

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.25406 of 2012 (O&M)
Date of Decision: 14.01.2016**

Dr. Sanjiv Pal Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurminder Singh, Senior Advocate,
with Mr. Mohit Garg, Advocate,
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the impugned order dated July 18, 2011 [Annex P-36] granting to the petitioner the pay scales applicable to posts in the Department of Higher Education, Punjab although the parent department of the petitioner is the Department of Medical Education & Research, Punjab where he was appointed Lecturer and confirmed in service as per the Government instructions No 11/4/88-PP (1) 4960 dated April 8, 1991 vide order of the Governor of Punjab issued by the Secretary to Government of Punjab in the Department of Medical Education & Research dated March 10, 1997 with effect from November 20, 1993

[Annex P-66 with CM]. The impugned order dated July 18, 2011 [Annex P-36] has been reaffirmed by the “Speaking Order” dated August 14, 2015 [Annex R-1] which is the second impugned order.

2. The relevant facts necessary for the determination of the case are to the effect: Petitioner was appointed as Lecturer in Statistics & Demography by the Punjab Government on the recommendations of the Punjab Public Service Commission, Patiala and joined the post on November 20, 1991 in Government Medical College & Hospital, Amritsar. The Commission had advertised three posts of Lecturers in Statistics and Demography for State Medical Colleges through public employment notice dated August 06, 1991. The appointment was in the Department of Health & Family Welfare, Punjab. This post was created by the Central Government to promote the Post Partum National Programme carrying pay and other benefits at par with the cadre of the Health Departments in the different States of the Union. The Post Partum Programme [for short 'PPP'] was introduced by the Government of India vide circular dated March 05, 1985 through a policy framed by the Central Government to be implemented by State Governments. It may not be necessary to go into the history of the creation of post under the PPP under the administrative control of the Department of Health & Family Welfare, Punjab enjoined by Central directives since the issue raised in this petition is a limited one. Suffice it to say that it was the bounden duty of the Punjab Government to make place for the programme in its Health Department.

3. Challenge in this petition is to the impugned order dated July 18, 2011 whereby the respondent-State has issued and served an order on

the petitioner fixing his pay by treating him under the pay scales pertaining to the Department of Higher Education. It is the petitioner's case that he was appointed by the Ministry of Health & Family Welfare, Punjab. Suffice it also to say that on March 05, 1985 the Government while addressing concerns raised by medical colleges in Punjab regarding stagnation of staff working under the PPP, decided to make the University Grants Commission Scheme for Merit Promotion applicable to the staff working under the PPP. A special procedure was laid down governing promotions of staff in PPP bringing them at par with other teachers and staff of the Health Department. In time, the Government of India discontinued financial aid and control over the PPP in the constituent States making them alone responsible for running the PPP in Medical & Dental Colleges in Punjab. The PPP was taken over by the Punjab Government in the year 2003 as its own responsibility.

4. As time progressed, the petitioner secured promotion as an Assistant Professor (re-designated Associate Professor) on May 11, 2001 on completion of 8 years of service when the Punjab Government upgraded two posts of Lecturer (S&D) to the posts Assistant Professor in the scale of pay ₹ 3700-5700 (Pre-revised) as a measure personal to them [including Dr Daljit Kaur] to comprise a diminishing cadre. The re-designation was effected after concurrence of the Finance Department in the pay scale of ₹ 3700-5700/- after upgrading the post of Lecturer w.e.f. May 11, 2001. The Government of India, Ministry of Health & Family Welfare, New Delhi then exercising control over the PPP approved the promotion as Assistant Professor under the UGC Scheme by DO dated October 31, 2001. On January 01, 2002 the Government of Punjab promoted the petitioner

retrospectively as Assistant Professor w.e.f. November 20, 1999 after receiving approvals of the Government of India dated October 31, 2001.

5. The Government of India transferred the PPP to the State Sector with the direction to take over the responsibility for payment of salary and the maintenance costs in respect of the existing Post Partum Centres and an OM to this effect was issued by GOI on May 02, 2002.

6. The petitioner's woes began when he was reverted by order dated August 24, 2005 by downgrading his pay scale from ₹3700-5700 (revised to ₹ 16350-20100) to ₹ 3000-4500/- (revised ₹ 10000-15200). This brought the petitioner to this court in his first round of litigation with CWP No.14462 of 2005 being filed. In challenge to the reversion order the writ succeeded and the order was quashed with liberty to respondents to pass fresh order in accordance with law. The reason for setting aside the order was interesting inasmuch as personal hearing was granted by one officer but the final order was passed by another officer who neither heard the petitioner nor considered his memorial against the reversion order. This order was passed on December 01, 2005.

7. Meanwhile, the Medical Council of India issued notice to de-recognize the SPM Department in the respondent College and Hospital as there was no specialty post manned. The DRME Punjab in order to save the department from being abolished specified the teaching and practical duties of the post held by the petitioner vide its response to MCI dated June 13, 2005 to overcome the objection regarding disaffiliation. The explanatory decision of the department was accepted and the show cause notice was dropped. The programme remained embedded to the Hospital.

8. Later on, Government served a second notice dated January 24, 2007 on the petitioner to show cause as to why the reversion order dated August 24, 2005 be not implemented; which was the order quashed in the first writ petition. The Government reluctant to implement the Court order declined the claim of the petitioner alluding to the Finance Department advice dated July 21, 2003 as reason for rejection. This brought the second writ petition to this Court bearing CWP No.2870 of 2007 challenging the order dated February 15, 2007. Again this Court vide order dated July 21, 2009 set aside the impugned order and directed respondents to pass a fresh reasoned order while dealing with the claim of the petitioner. The Government ultimately passed a fresh order on February 11, 2010 rejecting the claim of the petitioner against the reversion order on the basis of the same advice of the Finance Department rendered on July 21, 2003.

9. In the aftermath, the petitioner was brought to square one only for him and a colleague Dr. Daljit Kaur to initiate the third round of litigation in CWP No.5179 of 2010 as a co-petitioner in tow. The question before the learned Single Judge in this petition was as to what pay scale is to be granted to the petitioners belonging to the PPP. The other issue arising was whether there should be parity in pay and rank between the petitioners and the professionally qualified medical teachers of medical colleges. Or are the petitioners to be treated at par with those governed under the UGC Scheme, namely, the Merit Promotion Scheme [MPS]. Admittedly, the MPS had been extended by the Government of India to the PPP. The petitioners claimed that they were entitled to and were rightly placed in the Senior Scale on completion of 8 years of service, and thus they were in any case,

entitled to the consequential revised pay scale under the 1983 UGC Scheme. On the other hand, the State of Punjab had granted the revised pay scale as per the MPS notified by the UGC on January 12, 1988 which scheme replaced the previous one. This Court took notice of the operative part of the administrative order dated February 15, 2007 which reads as follows:-

“In the light of the above facts, the orders issued vide ID No.11/42/2000-2H-JB-III/2378 dated 11.5.2001 and subsequent orders vide ID No.11/42/2000-HBIII/59-63 dated 2.1.2002 relating to the placement of Sh.Sanjiv Pal Singh and Smt.Daljit Kaur in the pay scale of Rs.16350-20100 are hereby rescinded. On reconsideration of the circumstances of the case and in view of the advice of the Finance Department vide ID No.5/30/2000-4FE/II/1272 dated 21.7.2003, the decision taken vide order dated 24.8.2005 is hereby confirmed and the officers are placed in the pay scale of Rs.3000-4500 (unrevised), thereafter (revised) to Rs.10000-15200.”

10. The Court took notice of the reasons for declining the claim of the petitioners in passing the impugned order dated February 11, 2010 wherein it was observed by the department as follows:-

“(i) the petitioners were appointed as Lecturers on 21.10.1991 and much before that, the University Grants Commission Promotion Scheme, 1983 had been rescinded and replaced with the new Merit Promotion Scheme notified on 12.1.1988. The petitioners, therefore, were not entitled to take any advantage of the Memorandum dated 5.3.1985 (Annexure P-5) as the UGC Scheme mentioned therein was no longer in existence at the time of their appointment;
(ii) There is no professional parity between the petitioners and the Doctors possessing medical qualifications, appointed on the posts having nomenclature like Lecturer, Reader etc.;
(iii) Under the new Merit Promotion Scheme notified by the

University Grants Commission on 12.1.1988, the petitioners are entitled to the following pay structures:-

- a) Lecturer :Rs.2200-4000*
- b) Reader Lecturer
(Selection Grade) :Rs.3000-4500*
- c) Professor :Rs.4500-5700*

The pay scale of Rs.2200-4000 was later on revised to Rs.7200-11660, therefore, Lecturers under the Post Partum Programme like the petitioners, who joined in 1991 can at the most be given the scale next higher to the above mentioned scale, namely, Rs.9200-13900 followed by the next permissible higher scale on completion of 8 years' service under the 1988 UGC Scheme;

(iv) The petitioners cannot be granted any higher pay scale in isolation as such decision will effect other categories of State employees as well;

(v) At the time when the UGC Scheme, 1983 was operative, there was no intermediate post of Lecturer (Senior Scale) and Lecturer (Selection Scale) between the posts of Lecturer and Professors, therefore, also the petitioners cannot claim the pay scale as demanded by them;

(vi) Their claim for parity at par with the Medical Teachers is untenable for the reasons that promotion to the higher post for Medical Teachers is subject to the availability of post, qualifications, service record and clearance by the DPC. On the other hand, in the case of the petitioners, no post was ever created in the grade of Assistant Professor nor were they Ph.D. at the relevant time as the first petitioner completed his Ph.D. in the year 2003, nor any DPC was ever held to adjudge their eligibility or suitability to place them in the next higher pay scale."

11. During the personal hearing which led to the passing of the order dated February 11, 2010 the Court noticed from those administrative proceedings that the petitioners themselves had stated before the competent

authority that in case their claim for placement in the higher grade of Assistant Professor was not acceptable, they may be granted revised pay scale as per the UGC Notification and may further be considered for promotion as per the UGC Guidelines. However, the competent authority did not comment on the alternative claim on the plea that acceptance of such a claim would require concurrence of the Finance Department, Punjab. The petition was partially allowed by order dated March 29, 2010 after issuing notice of motion to the State and hearing its standpoint. The impugned order dated February 11, 2010 was modified and a direction was issued to the 1st respondent to consider the claim of the petitioners for grant of new pay scales notified under the UGC Scheme, 1987 or subsequent corresponding revision thereto made by the State of Punjab in the Higher Education Department, Punjab. The order of this court in CWP 5179 of 2010 requires to be reproduced in its relevant paragraphs 13 and 14 in order to further understand the case in the right perspective and the prayers of the petitioner which stand excluded from consideration altogether by principle of *res judicata*, with the orders of this Court having attained finality:-

“[13] In my considered view, the claim of the petitioners to treat them at par with the Medical Teachers for the grant of higher pay scale, is wholly misconceived as there is a fine distinction between the nature of qualifications and duties of the two sets of Teachers. Such a parity, if granted, would amount to treat the unequals as equals. Similarly, the University Grants Commission's Merit Promotion Scheme, 1983 was not in existence at the time of appointment of the petitioners and as such no benefit accruing therefrom can be claimed by them. The rejection of their claim to that extent vide the impugned order dated 11.2.2010 (Annexure P-29) warrants no interference by this Court.

[14] The petitioners, however, it appears, are entitled to the corresponding revised pay scale as has been granted to the Non-Medical Teachers in the State of Punjab from time to time under the Merit Promotion Scheme, 1988, which was in vogue at the time of their appointment and/or subsequent University Grants Commission Notification/Guidelines/Recommendations, if any, accepted by the Government of Punjab. Suffice it to say that keeping the basic pay scale granted to the petitioners at the time of their appointment, in view, further revision thereof deserves to be considered as per the pay structure recommended by the University Grants Commission and accepted by the State Government. The concurrence of the Finance Department in this regard, if so required, is an intra-departmental affair to which the petitioners have no concern. The revised pay scales, to which the petitioners are entitled to, cannot be denied for want of such like ministerial exercise.”

12. The claim of the petitioners to treat them [PPP] at par with medical teachers for grant of higher pay scale was found “wholly misconceived” by this Court as there was found a fine distinction between the nature of qualifications and duties of the two sets of teachers, medical and non-medical. If parity was granted, the Court help would amount to treating unequal, equal. Besides, the UGC Merit Promotion Scheme, 1983 was not in existence at the time of appointment of the petitioners in 1991 as it had been abolished and replaced by a New Merit Promotion Scheme notified on January 12, 1988 and benefits accruing under the old scheme could not be claimed by them. That part of the administrative order dated February 11, 2010 called for no interference by the Court, held the learned Single Judge. However, the entitlement to corresponding revised pay scales had been granted to non-medical teachers in the State of Punjab from time to time under the Merit Promotion Scheme, 1988 which was in vogue at the

time of the appointment and/or subsequent UGC notification/guidelines/recommendations, if any, accepted by the Punjab Government in this behalf, then, the Court observed, rights may have matured to get higher pay scales. This aspect deserved to be considered as per the pay structure recommended by UGC and accepted by the State Government. The concurrence of Finance Department was considered and is an intra-departmental affair to which the petitioners have no concern.

13. Orders pronounced, the petitioner filed applications bearing Civil Miscellaneous Nos.11356-57 of 2010 on March 29, 2010 for modification of the order. It was contended therein that there was the UGC Merit Promotion Scheme dated March 05, 1985 on the basis of which the petitioners had availed their first promotion to higher rank of Associate Professors. The Court passed the following order in the miscellaneous application:-

“After hearing learned counsel for the applicant/petitioners, though I am of the view that there is no ambiguity in the order dated 29.03.2010 (Annexure A1), however, it is clarified that the aforesaid order does not preclude the applicant/petitioners to seek revised pay-scales under the scheme other than Merit Promotion Scheme, 1988, if so applicable in their cases.

Disposed of.

Dasti.”

14. Nevertheless, Government passed order dated July 18, 2011 in which the salary of the petitioner was fixed in the entry grade pay ₹ 15600-39100 + Grade pay of ₹ 6000 which is equivalent to the pay scale/structure of a fresh teacher recruited as Lecturer/ Assistant Professor. The petitioner's

grouse is that with this decision the department has virtually taken away 21

years of service life without any legal justification. The order became impugned subject matter of further litigation. As per the stand of the petitioner, the department has sought to raise false and frivolous objections regarding non-completion of refresher courses, whereas he meets all the requisite standards of possessing refresher and orientation courses as per the mandate of the UGC policy itself and the petitioner is thus fully eligible to avail all the promotions including higher pay scales as a matter of right.

15. The present is the 4th round of litigation which challenges the impugned order dated July 18, 2011 declining relief sought by the petitioners. The UGC policy [01.01.1996] as amended from time to time and in continuation of the earlier policy which prescribed that Lecturer is entitled for Lecturer (Senior Scale) after 6 years of service as Lecturer and then after 5 years is entitled for Lecturer (Selection grade)/Reader and still further after 8 years of service as Reader is entitled for promotion as Professor as per the Career Advancement Scheme (CAS).

16. The UGC revised policy applicable w.e.f. 01.01.2006 prescribes that after 3 years of service as Lecturer Selection Grade/ Reader, a teacher is entitled for promotion as Associate Professor and after another 3 years of service with PhD degree is entitled to earn promotion/designation as Professor under the Career Advancement Scheme (CAS).

17. As per UGC policy regarding conduct of Refresher/ Orientation courses by the Academic Staff Colleges it is stipulated as a condition of eligibility that after undergoing Refresher Courses of a duration of 3 weeks and Orientation Courses for 4 weeks entitlement accrues. There is a requirement of undergoing one orientation and one refresher course for

moving to Senior Scale. Ph.D degree holders, as in the case of petitioner, are exempted from one refresher course. After this, there is a requirement of undergoing two refresher courses for moving to Selection Grade. The petitioner has successfully completed these three training courses as per UGC guidelines at Annex P-59, p. 63 and P-64 and vide Annex P-51/27.11.2012 [p. 218 of the paper-book].

18. During the pendency of this writ petition, the office of the Secretary, Medical Education & Research examined the case of the petitioner in the light of DRME recommendations indicating that the petitioner/s fulfill/s all the conditions as per UGC guidelines Annex P-59, P-63 & P-64 including completion of Orientation/ Refresher courses along with possession of PhD degree. On examination of the case, the Punjab Government agreed to grant all UGC benefits up to the level of Professor to the petitioner/s. The OSD (Litigation) in his opinion based on record categorically advised that the petitioner has accomplished the task of entire minimum mandatory refresher and orientation programmes as per mandate of UGC and accordingly recommended the UGC pay structure to be given to the petitioner as per office report (P-51/27.11.2012)

19. The Secretary, Medical Education & Research sought the advice of the Higher Education Department, Punjab regarding granting of Senior/ Selection Grade w.e.f its due dates after completion of refresher/ orientation courses within the extended time period granted by UGC in which policy it was clarified that the benefit is to be given from the due date after completion of Orientation/ Refresher courses vide ID No. 1/ 13/ 2014-4Ed1/186739/ 1 dated March 20, 2014.

20 The then DRME on papers placed before him, examined the case, and sent a report to OSD (Litigation) in which comprehensive UGC pay scales as Senior Lecturer, Selection Grade Lecturer, Assistant Professor, Associate Professor & Professor were deservedly to be given to the petitioner as was done in cases of similarly situated employees vide No. 2ME1-PS-2014/ 6442 dated April 29, 2013 obviously to bring about parity of treatment.

21. On this, the then Principal Secretary, Medical Education Department recommended the case to the Finance Department for final approval on the basis of the collective reports of the DRME, OSD (Litigation) and as per her own office report. After a minor query put by the Finance Department, the Administrative Department again recommended the case of pay fixation of the petitioner to the Finance Department with a comprehensive table depicting the hierarchy of pay scales in five steps up to the level of Professor as recorded in the official file No. 13/ 07/ 2013-2HB3.

22. Ultimately, the Finance Department after considering the proposal of the Government and considering all the legal implications involved agreed to the proposal of the Administrative Department and accorded its final approval granting pay scales to be given to the petitioner in five steps vide its approval ID No. 5/ 30/ 2000-4FE2/ 480907/ 1 dated May 08, 2015.

23. Thereafter, the Administrative Department on the flip side sent another proposal to the Finance Department which was apparently against the interest of the petitioner which remarkably after the present DRME, Dr.

Manjit Kaur Mohi took over as Head of Department who has virtually

overruled the earlier Finance Department advice dated May 08, 2015 (Annex P-50). The pay structure approved by the Finance Department (Finance Expenditure 2 Branch) has been tabulated in Annex P-50 in the first chart tabled in paragraph 25 below.

24. However, the Finance Department, Punjab on reconsideration of above proposal of DRME reiterated its earlier approval dated May 08, 2015 vide its Memo ID No. 5/ 30/ 2000-4FE2/ 131 dated August 03, 2015 and directed Administrative Department to decide “as per prevailing rules”. The rules of service carry the citation: Punjab Medical Education Service Rules, 1978 which do not make mention of the post in PPP occupied by the petitioner or Dr. Daljit Kaur (non-petitioner).

25. The litigating petitioner has supplied a chart of pay scales graphically explaining his case in the context of pay scales as approved by Finance Department advice dated May 08, 2015 which is reproduced below for quick reference an for a clearer understanding of the case set up by the petitioner:-

Chart of pay scales

Sr. No.	Dated	Salary Scale (₹)	Special Remarks
1	27.07.1998	10000-15200	On completion of 8 years of service as Senior Lecturer if he is fulfilling the service conditions (Consistently satisfactory performance appraisal reports)
2	27.07.03	12000-18300	On completion of five year service as Senior Lecturer if he is fulfilling other conditions (consistently good performance appraisal reports)

Sr. No.	Dated	Salary Scale (₹)	Special Remarks
3	1.1.2006	15600-39100+Grade Pay Salary 8000	Salary in the revised pay scale w.e.f. Dated 01.01.2006.
4	27.7.2006	37400-67000+ Grade Pay Salary 9000/-	On completion of 3 year as Lecturer (Senior Scale) and re-designated as Associate Professor
5	27.7.2009	37400-67000+Grade Pay Salary 10000/-	Associate Professor completing 3 years of service in the AGP of Rs.9000/- & a PHD degree in the relevant discipline shall be appointed/designated as Professor

Sr. No.	Date of Pay fixation	Pay Scale as per UGC in Rs.	Designated/Re-designated
1	27.07.1998	10000-15200	Senior Lecturer/ Senior Scale
2	27.07.2003	12000-18300	Selection Grade/Reader
3	01.01.06	15600-39100+AGP 8000	Assistant Professor
4	27.07.2006	37400-67000 + AGP 9000	Associate Professor
5	27.07.2009	37400-67000 + AGP 10000	Professor

26. The petitioner states his case as reproduced below, for the consideration of the court:-

“Petitioner is aggrieved that despite the fact that the petitioner has been appointed under the Post Partum National Programme through the Punjab Public Service Commission and his appointment order has been issued by the Department of Health and Family Welfare where after he has discharged services in the medical colleges and hospitals of Punjab, by way of impugned order dated 18.07.2011, the respondent State of Punjab has passed an order fixing the pay of the petitioner by treating him under the pay scales pertaining to Department of Higher

Education. The posts under the Post Partum Programme were directed to be covered under the specific policy issued by the Government of India, Ministry of Health and Family Welfare, on 05.03.1985 whereby, while addressing the concern raised by medical colleges regarding stagnation of staff leading to frustration of persons working under the Post Partum Programme, it was decided to make the UGC Scheme for merit promotion applicable to the staff working under the Post Partum Programme. Certain additional conditions were also added in the circular to specifically govern the promotions and procedure applicable to the staff of Post Partum Programme for bringing them at par with the other teachers and staff of the Health Department. The Post Partum Programme was taken over by the State Government in the year 2003 and thereafter in accordance with the aforementioned policy the petitioner has been granted further promotion to the post of Assistant Professor re-designated Associate Professor and released the pay scales accordingly. The petitioner has lagged behind the other Lecturers of the Health Department as those appointed along with the petitioner were promoted to the higher post of Assistant Professor re-designated as Associate Professor much earlier than the petitioner. The State Government, however, without any rational basis, had withdrawn the promotion orders of the petitioner and further withdrawn the pay scale granted to him on promotion. The petitioner is entitled to the post of Assistant Professor (now re-designated as Associate Professor) and the consequent pay scale of 16350-20100 now revised to 37400-67000. In a totally illegal and arbitrary action the petitioner has been directed to be treated as Lecturer (now Assistant Professor) and fixed in the pay scale of 15600-39100 with Rs.6000 AGP Grade Pay w.e.f. 01.01.2006 after equating him with the Lecturers of Department of Higher Education. The respondent State has further imposed the condition of completion of refresher courses and acquiring of additional qualification when none was a part of the service conditions of the petitioner having been

appointed under the Post Partum Programme of the Department of Health and Family Welfare. Now the respondent authorities have illegally denied the benefits accruable to the petitioner as per his entitlement under the Programme after the gap of 20 years. The petitioner has already been given his 1st promotion as per the entitlement under the above mentioned Programme after the completion of slab of 8 years. The petitioner is entitled to be promoted to the post of Professor as per his entitlement on the completion of 16 years of service. It is of immense importance to mention here that all other staff except the petitioner working under the Post Partum Programme is getting salary, allowances and promotions as per this programme at parity with the salary and allowances of the Department of Health and Family Welfare (Now Medical Education & Research Department) and due to this action of the Department the 21 years service of the petitioner has been washed away by the department without having any justified reason and in a totally illegal and arbitrary manner.”

27. Per contra the respondent-Director, Medical Education and Research, Punjab has submitted a synopsis by way of defence of the writ petition in addition to the written statement, with liberty granted to her speak in writing nearing conclusion of hearing, in which it is focused by way of unverified pleadings as follows:-

“1 It is denied that the department has illegally and arbitrarily taken away 21 years of service of the petitioner because the post of Lecturer in Demography and Statistics is a single cadre post. It is a non medical teachers post. The pay scale Rs 2200-4000/- had been given to the petitioner at the time of appointment after that the post has been upgraded once and pay scale of Rs 3000-4500/- (revised Rs 10000-15200) had been given to the petitioner as per notification 12.01.1988, in the year 2005.

2 Above said post was advertised by the PPSC on the

requisition of the Government & petitioner had applied for this post. The petitioner was appointed as Lecturer in Demography and Statistics by the Government on the recommendation of PPSC and he joined on 20-11-1991. The petitioner is misleading the court by saying that he did not know that the post for which he has applied is under post partum programme whereas he himself has admitted in this writ petition that he is working on a post of Lecturer, created under post partum programme.

3 *In the year 2005 the petitioner was rightly reverted and his pay scale was rightly downgraded from 3700-5700 (revised as Rs 16350-20100) to Rs 3000 to 4500/- (revised Rs 10000-15200) on the recommendation of the Finance Department.*

4 *The pay scale has been given rightly to the petitioner vide order dated 18-07-2011 as per Guidelines of merit promotion Scheme 1988 which is applicable to the petitioner because he was appointed in the year 1991. Now the department is willing to give senior scale and selection grade upto the post of Lecturer (now designated as Assistant Professor) only, because he is eligible to get all benefits for this post only. As per UGC guidelines of 2009-2010, Government is willing to grant him scales for the post of Assistant Professor only as no other post exists. If he is given benefit of higher post then it will be financial burden on the State because similarly situated persons in various departments will demand higher post, while these posts do not exist at all. If he is granted higher post then this case will become a reference case which will set a wrong precedent and will create lot of difficulties for the Government.*

5 *That there is no sanctioned post of Professor and Associate Professor in Demography and Statistics in the department so the proposal was wrongly recommended by the then DRME to the Government. It is also clarified that the petitioner and the then DRME belonged to same Department of SPM and they were hand in glove. The advocate of the petitioner have wrongly accused the*

present DRME of being personally against the petitioner which is totally wrong and without any base. Infact the DRME has acted to safeguard the interest of the Department as already decided by the Hon'ble Court in its order dated 29.03.2010 in CWP No.5179 of 2010 which the petitioner has never challenged. The relevant para is reproduced for the kind convenience of the Hon'ble Court:

“(13) In my considered view, the claim of the petitioners to treat them at par with the Medical Teachers for the grant of higher pay scale, is wholly misconceived as there is a fine distinction between the nature of qualifications and the duties of the two sets of Teachers. Such a parity, if granted, would amount to treat the unequals as equals. Similarly, the University Grants Commission's Merit Promotion Scheme, 1983 was not in existence at the time of appointment of the petitioners and such no benefit accruing there from can be claimed by them. The rejection of their claim to the extent vide the impugned order dated 11-02-2010 (Annexure P-29) warrants no interference by this court.”

6 *The petitioner is not entitled for promotion to the post of Professor and Associate Professor because these posts are not sanctioned. The case of the petitioner has been considered as per advice dated 03-08-2015 given by the Finance Department as per rule. It is also mentioned that required post in Demography and Statistics as per MCI guidelines is only of lecturer in Medical Colleges.*

7 *The Administrative Department (Government) has not interfered in the advice of Finance Department because Administrative Department complied with the advice of Finance Department as per rule.*

8 *That the Petitioner is demanding to implement the advice of Finance Department Dated 08-05-2015 in which the petitioner was granted pay scale upto the level of*

Professor w.e.f 27-07-2009. This proposal of the Finance Department was never fully rejected by the department but it was resent to the Finance Department to reconsider its advice because the petitioner was granted pay structure in 5 steps upto the level of Professor which was against the rules. Again the advice of the Finance Department on Dated 03-08-2015 reiterated the earlier advice but with a specific note that the petitioner may be granted pay scales as per rules. Here it is emphasized that the post of petitioner is single cadre post. This fact is very well known to the petitioner, how can he be promoted to a post which do not exist. The pay scale granted to the petitioner upto the level of Lecturer (now designated as Assistant Professor) vide order Dated 14-08-2015 and also order Dated 18-07-2011 is justified. He can only claim benefit of Senior Scale and Selection scale as per UGC guidelines in notification of 2009-2010 upto the level of Lecturer (now designated as Assistant Professor). Therefore the petitioner can be granted pay scale of Rs. 15600-39100+7000 Grade Pay and Rs.15600-39100+8000 Grade Pay.”

[emphasized]

28. In counter response to the synopsis submitted by the 2nd respondent, the petitioner has the following to say:-

“1. The single cadre definition of the respondent is totally false and misleading at this point when there is no issue about this. The present Secretary has very well explained about this in its noting approval sent to Finance Department. (Annexure P-56, Page 234).

2. In the PPSC advertisement after the Government requisition, there is no reference of Post Partum Programme. (Annexure P-8, Page 58).

3. The Administrative Department is overruling the latest FD Advice dated 08.05.2015 (Annexure P-50, Page 171) but at the same time is justifying the reversion order on the bases of earlier FD advice which was quashed in case of earlier CWP 14462/ 2005 (Annexure P-22, Page 93) & CWP 2870/ 2007 (Annexure P-31, Page 124).

4. *The stand of the respondents denying the promotion/ higher pay scales on the plea of non availability of higher post is totally wrong and misleading. There is no requirement of any higher level post for getting higher pay scale/ promotion benefits as explained in Para 5 & 6 of the set of conditions under the 1988 policy of UGC as well as under Merit Promotion Scheme (Annexure P-62, Page 323) and subsequent revised UGC policies of Career Advancement Scheme (CAS) applicable w.e.f 01.01.1996 (Annexure P-63, Page 328) and w.e.f 01.01.2006 (Annexure P-64, Page 341, under Para x & xiii). All these benefits under UGC are being given to all the teachers in Higher Education Department. (Annexure P-48, Page 7 of CM 5543/ 2014).*

5. *That the DRME is only proposing body and is not a part of the Government. It is for the Government to decide about the proposal sent by the DRME. The present DRME is acting against the mandate of Hon'ble Court order passed in CWP 5179/ 2010 (Annexure P-33, Page 137 & Annexure P-34, Page 139). The present Secretary has categorically recommended the case of the petitioner to FD for granting higher pay scales to be given to petitioner in five steps initially but later on taken U-turn on being asked by the present DRME. (Annexure P-56, Page 234).*

6. *As per the policy of UGC there is no requirement for sanctioning the posts of Associate Professor & Professor since the lecturers/ Assistant Professors after getting the benefits of Senior Scale and Selection Grade are automatically entitled for promotion/ placement in the higher scale as Associate Professor & Professor under Career Advancement Scheme. (Annexure P-64, Page 341, under Para (x) & (xiii). After the superannuation of such an incumbent teacher, the higher level post of the incumbent will automatically fall vacant at the lower level as lecturer/ Assistant Professor for fresh recruit.*

7. *The Administrative Department is acting over and above of the advice of the Finance Department since it is denying the benefits to the petitioner on the bases of self*

made assertions while totally ignoring the UGC policy and guidelines adopted by the Government of Punjab.

8. *The Department cannot selectively implement the FD advice (Annexure P-50, Page 171) as per 'Rules of Business of the Government of Punjab, 1985' dated 29th Sep 1985.* (Copy enclosed). *It is up to the Finance Department to allocate the budget for the already sanctioned pay scales in five steps to be given to the petitioner. Hence the impugned orders dated 18.07.2011 and the order dated 14.08.2015 passed during the pendency of the writ petition are deserved to be quashed."*

[emphasized]

29. Heard Mr. Gurminder Singh, learned Senior counsel assisted by Mr. Mohit Garg, Advocate for the petitioner and Dr. Puneet Kaur Sekhon, learned Addl. AG, Punjab for the State on point and counter point. Heard also the DRME present in person in Court without any orders asking her to appear and on her own volition and interest to be of assistance, in case required, from the original record brought.

30. The question presented for adjudication is whether State Government was correct in applying pay scales available to teaching staff in the Higher Education Department to the two PPP teachers in Medical Colleges working under the control of the DRME which has resulted in withdrawal of pay scales/promotions as Assistant Professors retrospectively by downgrading the pay scales without reference to the earlier advice/viewpoints of the parent Department i.e. DRME [before the present incumbent Dr. Mrs. Mohi occupied office of DRME] and removing the basis of the claim for the five stage pay scales already approved by the Finance Department and the Department of Medical Education & Research, Punjab in terms of the pay structure prevailing in the Higher Education

Department, Punjab and thus retracting from the ground earlier held in favour of the petitioner/s. In short, the State in DRME says that the post held by the petitioner at entry point is a single cadre post; the 1978 rules do not provide any promotional avenues for teachers in PPP; the petitioner belongs to the non-teaching staff working in the PPP which is an isolated post with no promotional avenues. According to the DRME the only benefit the petitioner can claim as a matter of right is the Senior Scale and Selection Grade as per UGC guidelines up to the level of Lecturer/Assistant Professor at the entry point from where he would retire on attaining the age of superannuation. Nothing more can be done for him.

31. The petitioner has presented CM No.455 of 2016 enclosing Government instructions dated April 08, 1991 and the order dated March 10, 1997 confirming the petitioner in service in terms of the above instructions w.e.f. November 20, 1993 vide order dated March 10, 1997. These instructions have been issued under Rule 3.12 of the Punjab Civil Services Rules, Vol. 1 Part-1 regarding subject of simplification of confirmation procedure and de-linking of confirmation from availability of permanent posts. The instructions prescribe that orders of confirmation of an employee should simultaneously follow when regarding satisfactory completion of his probation period are passed. Government also felt it equitable, fair and desirable to confirm an employee only once in the service of an official which will be in the entry grade for which availability of permanent vacancy in the grade is not necessary. No confirmation is required on promotion. These instructions have been clarified by Punjab Government letter dated October 06, 1993 advising departments that the

mother instructions would not apply to the persons appointed against the post in purely temporary organizations/departments (created for a specific objective for a limited period) i.e. persons appointed against the post in such organization/department would be outside the purview of the revised procedures, as outlined in the new policy instructions dated April 08, 1991.

32. Mr. Gurminder Singh argues from this position that permanent vacancies are not required in promotion for purposes of confirmation and confirmation in this case has taken place w.e.f. November 20, 1993 vide Annex P-66. Having earned promotion as Assistant Professor on completion of 8 years service the second promotion to the post of Professor was due on completion of 16 years of service. The promotion to the post of Assistant Professor was based on the policy dated March 05, 1985 formulated by the Government of India which the petitioner says was in vogue in the year 1996 vide letter dated February 27, 1996 (Annex P-11) which was none other than the MPS for teachers under the UGC scheme for the teaching staff of PPP which are applicable at par with the other working staff of the Medical College for similar posts and that is how the petitioner was promoted as Assistant Professor and granted the pay scale of ₹ 16350-20100 as per notification dated April 07, 1999 issued by the State Government duly approved its Finance Department.

33. As a result of the concluded ruling in CWP No.5179 of 2010 decided on March 29, 2010 the petitioner, all said and done, can no longer claim parity with medical teachers for grant of higher pay scale. He also cannot claim benefit of the defunct UGC, MPS, 1983 since the petitioner was appointed in 1991 while the UGC scheme of January 12, 1988 had

come into operation. However, what remained to be considered in the wake of the orders was grant of new pay scales notified under the UGC scheme 1988 or subsequent corresponding revisions thereto made by the State of Punjab in the Higher Education Department as per directions of this Court in the aforesaid writ petition filed by the petitioner and one Dr. Daljit Kaur. As a natural consequence of this state of things, the petitioner cannot claim pay scales of higher posts in the Department of Health & Family Welfare, Punjab/Department of Medical Education & Research, Punjab.

34. Following the judicial orders passed, the petitioner made a representation on November 12, 2010 which has led to the passing of the impugned order dated July 18, 2011 passed by the Secretary to Government of Punjab, Department of Medical Education & Research. It is recorded in the order that in compliance of the directions of this Court passed in CWP No.5179 of 2010 the case was again referred to Finance Department along with the revised scale as applicable to the equivalent post in DHE where UGC scales are applicable. The observation of Finance Department was in the following terms:-

“The administrative department may clarify the scales along with effective dates that the petitioner is entitled to. Whether the same scale will be demanded by any other employee or not? Whether this involves burden on the State Exchequer?. In light of the orders a self explanatory proposal may be sent immediately.”

35. The clarifications sought by Finance Department were referred to DRME for comments as the entire service record is maintained at the level of college and DRME office. In turn, DRME recommended that the matter be fixed before a committee comprising four officers deputed to take

a comprehensive view of the pay scales applicable in DHE in the context of the case of then petitioner. The recommendations are in tabular form incorporated in the impugned order. The petitioner was placed in the pay scale of ₹10,000-15200 w.e.f. July 27, 1998, ₹12000-18300 (Selection Grade) on completion of five years service subject to fulfillment of conditions laid down by the UGC/Education Department with benefit accruing from July 27, 2003 and still further pay scale of ₹ 15600-39100 + 8000 AGP in the rank of Assistant Professor w.e.f. January 01, 2006. In the same ascending order of pay scales on completion of three steps, the petitioner was approved by Finance Department to be placed in the pay scale ₹ 37400-67000 + Grade Pay ₹ 9000 w.e.f. July 27, 2006 on completion of three years as Lecturers (selection scale) and re-designated as Associate Professor. At the fixed stage on July 27, 2006 the petitioner ought to be placed in the grade pay ₹ 10,000/- on completion of three years service as Associate Professor with a Ph.D. Degree in the relevant discipline which would be entitled to appointment/designation as Professor. Paragraphs 5 and 6 of the notification dated January 12, 1988 issued by the Education Department, Punjab were referred to. These paragraphs read as follows:-

“5. Every lecturer will be eligible for placement in a senior scale of Rs.3000-5000 if/she has:

(a) completed 8 years of service after regular appointment, with relaxation as provided in para (3) above;

(b) participated in two refresher course/summer institutes, each of approximately 4 weeks duration or engaged in other appropriate continuing education programme of comparable quality, as may be specified by the UGC;

(c) Consistently satisfactory performance appraisal reports.

6. *Every lecturer in the senior scale will be eligible for promotion to the post of reader in the scale of pay of Rs. 3700-5700 if he/she has;*

(a) completed 8 years in the Senior Scale, provided that the requirement of 8 years will be relaxed if the total service of the Lecture is not less than 16 years;

(b) obtained a Ph.D. degree, or an equivalent published work;

(c) made some mark in the areas of scholarships and research as evidenced by self-assessment, reports of referees, quality of publications, contribution to educational renovation, design of new course and curricula etc;

(d) participated in two refresher courses/summer, institutes each of approximately 4 weeks duration or engaged in other appropriate continuing education programme or comparable quality as may be specified by the UGC, after placement in the Senior Scale; and

(e) Consistently good performance appraisal reports.”

36. One of the necessary conditions stipulated in the notification dated January 12, 1988 was the underlined sub-para (d) of Para.6 [supra]. In the back reference to DRME made by the Finance Department, the DRME called for information regarding the completion of refresher courses in respect of the petitioner and his colleague in PPP, from the Principal, Government Medical Colleges at Amrtisar and Patiala, who informed the seeker of information that as per record both the Lecturers had not done any refresher course/training (four weeks) which is mandatory for grant of senior scale/selection grade. As such, they are not eligible to these benefits.

Therefore, in the light of the clauses of the notification of the Higher

Education Department the previously granted pay scale of ₹10,000-15200 and instead they were held entitled to the lower pay scale of ₹8000-13500 w.e.f. January 01, 1996 and ₹15600-39100 + 6000 AGP w.e.f. January 01, 2006. It was recommended that grant of UGC scales as per Higher Education Department needs to be considered but before taking a final decision in the matter the Education Department may be consulted regarding any other guidelines that have been issued after 1988 may be examined. This was in the light of the directions issued by the learned Single Judge. Accordingly, DRME sent a proposal for grant of scales of ₹2200-4000 with effect from the date of appointment in 1991 and thereafter in the manner as stated above. It was not disputed that the petitioner had acquired the Ph.D. degree in 2002 and as per Higher Education Department the letter dated February 20, 1999 and March 10, 1999 advanced increments are admissible. In this manner, the proposal was sent to Finance Department for advice. The Finance Department agreed with the proposal sent by the Administrative Department to it in purported implementation of the orders of the learned Single Judge dated March 29, 2010 in CWP No.5179 of 2010 which ended the petitioner's pay scale at ₹15600-39100 + 6000 AGP/Grade Pay w.e.f. January 01, 2006 and no further. In short, the case of the petitioner was scuttled on the altar of non-completion of refresher course/training (four weeks) and subject to verification of the Ph.D. Degree.

37. Mr. Gurminder Singh refers to the previous decision of the DRME dated November 27, 2012, Annex P-15, p.218 of the paper-book where it is endorsed and recommended that the petitioner fulfilled all the conditions as per UGC guidelines including completion of

Orientation/Refresher Courses along with Ph.D which would bring the fruit of the remaining stages of pay scales in the Higher Education Department even though the structural pyramid in the Health Department was no longer available. The Government had even agreed to grant of all UGC benefits up to the level of Professor. Even the OSD (Litigation) had categorically stated in his note dated January 23, 2013, [Annex P-52 at p.226 of the paper-book] that the petitioner had done all the refresher and orientation programmes as per mandate of UGC when he recommended the UGC pay structure to be given to the petitioner. The Secretary, ME&R sought the advice of the Higher Education Department regarding grant of senior/selection grade with effect from its due dates after completion of the courses within the extended time period by UGC in which it was clarified that the benefit is to be given from the due date after completion of the prescribed courses vide letter dated March 20, 2014. The DRME sent a report to OSD (Litigation) vide letter dated April 29, 2014, Annex P-49 at p. 69, in which comprehensive UGC pay scales as Senior Lecturer, Selection Grade Lecturer, Assistant Professor, Associate Professor and Professor were to be given to the petitioner as was done in cases of similarly situated employees with reference to contents of the letter dated April 29, 2013. It was in these circumstances that the then Principal Secretary, Medical Education had recommended the case to Finance Department for its final approval on the basis of the reports of the DRME, the OSD (Litigation) and her office report as per letter dated June 15, 2014 [Annex P-54 at p. 31 of the paper-book]. This is how the comprehensive table in five steps up to the level of Professor was recommended by the Administrative Department in the

official file No.13/07/2013-2HB3 with reference to document dated October 30, 2014, [Annex P-55 at p. 232 of the paper-book] finally on May 08, 2015, [Annex P-50 at p. 171 of the paper-book], the Finance Department after considering the proposal of the Government in all their legal and factual implications agreed to the proposal of the Administrative Department and accorded its final approval granting pay scales to be given to the petitioner in five steps. So far, so good. However, the euphoria was short-lived for the petitioner but I would say not irremediable as would be later discussed. What happened thereafter was like this:-

38. In a volte-face, in June 2015 the Administrative Department sent another proposal adverse to the petitioner to Finance Department after the present incumbent DRME Dr. Mrs. Mohi joined the department who virtually overruled the earlier Finance Department advice dated May 08, 2015 (supra) in an effort to withdraw benefits. However, the Finance Department after reconsideration of the proposal reiterated its earlier approval dated May 08, 2015 and directed Administrative Department to decide as per rules. This was treated as not a final and binding decision of the Finance Department. This carte blanche of decision as per rules was used as a lever to non-suit the petitioner of his two remaining steps in the pay scales prescribed by lapse of time in service i.e. the 4th and 5th stages, abruptly truncating the petitioner to the pay scale of Lecturer/Assistant Professor and without hearing. This, the petitioner says was a rash and mala fide action of the DRME taking a U-turn by initiating a wrong proposal in contravention of the UGC policy and remitted the same to the Finance Department for re-consideration at the hands of the present incumbent

Secretary who had earlier recommended the case in a positive manner but with the twist in the tail that Administrative Department may decide as per rules. This action has re-opened the case and injured the petitioner of his rightful dues and deprived him in the matter of award of pay scales at stages four and five.

39. It is thence canvassed by Mr. Gurminder Singh, learned Senior counsel that a conscious decision taken by predecessor-in-interest on relevant material after due application of mind cannot be re-opened by a successor-in-interest and that too at the behest of a lower functionary being the DRME and without valid reason. This action according to the learned Senior counsel has wiped out 21 years of service of the petitioner without justification and in a totally illegal and arbitrary manner and put his case in shambles. Argues that the DRME present in Court in her synopsis presented to the Court has exceeded the defence of the defence of the State filed by none else than Dr. Mohi on behalf of the department and the State of Punjab in defence of the impugned order dated August 14, 2015 in the written statement by seeking to introduce foreign matter and a very dangerous argument that the petitioner occupies a single cadre post with no promotional channels available in rules of service and, therefore, he cannot be promoted posts which do not exist and then even the more dangerous argument in para.5 of the synopsis that earlier decisions were taken in favour of the petitioner since the petitioner and the then DRME belonged to the same department of SPM and they were hand in glove. The DRME has to the mind of the Court tried to stand on high moral ground contending that she has acted to safeguard the interest of the department in terms of the

order dated March 29, 2010 passed in CWP No.5179 of 2010 which the petitioner has never challenged. She mixes up the case as one of promotion to the post of Associate Professor and Professor because the posts are not sanctioned in PPP and the case under UGC guidelines which are not based on availability of vacancies in higher posts but substitute promotional rights with higher pay scales by passing time. There is a clear dichotomy between the two rights.

40. On the other hand, the petitioner has reconciled himself peacefully to what has been held against him by this Court in CWP No.5179 of 2010 and presently claims only that which was open to him to claim in terms of the last paragraph of the order kept open for renewed decision making on UGC principles. DRME admits that the Finance Department advice dated May 08, 2015 grants pay scales up to the level of Professor w.e.f. July 27, 2009 but the proposal of the Finance Department was never fully rejected by the Department and was re-sent to Finance Department to re-consider its advice because the petitioner was granted pay structure in five steps up to the level of Professor wrongly in her perception which action of the Finance Department was contrary to the rules. Where these rules are, and what they mean are not known to case papers presented on file. After all, and there can be no doubt, the case of the petitioner was considered, decided and approved by the Finance Department in the order dated August 03, 2015 in five stages as per stages prevailing in the Higher Education Department but not the Department of Medical Education and Research. DRME is not even correct on her assumptions of facts on the Orientation/Refresher Courses (four weeks duration) when there is

sufficient material on record to conclude that the petitioner had in fact cleared those pre-conditions as pointed out by Mr. Gurminder Singh. Moreover, as per policy of UGC, MPS there is no requirement for sanctioned posts of Associate Professor and Professor since Lecturers/Assistant Professors after getting the benefit of Senior Scale and Selection Grade are automatically entitled for promotion/placement in the higher pay scale as Associate Professor and Professor under the Career Advancement Scheme in terms of Paragraphs (x) and (xiii), Annex P-64 at p.341 of the paper-book. After the superannuation of such an incumbent teacher, the higher level post of the incumbent will automatically fall vacant at the lower level of Lecturers/Assistant Professor to admit a fresh recruit. This is what the policy lays down. The policy is not challenged by the DRME nor can be or her to be heard on such a specious plea completely foreign to the determination of the dispute in hand. The DRME had also lost sight of the fact that she is only a proposing body and is not a part of the Government machinery in the final decision-making process in monetary matters of pay and pay scales which power resides in the Finance Department of the Government to decide proposals sent by DRME in terms of the Rules of Business of the Government. The Administrative Department cannot act over and above the advice of the Finance Department by ignoring the UGC policy and guidelines adopted by the Government of Punjab without any reason..

41. The Department cannot selectively implement the Finance Department advice (Annex P-50, p.171) as per 'Rules of Business of the Government of Punjab, 1985' dated 29th September 1985. It is up to the

Finance Department to allocate the budget for the already sanctioned pay scales in five steps to be given to the petitioner according to UGC policy. Hence the impugned orders dated July 18, 2011 and the order dated August 14, 2015, the latter passed during the pendency of the writ petition, deserve to be quashed. Besides, the petitioner cannot be left stranded in the evening of his career.

42. When all the facts of the case set out above are noticed and beaded together, a few state of things stand out rather prominently in favour of the claim of the petitioner as prayed for. For one, I think the PPP can no longer be regarded as a stepney to the marriage cart and deserves to be treated as en-cadred by long lapse of time by assimilation. It is both the bride and the bridegroom and is no longer a spare tyre in ME&R albeit drawing pay scale from HED via UGC guidelines accepted to be acted upon by act of State Government accepting the National Post Partum Programme introduced by the Central Government in all Health Departments in the member States that form the Union and to treat the programme permanently as its own except for the condition it will no longer be financially supported by the Central exchequer. The wisdom of the Union Government in creating PPP dawned on the Punjab Government after parting with the Central Government on the financials while agreeing to assimilate and continue the PPP by shouldering the financial burdens of the post/s which is/are presently an adjunct of the Government Medical Colleges at Amritsar and Patiala in imparting medical education and an integral part thereof and part of curriculum. The Colleges are no longer the exclusive preserve of the medical staff strength. Rules may take a long time to make but life is short

and must accommodate adjustments which are equitable. The Finance Department had agreed to the proposals to grant the pay scales in five steps to the petitioner etc. the UGC way which appear to look like promotions but are effectively no more than stages of higher pay scales by passage of time and experience in a career advancement structure guided by UGC for higher education throughout the country.

43. There is no gainsaying that the Finance Department calls the shots and the Administrative Department in ME&R is not State Government nor can pretend to be so as to deflect the course set by the Finance Department by conscious decisions based on relevant material at the relevant time. If it agrees to five steps in the matter of pay scales without causing disturbance to other employees of the State Government, its mandate is final and cannot be treated as mere proposal which the ME&R in the Administrative Department insists it to be and which it has right to cause an adverse change. The Finance Department did not say there was any bar in law to limit the pay scales to the first three stages after appointment and to stagnate the petitioner at ₹ 5600-39100 + 6000 AGP w.e.f. January 01, 2006 and superannuate him on such salary and allowances when the day comes. The Finance Department advice is on the other hand clear and categorical in its noting approval in Annex P-56, p. 234 of the paper-book. In the Punjab Public Service Commission advertisement after Punjab Government sent requisition to it for filling up the posts in issue by open merit selection there is no reference therein to PPP when appointments were made as Lecturer, Demography and Statistics in the scale of ₹2200-4000 in the year 1991. The obsession of DRME appears to her irreconcilably in as much as how can a

non-medical person teaching in a Medical College producing doctors get pay structure in a promotional hierarchy in her department in absence of cadre posts designated in the rules of service where the isolated posts outside the main line are not part of the scheme of medical education. The petitioner does not claim promotions per se but the higher pay scales.

44. Promotions as understood in service jurisprudence, the petitioner is no longer claiming after declarations against him in CWP 5179 of 2010. In this petition he limits claim to higher pay scales as fashioned by UGC for teaching cadres in Higher Education Departments such as of the Punjab Government, being a right ensuing from the previous approvals of the Finance Department in five steps which claim has been denied to him by the U-Turn taken in the impugned ill-advised order. The petitioner is right when he laments that 21 years of his life career cannot be washed away without and legal justification especially when there is no fresh reasoning contained in the impugned order to hold otherwise. To that extent the order is non-speaking and therefore void. DRME has evidently found a rather ingenious way to scuttle the case of the petitioner by advising the Finance Department and prevailing upon it to leave lacunae against his case based on a report obtained from the Principals of the two Government Medical Colleges in Punjab that the petitioner had not completed his mandatory courses of four weeks duration which alone disentitled him to selection grade etc and higher pay scales in the five steps. This was a deliberate false assertion made to Finance Department contrary to facts as demonstrated by the petitioner in the petition backed by prior decisions of the competent authority on due compliances supported by documents regarding the

courses. The assertion of the petitioner has not been controverted that as per UGC guidelines for the year 2009-2010 the requirement of Refresher course is of 3 weeks while the Orientation course should be of 4 weeks which the petitioner has already done to claim UGC benefits, which are most certainly not dependent on actual promotions and are instead in lieu thereof.

45. It appears to this Court that DRME grossly misused the advice of the Finance Department that she may take a decision in implementation of the operative directions in CWP 5179 of 2010 “as per the rules”. Which rules, I pray ask, work against the claim of the petitioner? Building an argument is not a statutory rule. Reasoning is not rule framed under proviso to Article 309 our Constitution. A rule which confers or abrogates rights must be expressed in words. This Court is hard pressed to find that magical rule in the impugned order; in the pleadings of the State filed by none other than DRME herself on behalf of the State of Punjab; in the synopsis submitted by DRME at the hearing, which strictly speaking is not even pleading but still has been taken into consideration as a point of view because of their emphatic production and because they contain assertions aimed at attempting to destroy the case of the petitioner of the flimsiest of grounds and are therefor noticed in this order and dealt with, least the DRME complains her view point on the case was not considered in her support of the impugned order and her valuable advice to Finance Department. Rather, Finance Department advice to Administrative Department/DRME to decide the case of the petitioner afresh “as per the rules” was not based on any directions made by this Court when it modified the earlier impugned order dated February 11, 2010 while the specific

directions were those as are reproduced in para. 11 above and its operative relevant part underlined for emphasis. The administrative authorities clearly exceeded their brief and embarked upon uncharted territories defacing the UGC guidelines which alone they were required to address and apply and in this was found falsely that the Refresher/Orientation courses were lacking in time and substance to justify Senior Scale/Selection Grade, which was far from the truth. The petitioner has been wronged by wrong facts and the premise built on them that there was any deficiency on this account. This court is of the opinion that the petitioner has a genuine case for interference and for certiorari and mandamus to issue to prevent continued injustice to the petitioner in the matter of pay scales at stages four and five by restoration of rights sought to be deprived.

46. For the many reasons recorded above, I find substantial merit in the submissions made on behalf of the petitioner that the impugned order is not legally sustainable and does not deserve to stand. Accordingly, the petition is allowed with all consequential benefits flowing therefrom. The misguided impugned orders dated July 18, 2011 [Annex P-36] and August 14, 2015 [Annex R-1] are quashed being illegal, arbitrary and discriminatory and also contrary to UGC law as applicable to the respondent State in the case of the petitioner. The petitioner is held entitled in law to all the five steps in the matter of award of pay scales from the due dates as was agreed upon by the Finance Department previously by a conscious decision which is made operable by setting aside the offensive part contained in the words “as per rules” which caused the mess. But for the active misguidance of the DRME to deflect the course of administrative justice after two

decades of settled vested rights and in this misadventure a lot of time and expenditure has been wasted and lost to time and tide. This order makes those necessary amends to put the case of the petitioner back on its tracks and bring the much desired monetary relief to him. The petitioner shall be entitled to costs of ₹ 25,000. The same be paid to him, along with other monetary benefits as would accrue as a result of this order, within three months from the date of receipt of a copy of the order in certified form.

14.01.2016
manju

(RAJIV NARAIN RAINA)
JUDGE