

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7629 OF 2002

ORDER:

Petitioners, who are 9 in number, worked as Associate Professors/Lecturers in third respondent-Engineering College filed this writ petition seeking to issue a Writ of Mandamus to implement the UGC scales of 1986 and 1996 in accordance with G.O.Ms.No.242 Education dated 29.06.1999 and other relevant Government Orders together with admission to D.A., H.R.A. and other allowances with all consequential benefits and arrears of salary, etc.

Brief facts of the case are that Private Engineering Colleges in the State of Andhra Pradesh were governed by the provisions of the Andhra Pradesh Education Act (for short 'Education Act'). The Colleges were prohibited from collecting Capitation Fee and their financial viability was ensured by fixing tuition fee and reviving it from time to time. The Private Engineering Colleges in the State of A.P. were regulated by the Government by fixing tuition fee and intake by G.O.Ms.No.525 dated 29.11.1993 under the provisions of the Education Act to prevent commercialization of technical education. The third respondent-Institution is a private and unaided institution affiliated to JNTU-Kakinada. It is one of the old institutions established on 28.10.1986 under Act for Registration of Literacy, Scientific and Charitable Societies Act, 1860. The Government issued orders vide G.O.Ms.No.520 Education (UE) Department dated 15.12.1988 extending the revised UGC scales of pay 1986 to all the teachers, librarians and affiliated Degree and PG colleges whether Government or private Aided Colleges and also to the Physical Education personnel and

librarians in the Universities. Thereafter, the Government of Andhra Pradesh issued G.O.Ms.No.242 Education (EC-I) Department dated 18.07.1989 extending the pay scales to the teachers, librarians and physical education instructors in Engineering Colleges including Architecture and Fine Arts. In the said Government Orders, it was categorically mentioned that Central Government will provide assistance to the State Government to the extent of 80% of the additional expenditure involved in giving effect to the revised scales of pay, for the period from 01.01.1986 to 31.03.1990 and the remaining 20% of the expenditure will be met by the State Government from their own sources till 31.03.1990 and it would take responsibility of continuing the revised pay scales w.e.f.01.04.1990. In the Government Orders it is also mentioned that the State Government may give effect to the revised pay scales w.e.f.01.01.1986 or a later date by taking into consideration the local conditions etc. The Director of Technical Education, Government of Andhra Pradesh vide Circular Memo No.E2/15190/88 dated 10.08.1989 issued instructions to all the Secretaries and Correspondents of all Private Engineering Colleges in the State to implement the above revised scales provided under G.O.Ms.No.242 dated 18.07.1989 to their colleges with immediate effect. Further, the Government issued orders vide G.O.Ms.No.208 Higher Education (UE-II.1) Department dated 29.06.1999 extending the UGC scale of pay 1996 to the affiliated Degree and PG colleges and in the said Government Orders, the Government also extended the revised UGC Scales of Pay, 1996 to teachers, librarians, physical education personnel to the Universities and Colleges in the State. The revised scales of pay was made applicable to all the teachers in the University

affiliated Degree and PG Colleges whether Government or Private Aided Colleges and also to the physical education personnel and librarians in the Universities and Colleges. Said orders were also extended to Acharya N.G. Ranga Agricultural University and JNTU along with other Universities. The said UGC Scales of pay 1996 were extended to the Private Engineering Colleges vide proceeding No.E4/7427/2991 dated 08.05.2001 of the Commissioner, Technical Education. The Private Engineering Colleges were required to give a confirmation regarding payment of UGC scales along with an affidavit. Accordingly, a confirmation was given by the third respondent to the Commissioner, Technical Education, along with an affidavit vide letter No.SVHCE/AICTE/2001-64 dated 16.05.2001 stating that UGC Scales 1996 were given w.e.f.01.11.2000 much prior to the receipt of instructions from the Commissioner of Technical Education. The Government enhanced the intake of certain Private Engineering Colleges and also revised the tuition fee from the academic year 1987-88 under GO Ms.No.257 r/w.256 dated 7.10.1987. In said GOs, the Government prescribed certain norms to be followed by the educational institutions while increasing the intake and revised the tuition fee. However, the third respondent-College has implemented the UGC Scales of Pay 1986 w.e.f.01.07.1988 and implemented the UGC Scales of Pay 1996 w.e.f.01.11.2000. Petitioner along with their Association made a complaint to the Hon'ble Lokayukta making several allegations against the Management including implementation of pay scales. Hon'ble Lokayukta after hearing both sides rejected the complaint. Thereafter, the petitioners along with others filed W.P.No.8428 of 2001 and the same was disposed of by this Court on 26.04.2001

directing the respondents to consider and dispose of the representation of the petitioners dated 14.09.1999. In compliance of the said order, the representation of the petitioners was considered and rejected vide proceedings dated 08.07.2001. The further case of the petitioners that the third respondent had not implemented the UGC Pay Scales of 1986 to the Teaching Staff of Private Engineering Colleges vide G.O.Ms.No.242 w.e.f.01.01.1986 and UGC Pay Scales of 1996 w.e.f.01.01.1996 from the date of issuance of the Government Order. Being aggrieved by the non-implementation of the UGC Scales, this Writ Petition is filed.

Sri P.R.Prasad, learned counsel for the petitioners, would contend that the Government issued G.O.Ms.No.525 dated 29.11.1983 fixed the tuition fee and intake as per the provisions of the Education Act, to prevent commercialization of Technical Education. Number of Government Orders were issued revising the tuition fee and intake from time to time taking into consideration the expenditure on staff salaries and maintenance. The Government also allowed a separate Development Fee. Each revision of tuition fee is associated with certain conditions regulating the expenditure. The conditions include:

- a) Every Private Engineering College will pay UGC Scales of Pay with DA, HRA and CCA to the teaching staff as approved by the State Government;
- b) Scale of Pay with DA, HRA and CCA for non-teaching staff should be on par with the scale of Pay as applicable by the State Government;

He would further contend that the teachers duly appointed to a post in the private Institution also entitled to seek enforcement

of the orders issued by the Government and they are entitled to equal pay so as to be on par with Government employees under Article 39 (d) of the Constitution. Hence, the teachers of self financed Private Engineering Colleges are governed by the UGC Scales of pay with DA, HRA, CCA and other benefits as per Government Orders and on par with the teachers of the University Colleges. The third respondent collected the tuition fee and admitted the students intake as per the Government Orders, it cannot avoid implementation of UGC Scales of Pay to its teachers under the pretext that it is a private unaided institution. The State Government extended UGC Scales of Pay 1986 to the teachers of Technical Institutions general Universities and JNTU w.e.f.01.01.1986 by GO Ms.No.242 dated 18.07.1989. The Director of Technical Education issued a Circular memo No.E2/15190/88 dated 10.08.1989 requesting the Secretaries and Correspondents of all Private Engineering Colleges in the State to implement the revised pay scales as provided under G.O.Ms.No.242 dated 18.07.1989, to their College immediately as the enhancement of tuition fee and intake was ordered to cover the expenditure caused by the extension of UGC scales of pay. As per the GO, the UGC Scales of Pay 1996 are to be implemented along with DA, CCA and HRA w.e.f.01.01.1996. But, the Private Engineering Colleges in the State with necessary financial resources the respondent-College cannot avoid implementation of UGC Scales of Pay to its teachers under the pretext that it is a Private Un-aided Institution. The third respondent, as per G.O.Ms.No.208 the UGC Scales of Pay have to be extended with DA, HRA and CCA and Career Advancement Scheme w.e.f.01.01.1996 and not without DA, HRA and CCA and Career

Advancement Scheme. He further contended that the Government issued G.O.Ms.No.257 dated 07.10.1987, which is nothing to do with the revised UGC Scales of Pay of 1986 whereby the Government increased the intake and tuition fee to be collected by the Private Engineering Colleges vide G.O.Ms.No.286 dated 07.10.1987. Initially, the petitioners and others ventilated their grievance by filing their complaint before the Hon'ble Lokayukta. However, the Lokayukta closed the complaint on technical ground stating that 'in view of the fact that already the Memorandum submitted to the Hon'ble Chief Minister has been forwarded to the competent authority, there is no necessity to give any directions in the matter'. The third respondent as per the orders of this Court in W.P.No.8428 of 2001 dated 26.04.2001, the representation of the petitioners and others were considered and rejected as the UGC scales have already been implemented. The fact remains that the third respondent had not implemented the UGC Scales of Pay with DA, HRA and CCA as per the Government Orders. The contention of the third respondent that as per G.O.Rt.No.535 dated 21.07.2001, the Career Advancement Scheme is applicable only to the teachers of Government and not to the Private Aided Educational Institutions is false. The Government extended the pay scales of 1996 by G.O.Ms.No.208 to the teachers of University, Government and Private Aided Colleges. Career Advancement Scheme is part and parcel of UGC Pay Scales. Hence, the Career Advancement Scheme also stands extended to the teachers of Private Engineering Colleges also. Further, G.O.Ms.No.535 was also issued clarifying the procedure for implementation of Career Advancement Scheme. It has nothing to do with the applicability

of Career Advancement Scheme to the Private Engineering Colleges.

Learned counsel would further contend that the petitioners are not comparing their cases with that of Sri K.Krishnamacharyulu and others, who are the appellants before the Hon'ble Supreme Court in C.A.No.1774/1997, as alleged by the respondents as the petitioners are not seeking extension of the benefits of the verdict of the Apex Court in C.A.No.1774/1997. The petitioners are only asserting their right for UGC Scales of pay with allowances and other benefits on the Principle of equal pay for equal work as enshrined under Article 39 (d) of the Constitution of India.

Learned counsel for the petitioners also contends that this Court allowed W.A.No.390/1997 filed by the employees of Veeravasaram Polytechnic praying for pay and allowances on par with Government employees, relying on the verdict of the Apex Court in C.A.No.1774/1997. Petitioners therein have accepted the salary with effect from the date of filing the writ petition i.e.8.7.1990.

During the pendency of the writ petition, some of the writ petitioners i.e. petitioners 1 to 6 have withdrawn the writ petition as they received the benefits and settled their benefits long back. Further, the Management Association filed W.P.No.16489/1999 for revision of development fee on the plea that they have to implement UGC Pay Scales of 1996. Said writ petition was allowed and the respondent-Management also got the benefit of its revised development fee from Rs.3,000/- to Rs.20,000/-. While the respondent-Management received the revised tuition fee and development fee, it failed to implement the UGC Scales of Pay as

per the Government Orders. The College is understaffed and underpaid. The College has accumulated huge finances and commercialized the Technical Education contrary to the provisions of the Education Act. He finally submits that the remaining writ petitioners i.e. petitioners 7 to 9 are entitled to receive payment of UGC Pay Scales 1986 and 1996 w.e.f.01.01.1986 and 01.01.1996 respectively as per the Government Orders on par with the University employees and also for arrears with interest. Non-payment of the same is arbitrary and contrary. Hence, he prayed this Court to allow the writ petition.

Sri N.Jaya Surya, learned counsel appearing for Sri A.Veera Swamy, learned counsel for the third respondent-College, would contend that the third respondent-College is a Private unaided Educational Institution, which is not getting any sort of aid from the government. The Government issued G.O.Ms.No.520 dated 15.12.1988 extending the revised UGC Pay Scales to 1986 to all the teachers, librarians and affiliated Degree and PG Colleges whether Government or Private aided colleges. Thereafter, Government issued G.O.Ms.No.242 dated 18.07.1989 extending the pay scales to the teachers, librarians and physical education instructors in Engineering Colleges including Architecture and Fine Arts. In said Government Orders, it was categorically mentioned that the Central Government will provide assistance to extent of 80% of additional expenditure for giving effect to the revised pay scales for the period from 01.01.1986 to 31.03.1990 and the State Government shall meet the remaining 20% of the expenditure from their own sources till 31.03.1990 and the State Government shall take the responsibility of continuing the revised pay scales w.e.f.01.04.1990. The State Government may give effect

to the revised pay scales w.e.f.01.01.1986 or a later date by taking into consideration the local conditions etc. The Director of Technical Education vide Circular Memo dated 10.08.1989 issued instructions to all the Secretaries and Correspondents of Private Engineering Colleges in the State to implement the revised pay scales as directed under G.O.Ms.No.242 dated 18.07.1989 with immediate effect from 18.07.1989. The third respondent-College without waiting for instructions of the second respondent, implemented the revised pay scales of 1986 w.e.f.01.07.1988, much prior to the receipt of the letter from Director of Technical Education dated 10.08.1989. The Government issued orders in G.O.Ms.No.208 dated 29.06.1999 extending the UGC Scales of Pay 1996 to the affiliated Degree and P.G. Colleges whether Government or Private aided college and also to teachers, librarians, physical education personnel in the Universities in the State. The revised scales of pay were also extended to Acharya N.G.Ranga Agricultural University and JNTU along with other Universities. As per the proceedings of the Commissioner, Technical Education, dated 08.05.2001, the third respondent gave confirmation along with an affidavit vide letter dated 16.05.2001 stating that UGC Scales 1996 were given effect from 01.11.2000 i.e. much prior to the receipt of instructions from the Commissioner of Technical Education. The Government Order does not satisfy any specific date from which the UGC Pay Scales are to be implemented. The third respondent-College has implemented the UGC Pay Scales 1986 w.e.f.01.01.1988 and UGC Pay Scales 1996 w.e.f.01.01.2000.

Learned counsel would further contend that the Career Advancement Scheme is not applicable to the Private Engineering

Colleges. The Government vide orders in G.O.Rt.No.535 dated 21.07.2001 clarified that Career Advancement Scheme is applicable only in respect of Government and Private Aided Educational Institutions. The very scheme itself was formulated for the employees serving and drawing pay only from the State funds. Petitioners along with others approached the Hon'ble Lokayukta for payment of equal pay for equal work on par with Government employees. Hon'ble Lokayukta rejected the complaint as false. Thereafter, petitioners filed W.P.No.8428 of 2001 wherein this Court by order dated 26.04.2001 directed the respondents to consider the representation of the petitioners dated 14.09.1999. Pursuant thereto, the third respondent considered the representation and rejected the same. The same has become final as the petitioners have not challenged the said order. Hence, the present writ petition filed for the same relief is not maintainable. The order in the earlier writ petition operates as *res judicata*. Hence, the writ petition is liable to be dismissed.

In reply, Sri P.R.Prasad, learned counsel for the petitioners, submits that one of the grounds for rejection is that the orders of Hon'ble Apex Court are not applicable to the petitioners and the same is applicable only to the petitioners therein. But, the Hon'ble Apex Court has categorically held that the employees working in third respondent-College are entitled for pay and allowances on par with Government employees in view of Article 39 (d) of the Constitution of India scope of which is far and wide. The other ground stated in the rejection order by the third respondent is that it is a Private Unaided Institution and is not in receipt of matching grant from UGC/AICTE/State Government, but the third respondent-College is a self financed regulated public institution in

public sector and they are allowed to collect heavy tuition fee and other fee considering the financial requirements to meet the staff salaries etc. Learned counsel relied on the decision of the Supreme Court in ***K.Krishnamacharyulu vs. Sri Venkateswara Hindu College of Engineering***¹.

However, the learned counsel for the third respondent, would contend that the Management is allowing the benefits on par with Government employees prior to filing of the W.P.No.8428/2001. The petitioners are not entitled for DA, HRA, CCA, as the same was not ordered to be implemented along with revised pay scales by the Government Orders. It would be implemented if the Government issue any specified orders. Finally, he submits that the third respondent-College has implemented UGC Pay Scales of 1986 w.e.f.01.07.1986 and UGC Pay Scales of 1996 w.e.f.01.11.2000, much prior to instructions of the Director of Technical Education and Commissioner of Education, respectively. Hence, the petitioners are not entitled to UGC Pay Scales from 01.01.1986 and UGC Pay Scales of 1996 from 01.01.1996 as the GOs are extended to the Private Institutions through the proceedings of the Director and Commissioner of Education. Hence, the petitioners are not entitled for any relief and the writ petition is misconceived and is liable to be dismissed.

Having heard the rival contentions of both the counsel and perused the material on record, it is found that the third respondent being a Private Unaided Educational Institution is governed by the provisions of Education Act and the orders issued by the Government from time to time are also applicable to the third respondent-Institution. The Government issued

¹ 1997 (3) Supreme 433

G.O.Ms.No.520 dated 15.12.1988 extending the revised UGC Pay Scales of 1986 to all the teachers, librarians and physical education instructors irrespective of Government or Private. Thereafter, Government issued G.O.Ms.No.242 dated 18.07.1989 extending the pay scales to the teachers, librarians and physical education instructors in Engineering Colleges including Architecture and Fine Arts. The Government revised the fee structure and intake of the students with a pre-condition that every private engineering college shall pay UGC pay scales with DA, CCA and HRA to the teaching staff as approved by the State Government. The pay scales with DA, CCA and HRA to non-teaching staff shall be on par with the scales of pay applicable to the State Government employees. As held by the Hon'ble Apex Court in C.A.No.1774/1997, the petitioners are entitled to equal pay for equal work on par with Government employees under Article 39 (d) of the Constitution of India. The UGC Pay Scales, 1986, are to be implemented along with DA, HRA and CCA w.e.f.01.01.1986. Hence, the contention of the learned counsel for the respondents that UGC Pay Scales, 1986, have to be implemented w.e.f.10.08.1989, the date of issuance of Circular Memo of Director of Technical Education without DA, HRA and CCA, merits no consideration.

The further contention of the respondents' counsel that the third respondent-Institution is not receiving either 80% of the Central Government's Assistance or 20% of the State Government's assistance to incur the additional expenditure on account of implementation of UGC Pay Scales and it is a private self financed College. Hence, the said Government Orders are not applicable. But, it is to be seen that very enhancement of the tuition fee and

intake of the students was only to facilitate the management of the Colleges to implement the UGC Pay Scales of 1986 and 1996 and to meet the expenditure incurred in implementing the said pay scales. Hence, the contention urged in this regard cannot be countenanced.

The further contention of the respondents' counsel that the third respondent-Institution has implemented the UGC Pay Scales of 1986 w.e.f.01.07.1988, much prior to the proceedings of the Director of Technical Education dated 10.08.1989, is untenable as G.O.Ms.No.520 dated 15.12.1988 was issued extending the revised pay scales of 1986 to all the teachers, librarians of affiliated Degree and PG Colleges whether Government or Private and as per G.O.Ms.No.242 dated 18.07.1999 the pay scales were extended to the teachers, librarians and physical education instructors in Engineering Colleges including Architecture and Fine Arts and the said revised pay scales have to be implemented from 01.01.1986 but not at a later date by taking into consideration the local conditions. The action of the third respondent in implementing the UGC Pay Scales of 1986 from 01.07.1988 is arbitrary and illegal, having received the enhanced tuition fee and enhanced intake of students, as per the GOs issued, with a pre-condition that the UGC Pay Scales have to be implemented. Only to meet the expenditure incurred due to implementation of UGC Pay Scales, the tuition fee and intake of students were enhanced. The third respondent on one hand rejected for implementation of UGC Pay Scales of 1986 from 01.01.1986 and on the other hand collected the enhanced tuition fee and admitted the enhanced intake of students, which was allowed to meet the expenditure for implementation of UGC Pay Scales.

Further, the Government issued G.O.Ms.No.208 dated 29.06.1999 extending the UGC Pay Scales of 1996 to the affiliated Degree and PG Colleges and in the said Government Orders, the Government also extended the revised UGC Pay Scales of 1996 to teachers, librarians, physical education personnel to the Universities and Colleges in the State. Said scales were also extended to Acharya N.G.Ranga Agricultural University and JNTU along with other Universities. The revised UGC Scales of pay 1996 have to be implemented from 01.01.1996 as rightly contended by the learned counsel for the petitioners. When the third respondent-institution is collecting the enhanced tuition fee and admitting the enhanced intake of students, it cannot postpone or extend the date of implementation of pay scales other than the date mentioned in the G.O. i.e. 01.01.1996. The contention of the respondents' counsel that the petitioners are entitled for revised pay scales from the date of issuance of instructions by the Director of Technical Education is not acceptable for the reason that G.O.Ms.No.208 dated 29.06.1999 was issued extending the UGC Pay Scales w.e.f.01.01.1996. Hence, non-implementation of the UGC Pay Scales 1996 from 01.01.1996 is also arbitrary and illegal.

As per G.O.Rt.No.535 dated 21.07.2001, implementation of Career Advancement Scheme is applicable to government and private education institutions. Hence, the petitioners are entitled for Career Advancement Scheme. Contrary contention urged by the respondents' counsel that the scheme itself is formulated for the employees serving and drawing pay from the State Funds, merit no consideration.

The further contention of the respondents' that in view of the orders of the Hon'ble Apex Court in C.A.No.1774/1997, the

petitioners are also entitled for the benefits from the date of order, is untenable.

The contention of the respondents that petitioners 7 to 9 are already retired and all the retirement benefits were settled and petition is not maintainable and that the petitioners have not challenged the order dated 08.07.2001 wherein the third respondent-College rejected the representation of the petitioners dated 14.09.1999 in pursuance to the orders of this Court in W.P.No.8428/2001 dated 26.04.2001 is also untenable since those proceedings are not statutory proceedings passed by any competent authority exercising power under any statutory provisions or rules. Hence, the principle of *res judicata* does not operate.

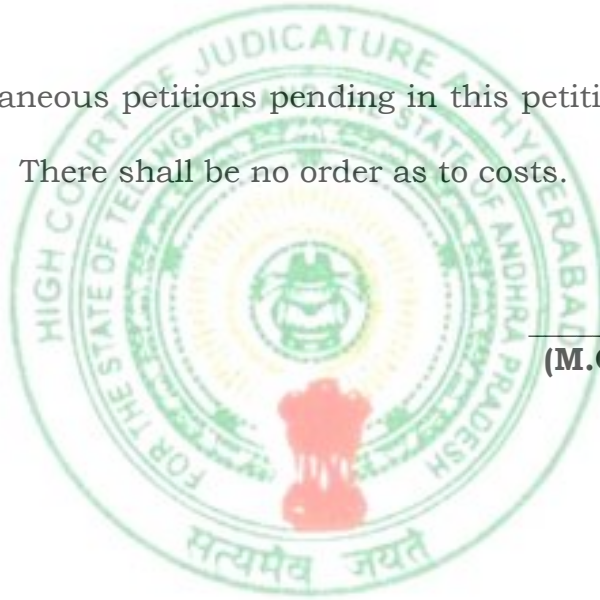
Learned counsel relied on **K.Krishnamacharyulu (1 supra)** in support of his contention that the petitioners are entitled for equal pay for equal work as enshrined in Article 39 (d) of the Constitution of India, on par with government employees. The Hon'ble Apex Court in the said decision held that the teachers duly appointed to the post in the private institution are also entitled to seek enforcement of the orders issued by the Government by approaching this Court under Article 226 of the Constitution of India and are entitled to equal pay for equal works on par with government employees.

For the reasons stated above, it is concluded that the petitioners, who are pursuing the writ petition i.e. petitioners 7 to 9, are entitled for revised UGC pay scales of 1986 from 01.01.1986 and revised UGC pay scales of 1996 from 01.01.1996 along with DA, HR, CCA, Career Advancement Scheme, etc.

Accordingly, the Writ Petition is allowed directing the respondents to pay the arrears of salary to petitioners 7 to 9 as per revised UGC Pay Scales of 1986 from 01.01.1986 and revised UGC Pay Scales of 1996 from 01.01.1996 along with DA, HRA, CCA and Career Advancement Scheme, etc. Further, as the petitioners were already retired from service without getting the benefit of revised UGC Pay Scales of 1986 and 1996 and underwent mental agony for not getting the revised pay scales, the Management of the third respondent is directed to settle all the benefits to petitioners 7 to 9 within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

10.08.2018
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(M.GANGA RAO, J)