with the guidelines laid down by the University Grants Commission. On being found suitable the petitioners shall be given the benefit of senior scale on the basis of total length of service. The respondents should pass appropriate orders within three months of the submission of the certified copy of this order and the benefit of arrears should be given to the petitioners within next two months.

The parties are left to bear their own costs.”

5. The respondent State filed an SLP in the hon'ble Supreme Court against the aforesaid order, which was converted into Civil Appeal No.4053 of 1998. The appeal of the State was allowed and the aforesaid order of this Court was set aside and the writ petition dismissed, vide order dated 14.08.1998.

The Supreme Court, while noticing the facts, observed that the petitioners (respondents before the Apex Court) were claiming the benefit of past service for the purpose of grant of senior scale/selection grade, under the Career Advancement Scheme for Lecturers, promulgated by the University Grants Commission, which had been allowed by this Court.

Under that scheme, previous service in another college, equal to the post of a Lecturer, without any break between the two services, was to be counted for placing Lecturers in the senior scales and selection grade, subject to the condition set out in DO letter dated 27.11.1990. It was pointed out by the State that the revised guidelines contained in the aforesaid letter had been accepted by the Universities (of the State), only in respect of their

own colleges/departments and the State Government had not accepted the scheme in respect of private aided colleges, or even for State colleges. Hence, the State had pleaded that Lecturers were not entitled to the benefit of previous service in private aided colleges, for the purpose of grant of senior scales/selection grade.

The petitioners herein, however, had relied upon the minutes of a meeting held by the State Council of Higher Education, on 08.07.1994, to submit to the contrary, which was rejected by the Supreme Court on the ground that nothing had been shown to the effect that the recommendation even of the State Council, had been accepted by the Government. An affidavit of the Government dated 16.07.1997 was also referred to by the Apex Court, wherein it was stated that as per existing rules governing the service of Lecturers, the benefit of past service of an employee who has resigned from his job to join another college, cannot be granted in the new college, for the aforesaid purpose.

6. Eventually, it was held as follows:-

“In paragraph 8 of the affidavit, it has been categorically stated that the clarification issued by the University Grants Commission dated 27th November, 1990, has to be considered by the State Government for its implementation, as the clarification issued by the University Grants Commission involves a financial burden on the State Government. The concurrence of the State for its implementation has to be sought. Since State concurrence has not yet been given, the High Court was not right in granting to the respondents the benefit of the University Grants Commission letter dated 27.11.1990. The appeals, are, therefore, allowed and the impugned judgment and order of the High Court is set aside.

The writ petition filed before the High Court is dismissed.”

7. It is contended in the present petition that thereafter, the Government of Punjab decided to adopt the scales for teachers working in the Government colleges and Universities as per the University Grants Commission pattern and issued a fresh notification dated 12.03.1999 (Annexure P-2 with the petition). The said Annexure is actually a press note issued by the Secretary, Education, Punjab, on 12.03.1999, stating as follows:-

“CHANDIGARH, March 12- The Punjab Government has adopted the Scales of pay for teachers in Govt. Colleges and universities in the State as per the UGC pattern approved by the Government of India. An official spokesman of Punjab Government clarified that three different notifications had been issued by the Ministry of Human Resource Development in July, 1998, September, 1988 and November, 1998, and while consolidating these three notifications the UGC on 24.12.1998 had prescribed some other conditions and guidelines. The Punjab Government has issued a fresh notification to-day, the 12.3.1999 which clarifies that the grades for Punjab Govt. Colleges and universities teachers would be strictly as per the UGC notification of 24.12.1998. The State Government has, however, not accepted UGC's recommendation regarding age of superannuation, which will remain at 58 years in Government Colleges and 60 years in universities. Also the mode of payment of arrears prior to 31.12.1998, will be decided during the financial year 1999-2000. The Punjab Government has sanctioned all allowances such as house rent allowance, daily allowance etc., as per Punjab Government rates. Copies of the amended notification of 12.3.1999 and of the UGC

consolidated notification of 24.12.1998 are enclosed.”

Thereafter, a notification was also issued by the State of Punjab on 24.03.1999 (Annexure P-3), which runs as follows:-

“Notification

No.10/22/98-5Edu-I/6860 Dated, Chandigarh, the
24.3.1999

The Governor of Punjab is to pleased to revise the pay scales of teaching personnel of the privately affiliated aided colleges in the State at par with University/Government Colleges with effect from 1.1.1996 as issued vide government notification No.10/22/98/5Edu-I/4257 dated 20.2.1999/10.3.1999 and notification dated 12.3.1999 issued vide endorsement No.19/22/98-5Edu-I./5813-27 dated 12.3.1999.

G.P.S.Sahi,
Principal Secretary to Govt. Punjab,
Department of Higher Education.”

8. It is further contended in the present petition that while allowing the earlier writ petition, this Court had relied upon the judgment of another Division Bench in **Dr. Romilla Jain v. State of Haryana** (1995(3) RSJ 807).

After the decision of the Supreme Curt in the case of the present petitioners, the State of Haryana also, it is stated in the petition, filed a Special Leave Petition in the Supreme Court seeking similar relief. However, that SLP was dismissed and subsequently a review petition filed by the State of Haryana was also dismissed by the Supreme Court, vide its order dated 28.04.1999 (Annexure P-4), a perusal of which shows that the

dismissal was both, on technical grounds of delay, as well as on merit.

The present petitioners, thereafter, obviously rely on the aforesaid orders of the Supreme Court in their favour, despite the State of Punjab having succeeded against them, *in personem* in their own case, in the Supreme Court.

9. The present petition thereafter refers to a letter of the Deputy Secretary to the Government of India, addressed to the Secretary, Government of Punjab, in the Department of Education, dated 15.10.1999 (Annexure P-5), wherein the Governments' notification dated 20.02.1999 is referred to and certain deficiencies were pointed out, in the light of the provisions of the Career Advancement Scheme, the relevant part of which is as follows:-

“OTHER TERMS AND CONDITIONS OF SERVICE OF TEACHERS:

Other relevant conditions of service such as period of probation, counting of past service, teaching days, work-load, re-employment of teachers, leave rules, code of provisional ethics, accountability etc., stipulated in UGC notification, have also not been incorporated in State Government's orders. State Government may reconsider the matter and incorporate relevant provisions in UGC's notification in their orders under reference.

You are requested to reconsider the matter and modify the orders in the light of our suggestions indicated above and submit a copy, thereof to us immediately to enable us to examine the matter further. It may kindly be noted that central share of financial assistance will be released to State Government only if the orders issued by it in this regard are found to be in absolute conforming and concordance with corresponding stipulations in this Deptt's/UGC's Scheme.”

(Emphasis above applied by this Court)

10. The petition thereafter refers to a letter of the respondent State in the Department of Finance, dated 15.11.2000, addressed to all Heads of Departments etc. in the State, on the subject of protection/fixation of pay of Government employees appointed by transfer/open selection etc., from one service to another.

In that letter, while referring to the proviso below Rule 4.4 (b) of the Punjab Civil Services Rules, Vol.I, Part-I, it was clarified that when a person already in service is selected for service under the Government through proper channel, his past service should not be washed out as regards the fixation of pay in the new post. However, seniority in the previous service would not count in the new service.

The letter also refers to certain judgments of this Court and the Supreme Court on the issue of counting of service in other departments and further states that such service would count for the purpose of grant of time bound promotion/higher scale as a measure personal to him. However, the grant of such benefit would not count for seniority.

Certain other related issues pertaining to employees already getting higher scales etc. in the previous service, are also referred to, which are not germane to the issue at hand.

11. Other than the above, the petition then refers to the letter of the University Grants Commission, dated 24.12.1998, wherein it was recommended that previous service, without any break on the post of a Lecturer (or an equivalent post), in any University, college etc. should be

counted for placement of a Lecturer in senior scale/selection grade, subject to certain conditions, such as that the qualification prescribed for the previous service was not lower than that prescribed in the new service, etc.

12. Thus, it is contended in the petition that since the only reason for accepting the Governments' appeal, by the Supreme Court, was that Government itself had not made any such recommendation for counting of previous service, and subsequently the State Government, vide its press note dated 12.03.1999 (i.e. after the judgment of the Supreme Court dated 14.08.1998), had decided to accept the recommendations of the UGC dated 24.12.1998 in toto, that would, naturally, include the provision of counting of past service in the previous college. Hence, it is contended that despite having lost the previous round of litigation right up to the Supreme Court, the claim of the petitioners would need to be considered in the light of the subsequent decision of the Government itself.

Consequently, petitioner No.1 represented to the Principal of his college for grant of benefit of previous service, which was forwarded to the 2nd respondent but with no result, leading to a reminder being sent by respondent No.4, i.e. the Principal, to respondent No.2 (DPI) on 10.01.2001. Yet another reminder was sent on 30.01.2001. No reply having been received from the Government, the present writ petition was filed seeking essentially the same relief, as was earlier sought in CWP No.17354 of 1994.

13. In reply to the writ petition, respondents No.3 and 4 (the employer of the petitioners) filed an affidavit stating that since there was no break in the service in the case of any of the petitioners, between their previous service and service with the respondent college, the college had no

objection to grant of the relief sought.

14. However, the State of Punjab, in its reply dated 26.11.2001, took the objection of the matter already having been settled qua parties upto the Supreme Court and as such, dismissal of the SLP filed by the State of Haryana would have no bearing on the case of the petitioners.

It was further stated in the reply, firstly, that the recommendations of the University Grants Commission are not binding upon the State Government, considering the financial implication involved and secondly, as regards the letter of the Finance Department dated 15.11.2000, for grant of benefit of past service to Government employees, in other Government services, (towards higher pay scales and time bound promotions in subsequent service), it was only in relation to Government employees alone, with no relevance to private Government aided colleges. The petitioners, being fresh recruits in the Arya College, Ludhiana, could not claim benefit of past service in another college, as per the respondent State.

15. Referring to the letter of the University Grants Commission dated 24.12.1998, it has been specifically stated that the Punjab Government had not accepted the recommendation regarding counting of past service in different colleges.

As regards the press note issued on 12.03.1999, the reply simply states that pay scales of Lecturers working in private aided colleges in the State were revised vide notification dated 24.03.1999.

Subsequently, a letter dated 03.06.2013 was placed on record by the respondent State, issued by the Special Secretary, Higher Education,

addressed to the Director Education Department (Colleges), Punjab, on the subject of issuance of instructions for grant of senior scale/selection grade, after counting of previous service rendered on *ad hoc* basis.

The letter states that in reference to the case of one Indu Bala, Lecturer in English, the Finance Department had recommended that service rendered by her in an *ad hoc* capacity with the Government, prior to regular service, would be countable towards grant of senior scale/selection grade, but service rendered in a private college, prior to service in a Government college, would not be countable, as it had nothing to do with Government service and as such, the selection would not have been made in continuation of previous service. Therefore, condition (c) of the UGCs' letter dated 24.12.1998 would not stand fulfilled.

Actually the reference is to sub-clause (C) of Clause 8.6.0. of the UGCs' aforesaid letter. However, to appreciate the said sub-clause, the entire Clause 8 is reproduced hereinunder:-

“8.0.0 COUNTING OF PAST SERVICE

Previous service, without any break as a Lecturer or equivalent, in a university, college, national laboratory, or other scientific organisations, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturer in Senior Scale/Selection Grade provided that:”

8.1.0 The post was in an equivalent grade/scale of pay as the post of a Lecturer,

8.2.0 The qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of Lecturer;

8.3.0 The candidates who apply for direct recruitment should

apply through proper channels;

8.4.0 The concerned Lecturers possessed the minimum qualifications prescribed by the UGC for appointment as Lecturers;

8.5.0 The post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government/ Central Government/ Institution's regulations;

8.6.0. The appointment was not ad-hoc or in a leave vacancy of less than one year duration. Ad-hoc service of more than one year duration can be counted provided-

- a) the ad hoc service was of more than one year duration;
- b) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and
- c) the incumbent was selected to the permanent post in continuation to the ad hoc service, without any break.”

No replication was filed by the petitioners, to the reply.

16. At this stage, the history of the present petition, needs to be referred to.

This writ petition was initially heard by a Division Bench and after noticing the order of the Supreme Court dated 14.08.1998, in Civil Appeal No.4503 of 1993 (SLP (C) No.14014 of 1996), it was observed as follows:-

“It is, therefore, evident that the claim of the petitioners was declined as a consequence of the non-acceptance of the scheme dated 27.11.1990 sponsored by the University Grants Commission, by the State Government. Since the matter attained finality, the petitioners did nothing after the determination by the Supreme Court.”

XXX

XXX

XXX

XXX

XXX

XXX

“Learned counsel for the respondents acknowledges the fact that the solitary objection which was available with the State Government when the petitioners filed C.W.P. No.17354 of 1994 stood satisfied with the issuance of the notification dated 24.3.1999.

It is, therefore, clear that the State Government has now accepted the Career Advancement Scheme for the grant of senior scale/selection grade as has been recommended by the University Grants Commission in its letter dated 27.11.1990. That being so, there remains no impediment for the release of senior scale/selection grade, in case the conditions prescribed are fulfilled.

The claim of the petitioners should ordinarily have been considered suo motu by the respondents after the issuance of the notification dated 24.3.1999, be that as it may, it shall now be considered and the petitioners shall be granted senior scale/selection grade as the case may be, under the Career Advancement Scheme by taking into consideration the service rendered by them in different institutions as may be permissible in terms of the Career Advancement Scheme sponsored by the University Grants Commission. Needful be done within a period of four months from today. In case the petitioners are found entitled to any monetary benefits on account of the grant of senior scale/selection grade; payments due to the petitioners as a consequence of the aforesaid determination be released to them within a further period of one month.”

Thus, this writ petition, was allowed by the Division Bench, vide its order dated 13.01.2003

17. The State of Punjab again went in appeal and the following order was passed by the Supreme Court, in Civil Appeal No.2840 of 2008,

on 15.04.2008 (arising out of SLP (C) No.13351 of 2003):-

“Leave granted.

One of the questions raised by the appellants herein is as to whether despite acceptance of the U.G.C. recommendations by the State Government in regard to the teaching personnel of the privately affiliated aided colleges in the State at par with University/Government Colleges with effect from 1.1.1996, as would appear from the notification dated 24.3.1999, the same would be subject to the earlier notification issued by the State dated 16.11.1989 and 12.3.1999 or not.

It appears that the said Circulars/Letters and/or Notifications had not been placed before the High Court. The High Court by reason of the impugned judgment has directed the State Government to grant relief as regards revision of pay as recommended by the University Grants Commissions even in regard to the privately affiliated aided colleges, we are of the opinion that the matter should be considered afresh by the High Court in the light of the question raised by the parties before us. For the reasons aforementioned, the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh as expeditiously as possible. The appeal is allowed. It would be open to the parties to file additional affidavits.”

18. Consequently, the matter has been remitted back to this Court to consider the notification dated 24.03.1999, in relation to the earlier notifications dated 16.11.1989 and 12.3.1999. (More would be said with regard to the date, 16.11.1989, later).

Such writ petitions, pertaining to service matters, thereafter having been made subject matter of a Single Bench, as per roster, the matter

came up before a co-ordinate Bench and the writ petition was again disposed of, with the following direction, on 05.02.2009:-

“Notice of motion.

On the asking of this Court, Mr.B.S.Chahal, DAG, Punjab accepts notice on behalf of the respondent-State.

The petitioners joined in different private colleges as Lecturers. While serving in such private colleges, they applied and were selected by the Punjab Public Service Commission as Lecturers in Government Colleges. University Grants Commission issued regulations/guidelines and recommended for inclusion of service rendered in ad hoc capacity for placement in Senior Scale/Selection Grade. On the basis of the aforesaid University Grants Commission guidelines, the State of Punjab granted such relief to Smt. Indu Bala Singh, Lecturer English, Government College, Mohali for the purpose of Senior Scale/Selection Grade. Some of the Lecturers who had served in Govt. Colleges and were later appointed in Government Colleges also filed CWP No.15272 of 2007 and some other petitions. CWP No.15272/2007 was heard by a Division Bench of this Court and vide order dated 5.8.2008 following observations were made:-

“Petitioners are working as Lecturers in Govt. College for Women at Ludhiana. By filing this writ petition, they pray that benefit of ad hoc service be given to them, to get Senior Scale/Selection Grade as per UGC letter dated 25.12.1998. They further pray that the benefit of decision of the Government with regard to similarly situated employee (Annexure P-1), be also extended to them.

In the reply filed, entitlement of the petitioners to get abovesaid relief is not denied. It is rather admitted that the relief has already been granted to one Smt. Indu

Bala Singh, Lecturer, Govt. College at Mohali.

If that is so, we have failed to understand as to why the relief is not granted in favour of the petitioners. We feel that a very discriminatory attitude has been adopted by the respondent-State in denying the benefit due to the petitioners. The petitioners are entitled to get the same relief, which already stood granted in favour of their co-employee.

In view of the facts mentioned above, we direct the Secretary, Higher Education, Punjab, Chandigarh to prepare a Cheque (s) for each of the petitioners for the amount due.

Needful be done within a period of seven days from today failing which officer concerned shall come present in the Court on the next date of hearing.

Copy of this order be supplied to Sh.Goyal, Sr.DAG, Punjab for necessary compliance.

List on 13.8.2008.”

It is admitted case of the parties that the case of the petitioners herein is squarely covered by the aforesaid judgment. This petition is accordingly disposed of with a direction to the respondents to grant the relief to the petitioners in terms of the aforesaid directions of this Court.”

The above direction was obviously issued in the light of a Division Bench judgment dated 05.08.2008, passed in CWP No.15272 of 2007, wherein Lecturers in the Government College for Women, Ludhiana, had sought the benefit of *ad hoc* service rendered by them, prior to their regular service, which relief had already been granted by the respondent Government itself, to one Smt.Indu Bala, a Lecturer at Government College, Mohali.

This Court, while disposing of this writ petition on 05.02.2009, at the outset had erroneously stated that the petitioners herein had joined in different colleges and were then selected by the Punjab Public Service Commission as Lecturers in Government colleges.

As such, their case was treated at par with Lecturers of Government colleges, seeking benefit of earlier *ad hoc* service with the Government, as was the case in CWP No.15272 of 2007.

19. The respondent Government thereafter filed Review Application No.430 of 2009, stating therein that the order dated 05.02.2009, disposing of the writ petition in terms of order passed in CWP No.15272 of 2007, was erroneous, in view of the fact that that writ petition was in respect of service rendered by Lecturers in Government colleges in an *ad hoc* capacity, prior to their regular selection in such colleges, whereas in the present petition, the issue is with regard to benefit of service rendered in different private colleges, before selection in a private, Government aided college.

The review petition was, consequently, allowed by the same Bench as had passed the order dated 05.02.2009. The said order was recalled and the petition was ordered to be listed for hearing as per roster.

Thereafter, the connected petition (CWP No.20034 of 2009) was ordered to be heard along with this petition and eventually these cases came up for final arguments, at this point of time.

**CM No. 12466 of 2010 & RA No. 151 of 2011 in
CWP No.20054 of 2009**

20. In this petition, the lone petitioner is a Doctorate in English

from Punjabi University, Patiala (since 1995). He was initially appointed as a Lecturer in the Hindu College, Sonapat, (Haryana), in an *ad hoc* capacity, from 22.08.1979 to 29.09.1980 and was thereafter appointed as a Lecturer on regular basis on a Government aided post, in the Shaheed Kanshi Ram Memorial College, Bhagomajra, Tehsil Kharar, District Ropar (Punjab) w.e.f. 08.09.1980, upon selection by a duly constituted selection committee and continued there till 17.08.2004. In that college, he had been placed in the selection grade of Rs.12000-Rs.18300/-, as per his entitlement under the UGC guidelines. At the time that he left that college, he was drawing a basic pay of Rs.16,620/-.

21. In June 2004, he applied to the Patel Memorial National College, Rajpura, District Patiala (respondent No.3), for the post of Lecturer in English, through proper channel. Upon being selected he was appointed as such, against a 95% grant-in-aid post, sponsored by the State Government. He is stated to have joined that college on 18.08.2004, with the appointment letter having been issued on 16.08.2004.

He represented for protection of the pay scale drawn by him in the previous college, as allegedly promised to him at the time of his appointment, upon which a resolution dated 12.06.2005 is stated to have been passed by the Managing Committee of the respondent college (the Management Society being respondent No.4).

His case was accordingly forwarded to the DPI (Colleges) Punjab (respondent No.2), who sought a clarification as to whether the petitioner had applied through proper channel. On 01.08.2005 respondent No.3 replied in the affirmative to respondent No.2.

Still further clarifications were sought by respondent No.2 from respondent No.1, vide a letter dated 09.03.2006 (Annexure P-6), a perusal of which reveals that it was stated therein that though the petitioner had resigned from Kanshi Ram Memorial College, Bhagomajra, after depositing three months' salary, however, he had been given a no objection certificate for joining his new college, (by the previous college) and as such, he had applied through proper channel.

It was also stated that though his pay in the Kanshi Ram Memorial College, on the date that he left it, was Rs.16620/-, in the grade of Rs.12000-18300, the new appointment was made in the scale of Rs.8000-13500. It was further stated in the letter that pay protection is only of the pay drawn and not of placement in a particular scale. Thus, where the scale itself drawn by the petitioner in his previous college was a higher scale than that to which he was appointed in the respondent college, he could at best be placed at the maximum end of the scale to which he was appointed, i.e. at the stage of Rs.13500/-, which is the top end of the scale. However, he could still be granted pay protection by treating the difference (between Rs.16620-13500/-) as personal pay.

In the meanwhile, the petitioners' pay had already been fixed by respondent No.2 itself, vide letter dated 20.02.2006 (Annexure P-7) at the stage of Rs.13500/-, in terms of condition No.16 of the grant-in-aid scheme, by which the college was receiving 95% grant-in-aid from the State Government.

Thereafter, on 02.05.2007, an order was again issued to the same effect.

22. The petitioner then represented to respondent No.1 to protect his pay as per the UGC guidelines adopted by the State of Punjab, which representation was rejected by respondent No.2 vide order dated 03.04.2008 (Annexure P-9), on the ground that all the guidelines of the UGC have not been implemented by the State and that the UGC is only a recommendatory body.

The petitioner has, thus, actually impugned these two orders, dated 02.05.2007 and 03.04.2008, in the present petition.

23. Thereafter, the petitioner again became eligible for grant of senior scale, even in his new service, as contended in the petition, and consequently, his case was sent for placing him in the senior scale, alongwith one Dr.Jagir Singh, Lecturer in Punjabi in the same college.

Dr. Jagir Singhs' case was sanctioned on 04.03.2009, granting him the senior scale of pay, whereas the petitioners' case was kept pending and sent back on 10.10.2009, vide letter Annexure P-10, requesting the college to prepare the case of the petitioner in terms of the “new notification” and send it thereafter.

The new notification referred to is actually the set of two notifications which had been issued by the State of Punjab on 12.03.1999 and 24.03.1999 (copies of which have been annexed collectively as Annexure P-11 with the present petition), as has not been denied by the State, though with a rider that the complete notification dated 24.03.1999 has not been annexed by the petitioner and that sub-rule (vi) of Rule 1 of the set of conditions of Annexure-I of the said notification, reads as follows:-

“The above scheme will be applicable subject to the acceptance of all the conditions mentioned in this letter by the Government of India, Ministry of Human Resources Development”.

24. In the first notification, a reference has been made to earlier notifications dated 20.02.1999 and 10.03.1999, to the effect that the same would now stand substituted with regard to the grant of revised pay scales of teaching/academic personnel of State Universities and Government colleges, in accordance with the pay pattern recommended by the University Grants Commission and notified on 24.12.1998, after approval of the Central Government.

The 2nd notification, dated 24.03.1999, is the one by which the claim of the petitioners actually crystalises. By this subsequent notification, the pay scales of teaching personnel of private, affiliated Government aided colleges, were placed on par with University/government colleges, w.e.f. 01.01.1996, in terms of the notifications dated 20.02.1999/10.03.1999 and 12.03.1999.

25. The petitioners' contention, therefore, is the same; that the Punjab Government having granted the same pay scales to private, aided colleges, as were applicable to Government colleges, in terms of the Career Advancement Scheme of the UGC, notified on 24.12.1998, all conditions contained in the said scheme necessarily need to be adhered to by the Government, including what is contained in Clause 8.0.0 of the said scheme (already reproduced earlier).

Clause 7.2.0 of the said scheme refers to the senior scale of Lectures, stipulating therein that those Lecturers who have completed six

years of service (five years in the case of those with the M.Phil degree and four years in the case of those with the Ph.D degree), and have participated in certain courses, with consistently satisfactory performance in their work, would be entitled to the said scale.

Clause 7.3.0 pertains to the grant of the selection grade to Lectures, also subject to certain conditions laid down therein.

Accordingly, the petitioner again represented to the respondents on 16.11.2009, for grant of selection grade to him on the basis of the said scheme, but with no response. Hence, the present writ petition was filed, seeking the benefit of selection grade and protection of the petitioners' service in the previous college.

26. In the reply filed by the State, preliminary submissions have been made that the Government settled terms and conditions for the grant of 95% grant-in-aid to colleges, as per a specific scheme, and condition No.16 thereof protects the pay of employees who join one college afresh, after service in another college. Accordingly, the petitioners' case for protection was considered in terms of condition No.16, but since the petitioner could only be granted promotion in the new scale in which he was appointed in the subsequent college, i.e. in the scale of Rs.8000-13500/-, with no stage of Rs.16620/- in that scale, he was granted promotion at the top end of that scale, i.e. at the stage of Rs.13500/-.

Reference has also been made to Rule 4.4 (a)(iii) of the Punjab Civil Service Rules, Vol.I, Part-I, which reads as under:-

“4.4. The initial substantive pay of a Government employees who is appointed substantively to a post on a time-scale of pay

is regulated as follows:-

a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended -

i) and ii) xxxxx xxxxx xxxxx

iii) When appointment to the next post is made on his own request under rule 3.17(a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.”

It is further stated that even in terms of the offer made to the petitioner by the Principal of the respondent college, there was no assurance given of any protection.

The implication obviously is that the petitioner had accepted his new appointment with open eyes, knowing well that he was being appointed in a lower grade. A copy of the agreement dated 16.10.2004, between the petitioner and respondents No.3 and 4, has been annexed with the reply of respondents No.1 and 2, to show that actually the petitioner had agreed to be appointed in the lower scale, with no condition in the contract for grant of the pay that he had been drawing in his previous college.

27. The reply further states that the provisions of the Career Advancement Scheme of the UGC, as were adopted by the Government vide its notifications dated 20.02.1999/10.03.1999 and 24.03.1999, also do not anywhere speak of protection of pay scales.

Alongwith the reply, other than the aforesaid notifications, the letter from the UGC dated 25.12.1998 and another one dated 27.11.1990 have been annexed, which are with regard to inclusion of the period of service rendered by Lecturers in an *ad hoc* capacity, for placement in the

senior scale/selection grade. Reference has also been made to another letter of the UGC dated 05.12.2006, without annexing a copy thereof. (Though a copy of the said letter has not been annexed with the reply, it was called for by this Court and a perusal thereof shows that a recommendation was made not to grant benefit of previous service to Smt.Indu Bala Singh, as thereafter, teachers of private colleges would also have to be granted the same benefit. A specific reference has also been made to the first petitioner in the connected petition, i.e. Dr.Mahesh Chander).

28. It has further been stated in the Governments' reply, that since the letter of the UGC dated 25.12.1998 is only in respect of counting of service rendered in an *ad hoc* capacity, towards grant of senior scale and selection grade, the petitioners' case is not the same.

However, it needs notice here itself, that a perusal of the aforesaid letter of the UGC, shows that reference has been made in that regard to the previous letter dated 27.11.1990, which is annexed alongwith the letter dated 25.12.1998, and clause 2 of the letter dated 27.11.1990, specifically states that no distinction should be made with reference to the nature of the management of the institution, where previous service was rendered. In fact, the letter of November 1990, gives reference of yet another letter, dated 29.01.1990, containing the decision of the UGC with regard to counting the experience of a person, for appointment in a particular college, with regard to service rendered in other institutions prior to that. Thus, clause 2 of the letter dated 27.11.1990, is specific in stating that previous experience in another college, whether private, or of a local body or a Government college, would count towards grant of senior scale/selection

grade.

29. Other than the above, the preliminary submissions in the reply of the State, state that the petitioner resigned from his previous service as a Lecturer and as such is not eligible for counting of that past service.

In reply to this petition too, the judgment of the Supreme Court in State of Haryana v. Mahesh Chander (SLP No.14014 of 1996), has been referred to, alongwith the order in the subsequent writ petition filed by Dr.Mahesh Chander (CWP No.5615 of 2001).

30. In the reply filed on merits, whereas the factual positions have otherwise been admitted, the same contentions have been reiterated, as have been made in the preliminary submissions.

In addition, it has been stated that even as per the Government notification dated 24.03.1999, it was made subject to acceptance of all conditions mentioned in the letter of the Government of India, Ministry of Human Resources Development.

Reference has been made (in para 10 of the reply) to sub-rule (vi) of Rule-1 of the set of conditions of Annexure-1 of the Government notification dated 20.02.1999/10.03.1999.

(The copy of the notification dated 20.02.1999/10.03.1999, annexed, shows that it was issued with regard to revision of pay scales of teachers and other academic staff of Universities and colleges, in terms of the recommendations made by the University Grants Commission.

The reason for making the scheme itself subject to the approval of the Government of India, was that at that point of time, the State Government was being given a grant for implementation of the UGC

recommendations by the Central Government).

31. As regards the protection of pay recommended by respondent No.2 to respondent No.1, (Rs.16620), treating it to be the personal pay of the petitioner, it is stated in the reply that the audit cell of the Directorate had raised an objection and had advised that protection can only be granted at the stage of Rs.13500/-, there being no stage of Rs.16620/- in the scale in which the petitioner was placed in the respondent college, i.e. Rs.8000-13500/-.

No replication to the written statement has been filed by the petitioner.

32. This writ petition was allowed by a co-ordinate bench on 23.08.2010 and thereafter an application seeking modification was filed by the petitioner on 31.08.2010, in which notice was issued but no reply was filed. Thereafter, as noticed, the respondent-State filed a review application, in which also notice was issued but no reply has been filed. Both the applications would be considered at the end of this judgment.

33. Having given the history of the litigation and the pleadings of the parties, the arguments addressed by counsel, need to be considered.

Mr. Satya Pal Jain, learned Senior Advocate, appearing for the petitioners in CWP No.5615 of 2001, first submitted that the Government of Punjab having admittedly implemented the pay scales recommended by the University Grants Commission, vide notification dated 24.12.1998, even qua private colleges, as per the Punjab Governments' notification dated 24.03.1999, it could not now back out from the rest of the scheme of the UGC on the ground that the scheme had been adopted only piecemeal. This,

as per learned senior counsel, would be especially so in view of clause 5 of the covering letter accompanying the UGC notification dated 24.12.1998. The said clause 5, taken from the letter of the Secretary of the University Grants Commission, dated 24.12.1998, addressed to the Vice-Chancellors of all Universities, and Education Secretaries of all States and UTs, runs as follows:-

“5.0 The University Grants Commission expects that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Governments as a composite scheme without any modifications, except the date of implementation and the scales of pay as indicated in Government of India notification No.F.1-22/97-U.I. Dated 27.7.98, 22.9.98 and 6.11.98. It shall be necessary for the Universities and the management of Colleges to make the necessary changes in their statutes, ordinances, rules, regulations, etc. to incorporate the provisions of this scheme.”

He further pointed to Annexure R-4 annexed with the reply of the respondent State itself, in the connected petition (CWP No.20054 of 2009). That is a letter from the Additional Secretary of the UGC, dated 25.12.1998, which states as follows:-

“DR.R.P.GANGURDE
Gram:UNIGRANTS
Additional Secretary
UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

D.O.NO.F-2-6/98(PS)
Dated: 25.12.1998

Dear Sir/Madam,

kindly refer to this office letter D.O. No.F.1-6/90(PB Cell) dated 27th November, 1990 (Copy enclosed) regarding counting of previous service rendered by lecturers for placement in the Senior Scale/Selection grade. The commission after seeking legal opinion on clause 1(e), has decided to include service rendered in adhoc capacity for counting for past service for placement in Senior Scale/Selection grade, provided, all three conditions, as mentioned here under are fulfilled:-

- a) The adhoc service was of more than one year duration,
- b) The incumbent was appointed on the recommendation of duly constituted Selection Committee; and
- c) The incumbent was selected to the permanent post in Continuation to the adhoc service, without any break.

Yours sincerely,

Encl. As above

Sd/-
(R.P.GANGURDE)”

Alongwith that letter, is annexed the letter dated 27.11.1990 (referred to earlier), which is as follows:-

“UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

Deputy Secretary
Phone No.3312210
D.O.No.F.1-6/90(PB Cell)
27 November, 1990

Dear Sir,

Kindly refer to para 3 of this office letter of even number

dated 29th January, 1990 containing the decision of the commission regarding counting the experience of a person, before appointment as a lecturer in the university/college, rendered in equivalent grade in other universities/colleges and the national laboratories or R & D organizations (SCIR/ICAR, DRDO, UGC, etc.) and UGC Research Scientist, as qualifying service for placement in the senior/selection grade.

The Commission in consultation with Ministry of Human Resource Development (Development of Education) reconsidered the matter at its meeting held on 11th October, 1990 and resolved revised guidelines as follows for counting of previous service for purpose of senior scale/selection grade under the career advancement scheme for lecturers:-

1. Previous service without any break as a lecturer or equivalent in a university, college, national Laboratory or other scientific organizations (CSIR/ICAR, DRDO, UGC, etc.) and as a UGC Research Scientist should be counted for placement of lecturers in Senior Scale/Section Grade provided that:- the post was in an equivalent grade/scale of pay as the post of a lecturer;

a) the qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of lecturer;

the lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as lecturers;

b) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Govt.'

c) the appointment was not adhoc or in a leave vacancy of less than one year duration;

2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government) the above

criteria are satisfied.

You are requested to bring the decision to the notice of the colleges under your jurisdiction also.”

Thus, Mr. Jain submitted, that with the said letter, the University Grants Commission had made it very clear, that no distinction should be made between Government and other colleges, as regards counting of past service. Therefore, the Government could have either chosen not to implement the recommendations of the UGC in toto, or having accepted the pay scales, was bound to implement all terms and conditions as are contained in the Career Advancement Scheme notified on 24.12.1998.

34. Mr. Jain next submitted that the stand of the State to the effect that clearance from the Government of India was required for implementation of the entire scheme, firstly, does not help the state in any manner, because if the entire burden of the scheme was on the Government of India, which had already approved the UGC scheme, then in any case the State could have no grievance thereto.

Factually, however, learned Senior Counsel submitted that earlier, 80% of the financial burden of implementation of the Career Advancement Scheme was upon the Central Government, with 20% upon the State Government, but after a period of 7 years elapsed, the entire burden is now to be borne by the State Government, which is why the State is now backtracking from its commitment.

However, he submitted that the State Government adopted the new pay scales contained in the UGC notification, w.e.f. 01.01.1996, fully accepting all conditions attached to it, vide its own notifications dated

20.02.1999/10.03.1999, 12.03.1999 and 24.03.1999. Hence, according to Mr.Jain, the State is wholly estopped from backing out of its decision, duly notified after accepting the Career Advancement Scheme of the UGC, as issued by the UGCs' letter dated 24.12.1998.

35. With regard to the directions of the Supreme Court, in Civil Appeal No.2840 of 2008 (arising out of CWP No.5615 of 2001), Mr. Jain submitted that the only reason why the appeal of the State was allowed and the writ petition remitted back to this Court, was that the earlier notifications, referred to in the subsequent notification of the State Government dated 24.03.1999, had not been considered by this Court, when the writ petition was allowed vide judgment dated 13.01.2003 passed by the Division Bench. Hence, as is obvious from the directions issued by the Apex Court (reproduced earlier in this judgment), the only reason for directing reconsideration of the matter, by this Court, is that the previous notifications had not been considered.

Mr. Jain submitted that, in fact, the date '16.11.1989' given in the order of the Supreme Court, is obviously a typographical error because no notification of that date has been referred to in the notification dated 24.03.1999 (in the context of which the date '16.11.1989' is mentioned in the order of the Supreme Court). The three dates referred to in the notification dated 24.03.1999, with regard to earlier notifications issued, are 20.02.1999/10.03.1999, on which date notification No.10/22/98-5 Edu.-I/4257 was issued, and 12.03.1999, when notification No.10/22/98-5 Edu.I/5813-27 was issued.

Learned Senior Counsel, therefore, submitted that there being

nothing in the earlier notifications also to suggest that the Government was not adopting the entire scheme of the UGC as it was, hence even on consideration after remittance of the matter by the Supreme Court, the conclusion to be drawn would be the same. As regards the merits of the notification dated 24.03.1999, with the Division Bench, vide its judgment dated 13.01.2003 (which was subject matter in appeal before the Supreme Court in Civil Appeal No.2840 of 2008), already having held that the Career Advancement Scheme was accepted by the Government, this Court would not go into any other aspect, other than for which it was remanded by the Supreme Court.

Finally, Mr.Jain relied upon a letter issued by the Additional Secretary, Higher Education, Government of Punjab, on 05.12.2006, to the Director Public Instructions (c), i.e. respondent No.2, a photocopy of which he placed on record. The said letter is in reference to counting of the *ad hoc* service rendered by Smt. Indu Bala Singh (already referred to earlier), Lecturer in English, Government College, Mohali, for the purpose of grant of senior/selection grade. Though the subject matter of that letter and the present controversy are not identical, Mr. Jain drew special attention to clause 3 of the said letter, which runs as follows:-

“3. Government also agrees to adopt the recommendations of University Grant Commission dated 25.12.98 for counting *ad hoc* service rendered before regular service for allowing the benefit for senior/selection grade to the Lecturers on the conditions stipulated by the University Grants Commission.”

Hence, learned counsel submitted that once a particular aspect of the scheme of 25.12.1998, i.e. counting of *ad hoc* service, was accepted

by the Government on the conditions stipulated by the UGC, the implication would be that all conditions contained in the aforesaid scheme had been accepted by the Government.

36. Mr. Jain also referred to the following judgments of this Court to support his argument that benefit of past service is to be given to teachers of even private Government aided colleges:-

- i) **M.R.Juneja v. State of Punjab and others**, 2004(2) SCT 906;
- ii) **Sukhdev Singh and others v. State of Punjab and others**, 2010 (3) SCT 450; and
- iii) **Tajvir and others v. State of Haryana and others**, 2008 (4) SCT 469 (DB).

37. Mr. Rajesh Garg, learned Senior Counsel appearing for the petitioner in CWP No.20054 of 2009 reiterated the submissions made by Mr. Jain and in addition submitted that this writ petition had, in fact, as already noticed, been allowed by a co-ordinate Bench of this Court and it is only the review application which is to be considered by this Court, i.e. whether there is any error patent on the face of the record, in the judgment dated 24.08.2010, so as to warrant interference by this Court, in the review application.

He further submitted that in case this Court is of the opinion that the aforesaid judgment does not warrant interference by way of review, then the petitioner would be entitled to interest on the arrears to be granted to him, on account of the difference of scales in which he has been placed and which are to be granted in terms of the judgment dated 23.08.2010.

38. *Per contra*, Mr.Suvir Sehgal, learned Additional Advocate General, Punjab, submitted in terms of the written statements filed in both these cases. He also produced the original files of the Government, leading upto and containing the notifications dated 20.02.1999/10.03.1999, 12.03.1999 and 24.03.1999.

Mr. Sehgal further submitted that a perusal of the said file shows that actually no conscious decision was taken to implement the condition of counting of past service in private, aided colleges and since the notifications aforesaid only referred to grant of pay scales, in terms of the UGC recommendations, it cannot be inferred that the condition contained in clause 8 of the UGC scheme dated 24.12.1998, had been accepted by the Government.

39. Before considering arguments and the pleadings, it needs to be stated here itself by this Court, that as regards the date '16.11.1989', referred to in the order of the Supreme Court dated 15.04.2008, by which this petition was remitted to this Court, that is obviously a typographical error, because even a perusal of the original notification dated 24.03.1999, as contained in the office file of the Government, shows that there is no such date mentioned therein and the only two notifications referred to in the notification dated 24.03.1999, are actually 20.02.1999/10.03.1999 and 12.03.1999 as submitted by Mr. Jain.

Even on query, no notification dated 16.11.1989 has been produced before this Court, by the State.

40. Therefore, what is to be seen by this Court, in terms of the order of the Supreme Court, is whether the Government actually took any

conscious decision not to accept the conditions contained in the UGC scheme dated 24.12.1998, with regard to granting benefit of service rendered by a teacher, in a previous college, towards the service rendered in the subsequent college, for the purpose of grant of senior scale/selection grade, in respect of private Government aided colleges.

41. A perusal of the noting file submitted to this Court by learned Additional Advocate General, shows that initially a meeting was chaired by the Chief Minister of Punjab on 25.02.1999, i.e. after 20.02.1999. Subsequently, the notification dated 20.02.1999 was substituted on 10.03.1999, after the said meeting was held. That is why, in fact, the said notification is being shown with a double date at all places, i.e. 20.02.1999/10.03.1999.

In the meeting held on 25.02.1999, the participation of the Principal Secretary, Higher Education and the Principal Secretary, Finance, as also the Chief Secretary is seen.

The subject matter of the meeting was with regard to grant-in-aid to Universities, Government aided private colleges and schools and revision of pay scales of teachers in these institutions.

A perusal of the record of discussions, shows that earlier a state level implementation committee had been formed, with regard to revision of pay scales of teachers of the University, including Government aided institutions. The said committee, as regards the grant of sanction of UGC scales and perquisites to college/University teachers in Punjab, had recommended that the entire package of revised scales of pay should be accepted by the Government, with the exception of the age of retirement,

further recommending that allowances should be given at Punjab Government rates only.

It was further recommended that the State Government may agree to give a grant to the aided colleges, to cover the expenditure on the revised scales of pay but that dependence of these institutions on Government, should reduce over a specified period.

The rest of the minutes of the meeting go on to discuss the issue of budgetary allowances, the desirability of private institutions to reduce their dependence on Government, the financial implications of the revision of pay scales etc.

42. Thus, no specific issue with regard to granting or not granting the benefit of previous service, to Lecturers of private aided colleges, was discussed, except in the form of accepting the complete package recommended by the UGC (except increase in age of retirement).

The six decisions taken, at the end of the meeting, also do not go into this issue at all. These decisions pertain to private institutions gradually moving towards self-reliance, the period over which their dependence should be reduced (10 years), reduction of subsidies and increase in fees, the issue of 80% expenditure on revision of scales coming from the Government of India for the period from 01.01.1996 to 31.03.2000 and the exact budget allocation to private schools for the year 1999-2000. The last decision was with regard to the recommendation of the committee in respect of pensions, which was approved. Hence, no specific decision on the issue in question was taken.

43. Thereafter, an undated file noting is seen with regard to

recommendations of the UGC on increase in pay scales, in which the salient features and negative features are pointed out, point-wise; the last negative feature being implementation of the revised scales in toto.

Another relevant document is a previous demi-official letter dated 24.12.1998, addressed by the Director Education (Colleges) to the Additional Secretary, Higher Education, Government of Punjab.

This letter refers to the financial implications of implementing the recommendations of the UGC and states that the details of such implications are annexed therewith.

It may be noticed that this letter carries the same date as the UGC notification itself, but obviously, the State Governments had advance intimation of the recommendations of the Commission. Various other documents are contained in the file, which though discuss the pay scales, are not directly concerned with the issue at hand, till the notification dated 20.02.1999 was issued, by which the revised pay scales recommended by the UGC, were implemented w.e.f. 01.01.1996, based upon the decision of the Government of India in that regard. This notification also does not contain any specific reference to the conditions of the UGC notification issued about two months earlier.

The substituted notification dated 10.03.1999, omits the reference to the Government of India and simply states that “in pursuance of the recommendations of the University Grants Commission, the Governor of Punjab is pleased to revise the scales of pay of the teaching personnel and academic staff only of the Universities and Government colleges in the State and Directorate of Colleges, with effect from the 1st January, 1996, as per

details given below:-

XXXXX XXXXX XXXXX XXXXX”

The details are with regard to the existing and the revised scales of pay at all levels of teaching staff.

It is to be noticed that both these notifications, i.e. the original one dated 20.02.1999 as also the substituted one dated 10.03.1999, do not mention private aided colleges, but only Universities and Government colleges.

44. However, importantly, clause 3 of the notification dated 10.03.1999, states that:-

“The terms and conditions prescribed for the grant of UGC pay scales are appended to this communication as Annexure-1”.

The set of conditions contained in the aforesaid Annexure-1, also includes Clause (vi) to the first condition.[Clause 1 (vi)]. In that clause, it is stated that the scheme will be applicable subject to the acceptance of all the conditions mentioned in this letter by the Government of India, Ministry of Human Resources Development”.

Clause 7 thereof also states that the State Government may change any of the conditions on its own, or on the recommendation of the UGC/Government of India.

45. Thereafter, the Government, in continuation of its notification dated 20.02/10.03.1999 issued another notification on 12.03.1999, to the following effect:-

“The Government of Punjab is pleased to amend and substitute the said terms and conditions, prescribed for grant of revised

pay scales of teaching/academic personnel of State Universities and Government colleges in accordance with the pay pattern recommended by the University Grants Commission and accepted by the Government of India as consolidated by the University Grants Commission vide their notification No.F-3-1/94(PS) dated 24.12.1998 as per Annexure -1 of this notification”.

Those set of conditions, in Clause (iv), refer to the Career Advancement Scheme but not in the context of the condition in the University Grants Commission notification, with regard to counting of previous service. These conditions (as contained in Clause (iv)) lay down the minimum length of service required for the grant of senior scale and selection grade.

The other conditions contained in Clauses (i), (ii) and (iii) also do not deal with the benefit of grant of previous service. Clause (v) deals with grant of super-time scale as a reward for merit, Clause (vi) deals with allowances and the fitment formula, Clause (vii) stipulates that the age of superannuation of University teachers etc. would be 60 years and would remain 58 years for college teachers.

Clause (viii) deals with professional development incentive and Clause (ix) with minimum qualifications and measures for maintenance of standards.

The last, condition (x) is to the following effect:-

“Other terms and conditions of service of teachers

Other terms and conditions of service of teachers shall be as notified by the UGC by way of regulations in incorporating the approved pay scales and other related conditions on the line of

existing scheme (s) with the approval of Government.”

Whether this is a reference to the Central Government or the State Government is not clear, but needs to be read with what was noticed earlier, with regard to approval to be granted by the Central Government, as given in Clause 1 (vi) of the set of conditions annexed with the notification dated 10.03.1999.

46. On 24.03.1999 another notification was issued by the Government of Punjab, as already discussed, stating that the pay scales of teaching personnel of the private, affiliated aided colleges in the State, were made at par with University/Government colleges w.e.f. 01.01.1996, “as issued vide Government notification No.10/22/98-5 Edu.I/4257 dated 20.02.1999/10.03.1999 and notification dated 12.3.99”.

Thus, obviously, the decision notified was that the same pay scales as were applicable to Government colleges were made applicable in respect of private Government affiliated colleges, in terms of the earlier notifications.

Hence, the same condition (x), as was applicable to the notification dated 12.03.1999, was made applicable even to the notification dated 24.03.1999.

47. Therefore, the fact the Government had actually accepted all terms and conditions of the UGC notification dated 24.12.1998, except to the extent that were specified in the set of conditions attached to the notification dated 12.03.1999, specifically non-acceptance of the enhanced age of superannuation from service.

48. If condition (vi) of clause 1 annexed with the notification dated

10.03.1999, is seen with condition (x) of the conditions annexed to the 12.03.1999 notification, the implication would be that all conditions given by the UGC, other than those differently specified in the notification, were accepted, subject to the Central Governments' approval. That approval was considered necessary because the Central Government was bearing 80% of the financial burden of the enhanced pay scales, as also of the other terms and conditions of the Career Advancement Scheme, promulgated vide the notification/letter dated 24.12.1998.

49. In fact, thereafter, a letter dated 03.01.2000, addressed by the Deputy Secretary, Government of India, Ministry of Human Resources Development, to the Principal Accounts Officer of that Ministry, is on file, (with a copy to the Secretary, Department of Education, Government of Punjab), stating therein that the Punjab Government had decided to implement the scheme of revision of pay scales for University and college teachers in the State and had submitted a copy of the orders issued by it in that regard to the Central Government for approval.

The letter further goes on to state that the said order has been examined by the Central Government and found to be in conformity with the relevant corresponding stipulations in “this Departments Scheme”.

As such, vide this letter, approval was granted for payment of Rs.40 crores as additional expenditure involved in the implementation of the scheme, for the period from 01.01.1996 to 31.03.2000.

The letter specifically states that: “this amount would be utilized by the State Government in accordance with the terms and conditions stipulated in this Ministrys' letters referred to above and UGCs' notification dated 24.12.98.”

(Though some additional terms and conditions have been set out therein, those are not relevant to the issue at hand).

At this point, Clause 6.0 of the UGC scheme of 25.12.1998 needs to be referred to:-

“6.0 The University Grant Commission expects that the entire Scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Government as a composite scheme without any modification, except the date of implementation and the scales of pay as indicated in Government of India notification No.F-1-22/97- U.I. Dated 27.7.98, 22.9.98 and 6.11.98. It shall be necessary for the Universities and the management of Colleges to make the necessary changes in their status, ordinances, rules, regulations etc. to incorporate the provisions of this Scheme.”

Therefore, the UGC and the Central Government both, made it a mandatory condition that the scheme had to be implemented completely.

50. Having considered the above, in the opinion of this Court, there is no doubt left that to receive the grant from the Central Government, financing 80% of the additional financial burden of enhanced pay scales to the Government of Punjab, the respondent State Government did not and could not have any objection, with regard to implementation of the terms and conditions as given in the notification dated 24.12.1998, subject to those conditions which were specifically set out differently in the notification dated 12.03.1999.

This would also seem obvious from a noting dated 12.03.1999, on page 38 of a connected Government file put up to this Court by learned State counsel, which states that another notification in continuation of the one dated 20.02.1999 be issued accepting all conditions contained in the UGC notification on 24.12.1998, except age extension.

Further perusal of the said file shows that though various aspects of the UGC notification were discussed, specifically this issue of grant of benefit of previous service was not discussed. However, with the acceptance of all other conditions, other than age extension, it would not lie in the mouth of Government to state that no decision had been taken with regard thereto.

The above inference would stand finally clinched from a perusal of the letter dated 15.10.1999 issued by the Deputy Secretary to Government of India, Ministry of Human Resources Development, to the Secretary, Department of Education, Government of Punjab (Annexure P-5- already reproduced earlier). This letter, though issued after the notification dated 24.03.1999, makes it amply clear that the other terms and conditions of the service of teachers, as have not been included in the notification dated 20.02.1999, in terms of the UGCs' notification dated 24.12.1998, including counting of past service (of teachers), are a pre-requisite for release of the central share of financial assistance to the State Government.

Thus, though no subsequent letter amending the notification or supplementing it, after 15.10.1999, is seen to be issued by the State Government, however, it is the admitted case of the Government that central assistance was received to the tune of 80% of the additional expenditure.

On specific query to learned Additional Advocate General, he,

on instructions, admitted the above to be a matter of fact. Hence, in the opinion of this Court, the stand of the Government taken in the written statement, as also in subsequent affidavits filed, to the effect that it never accepted the UGCs' recommendation in this regard, is wholly and completely against the conscious decision taken by the State Government, to implement the conditions of the UGCs' regulations dated 24.12.1998, except to the extent of enhancement of age.

It needs to be repeated here that this is obviously the reason why on noting page 38 of one of the files shown to this Court, recommendation for an amended notification was made, specifying all the conditions of the UGCs' notification and thereafter, internal notings within the Government continued to the effect that since the Central Government had made it a condition precedent for release of its share of the funds, that all conditions of the UGC notification be accepted, the State Government did not have a choice on that matter, except to the extent of raising of the age limit as per the UGC notification which the State Government remained adamant on.

Further, a perusal of the file notings shows that nothing specific was stated thereafter, though protracted internal notings still continued at various levels of Government. However, I do not see how such notings can be of any help to the respondent State, in view of the fact that, specifically, the notification dated 12.03.1999 stated that the other terms and conditions of service of teachers would be as notified by the UGC. Thus, other than the age of superannuation, the terms and conditions of the UGC regulations were accepted by the Government in its notification. The last line of the notification as contained in clause (x) thereof, to the effect that “ with the

approval of the Government” can only mean that the said terms and conditions, alongwith other related conditions “on the line of existing scheme (s)” have the approval of the Government. This, in my opinion, would naturally flow from the fact that other than the increase in age, the rest of the stipulations contained in the UGC notification dated 24.12.1998, had to be accepted by the Government, in order to receive 80% of the additional expenditure, incurred on account of implementation of the Career Advancement Scheme, from the Central Government.

Therefore, with the Central Government also insisting upon release of the funds only on the State Government meeting all conditions of the UGC notification, I do not see how the State Government can now escape its liability, by referring to subsequent notings raising objections, on the basis of which obviously the written statement and other affidavits have been filed in these cases.

51. Of course, if the State Government had not received Central Government assistance, it would have been very much within its right to decline implementing the conditions of the UGC notification. Having happily accepted the Central Government funds, which were released to it on specific condition, the State can not now turn around to say that it would not implement the scheme in toto (except to the extent of raising of age limit, which it objected to, all along and consequently reflected such dissent in the notification dated 12.03.1999, as contained in Clause (vii) of Annexure I thereof (referred to earlier in paragraph 43 of this judgment).

52. It needs to be reiterated here that though the notification dated 12.03.1999 was only in respect of teaching/academic personnel of State Universities and Government Colleges, the subsequent notification dated

24.03.1999 specifically extended benefit thereof to private colleges “at par with University/Government colleges w.e.f. 01.01.1996”.

The State Government therefore, also cannot now say that only the pay scales of teaching personnel of private affiliated colleges were revised by the notification dated 24.03.1999, because the UGC regulations apply to all colleges affiliated to those Universities as are covered by the said regulations, with no discrimination between Government or private institutions. This is amply clear from the letter dated 27.11.1990 written by the Deputy Secretary of the UGC, to the State Government, annexed as Annexure R-4 (collectively, alongwith letter dated 25.12.1998), with its reply to CWP No.20054 of 2009.

As already noticed, clause 2 of the said letter specifically states that no distinction should be made with reference to the nature of management of the institution where previous service was rendered, whether it be private or of a local body or of Government, as long as the general conditions applicable to all, as regards counting of previous service, were met, in terms of the said letter.

53. Hence, it is held that as regards the UGC scheme contained in the UGC notification dated 24.12.1998, the State Government is bound to implement all conditions of the policy, except as was specifically differed from by it, in the notification dated 12.03.1999, i.e. enhancement of age.

54. Thereafter, the UGC issued further guidelines on 31.08.2001, as is discernible from the file notings, which the Government of Punjab expressed its inability to adopt, due to its tight financial position. Though no letter to the Government of India or the UGC is available on file with regard to the guidelines of 2001, however, this can be seen from a noting made by

the Deputy Secretary, Finance, on 28/29.10.2002, in reference to a query/recommendation made in that regard by the Principal Secretary, Government of Punjab, Department of Higher Education.

It is, therefore, made clear that what has been held by this Court hereinabove, and the directions contained hereinafter, are only in relation to the UGC notification dated 24.12.1998 and no subsequent notification issued by the UGC, as no notification issued by the State Government, after 24.03.1999, has been referred to either in the writ petitions, or even during the course of arguments before this Court. It is necessary to state this as CWP No.20054 of 2009 was obviously filed well after the notification dated 31.08.2001 but not even a reference to that notification has been made in the said writ petition.

55. Consequently, CWP No.5615 of 2001 is allowed, holding the petitioners entitled to count their past service rendered in private colleges prior to their joining different private colleges, in terms of the UGC notification dated 24.12.1998. The respondents are directed to grant the petitioners the aforesaid benefit, within a period of three months from the date of receipt of a certified copy of this order, alongwith all arrears and other benefits that would flow therefrom. However, it is clarified that the petitioners would be entitled to the arrears as fall due to them only w.e.f. 01.01.1996, in terms of the notification dated 24.12.1998 and for no period prior to 01.01.1996.

Needless to say, if on account of the grant of benefit of past service to the petitioners in these petitions, the financial burden on the State Government is more than what was sanctioned by the Central Government,

it would be open to the State Government to claim the same from the Central Government, to the extent of 80% of the additional burden, in terms of the Central Governments' commitment.

56. As regards CWP No.20054 of 2009, this writ petition already stands allowed by a co-ordinate Bench vide its judgment dated 28.03.2010.

Vide that judgment also it had been held that by its notification dated 20.02.1999/10.03.1999 and 12.03.1999, the Government had decided to accept the UGC scheme.

It was also observed that the UGCs' notified guidelines dated 24.12.1998 were to be adopted by all Universities, States and Union Territories and such guidelines included the qualifications and other service conditions for teachers, including their pay scales. It was noticed that the scheme was to be adopted as a composite scheme without any modification, in terms of clause 6 of the scheme itself. (Reproduced earlier in the present judgment).

57. The judgment further goes on to state that the notification dated 12.03.1999 clearly indicated that the guidelines were adopted by the State and were made applicable to the teachers of the State Government, including aided colleges. Clause 8.0.0 of the scheme, which provides for counting of past service in another college/organisation, was also noticed.

Thus, in essence, that judgment also held what has been now held in CWP No.5615 of 2001, by this Bench.

58. Though a small factual error crept in, in the last part of that judgment, whereby, instead of “selection grade”, it is stated that the petitioner was drawing a salary in the “senior scale” at the stage of

Rs.16620/-, however, the respondents were directed to fix the pay of the petitioner at the stage of Rs.16620/- with effect from the date of his joining respondent No.3, within two months from the date of the judgment.

59. Thereafter, C.M. No.12466 of 2010 was filed by the petitioner seeking modification of the aforesaid order, to the effect that instead of 'senior scale', the words 'selection grade' be substituted in the judgment.

Notice was issued in the application on 12.11.2010, though no reply, till date, has been filed thereto by the respondents.

60. In the meanwhile, the respondent State also filed Review Application No.151 of 2011, seeking a review of the said judgment of this Court, dated 23.08.2010, on the ground that the UGC guidelines dated 25.12.1998 had been adopted by the State Government only for Lecturers of Government colleges but not for Lecturers of private aided colleges and since the petitioner herein had resigned from one private aided college to join another, the said guidelines would not be applicable to him.

Reference has also been made to Review Application No.430 of 2009 in the connected petition, i.e. Dr.Mahesh Chander and others vs. State of Punjab and others (which review application, in that case, was allowed, as already noticed).

Further, the judgment of the Supreme Court in Dr.Mahesh Chanders' case (in the previous round of litigation), i.e. in Civil Appeals No.4053-4054 of 1998, has also been relied upon in the review application, filed in the present petition (CWP No.20054 of 2009), stating that the matter already stands adjudicated upon right upto the Supreme Court, in favour of the State.

Notice in the review application was also issued on 28.04.2011, to which again no reply has been filed by the petitioner.

Thereafter, this petition was ordered to be tagged alongwith other matters, including CWP No.5615 of 2001, vide order dated 02.05.2011 and the matter remained under consideration since then, till the other 17 writ petitions, were ordered to be segregated from this petition (CWP No.20054 of 2009) and CWP No.5615 of 2001. The segregation was ordered because those 17 petitions actually pertained to the counting of *ad hoc* service prior to regular service in Government colleges, whereas these two petitions pertain to counting of past service (not *ad hoc* service) in private aided colleges, before appointment in another such private aided college.

Thus, the aforesaid applications (CM No.12466 of 2010 and RA No.151 of 2011) are now to be decided.

61. Though, essentially, the issue involved is identical in both these writ petitions, however, one difference which needs to be considered, pointed out in the Review Application, is that in the present case (CWP No.20054 of 2009), the petitioner consciously gave up his job as a Lecturer in English at Shaheed Kanshi Ram Memorial College, Bhagomajra, to take up his new appointment as a Lecturer in English, in the respondent Patel Memorial National College, Rajpura, in a lower scale than that he was drawing in his previous college.

62. Having considered the contents of the review application, I find it to be wholly misconceived, as regards the first ground raised, i.e. comparison with the order allowing the review application in CWP No.5615 of 2001. That review was allowed on the ground that the order disposing of

that petition, on 05.0.2009, was erroneously passed in terms of the judgment of a Division Bench in CWP No.15272 of 2007, which dealt with a different issue (*ad hoc* service in Government colleges).

On the other hand, the order dated 23.08.2010, passed in this petition (CWP No.20054 of 2009), was an order passed wholly on the merits of the petition and as such, no parity can be drawn by the State between that order (dated 23.08.2010) and the order dated 05.02.2009 by which CWP No.5615 of 2001 had earlier been allowed by the same co-ordinate Bench.

Hence, the contention of the State in that regard is wholly misconceived and is rejected.

63. Coming to the issue as to whether the petitioner in CWP No.20054 of 2009 would also be entitled to the benefit of the notification of the UGC dated 24.12.1998, in view of the fact that he obviously accepted an appointment in the Patel Memorial National College, Rajpura, District Patiala (respondent No.3 in the said petition) vide appointment letter dated 16.08.2004 (Annexure P-3) in a lower pay scale than the one he was drawing in his previous college at Kharar.

64. That issue has been dealt with by the co-ordinate Bench in its judgment dated 23.08.2010.

After considering the notifications of the State Government and the provisions of the UGC scheme, the learned co-ordinate Bench held that the plea of the respondents that the petitioner is not entitled for pay protection, his appointment being a fresh one, is contrary to the UGC scheme, duly adopted by the State Government as a comprehensive scheme.

Further, that as the petitioner fulfills all the conditions contained in clause 8

of the Scheme, he was entitled to the counting of his service in the previous college towards benefits of senior scale/selection grade, in the subsequent college.

65. I find no ground to differ with that opinion as this Bench also, now, while reconsidering the entire matter, on directions of the Supreme Court, in regard to CWP No. 5615 of 2001, has held that the benefit of past service is to be given to teachers after they joined different private colleges, in terms of the notifications dated 10.02.1999, 12.03.1999 and 24.03.1999.

Hence, the review application, seeking review of the judgment dated 23.08.2010, even on the ground that the petitioner took up a fresh appointment on a lower pay scale, in the subsequent college (Respondent No.3), is found to be without merit.

Though otherwise the Governments' contention in that regard would be very much an acceptable argument, however, it is to be noticed that this issue of counting of service rendered earlier in a different college has remained the subject matter of litigation right since 1994. Obviously, that would be the reason for the respondent college to not have granted the scale that the petitioner was drawing in his previous college, after 24 years of service there; because Government was not willing to reimburse the grant-in-aid qua the additional expenditure by counting the previous service.

It is not the case of any of the respondents that the petitioner is not otherwise eligible for the grant of the benefit of the scheme (other than the fact that the applicability thereof has been denied by the State in respect of all private college teachers). Hence, simply because the State had taken a stand, despite its notification dated 24.03.1999, that the scheme was not

applicable to teachers of private colleges and consequently, the respondent-college (respondent No.3) could not offer the benefit of the 24 years of service rendered by the petitioner in the previous college, because that higher amount of salary is eventually to be reimbursed by the Government, would not be a ground to deny this petitioner, the benefit of what has already been held by this judgment, in favour of the petitioners in CWP No.5615 of 2001.

Hence, as held vide the judgment dated 23.08.2010, in my opinion too, the petitioner (even in this petition), would be entitled to the benefit of the notification of the UGC dated 24.12.1998, read with notifications of the State Government, dated 10.02.1999, 12.03.1999 and 24.03.1999.

Consequently, RA No. 151 of 2011 is dismissed.

66. Coming then to CM No.12466 of 2010 filed by the petitioner, seeking modification of the order dated 23.08.2010. In view of what has been held, the application is disposed of by modifying the order dated 23.08.2010, to the extent that the words “senior scale” occurring in the penultimate paragraph of the said judgment, shall be read to be substituted by the words “selection grade”.

However, as regards payment of interest, on the principal amount to be paid to the petitioner in terms of the said judgment, the prayer of the petitioner is declined because of the fact that the issue has remained pending before this Court in the connected writ petition also, on remand by the Supreme Court. Hence, when the issue itself, of applicability of the Career Advancement Scheme to the petitioners, was in a state of flux, upon remand of CWP No.5615 of 2001, and has been settled (at this stage at

least), only vide this judgment, the question of paying interest to the petitioner in this writ petition (CWP No.20054 of 2009), would not arise, in my opinion.

No order as to costs, in either petition.

March 10, 2016
dinesh

(Amol Rattan Singh)
Judge