IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: March 13, 2018
Judgment delivered on: March 23, 2018

\+ W.P.(C) 3606/2015

G S TAYAL

..... Petitioner

Through: In person

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Monika Arora, SC for JNU with Mr. Vibhu Tripathi, Mr. Kushal Kumar & Mr. Harsh Ahuja, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

> *"**PRAYER***
>
> *(1) It is respectfully submitted that this Hon'ble Court be pleased to admit the writ petition in the interest of the justice.*
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> *(2) Your Lordship be pleased to order to pay the arrears of enhanced salary w.e.f 01/01/1996 and to grant annual increment w.e.f. 01/04/1996 at par with his counterpart, i.e Mrs. V.B. Vohra Assistant Finance Officer, and thereafter on 1st April of each*

consequent year till the retirement, with consequential retirement benefits such as revised gratuity, leave encashment, pension etc with 24% annual interest, on amount due w.e.f 1/1/1996;

(3) The cost of the petition may also be awarded in favour of the petitioner."

2. The facts as noted from the writ petition are, that the Jawaharlal Nehru University ('JNU' in short) was established n the year 1969. There were three cadres Ministerial staff, Secretarial Staff and Accounts staff. The petitioner was appointed as LDC, which was in the Ministerial staff. On qualifying the examination conducted by the respondent University, the petitioner was promoted as Assistant. After a gap of time, the respondent University conducted written examination for promotion to the post of Senior Assistant and on qualifying the same, the petitioner was promoted as Senior Assistant with effect from March 17, 1975 in the pay scale of ₹425-800/-. It is the case of the petitioner that his counterpart Mrs. V.B. Vohra, who was in the Accounts cadre, was promoted as Assistant and thereafter Senior Assistant with effect from June 18, 1975 in the same pay scale of ₹425-800/-. Later on, both of them were promoted as Section Officer in their respective cadre in the pay scale of ₹650-1200/-, which was later converted to ₹800-1350/-.

3. It is averred, in the year 1991, the University abolished the cadre system and merged all the aforesaid three cadres into one cadre i.e General cadre. After the merger of cadres, the petitioner and Mrs. Vohra were granted second ACP in the pay scale of ₹3000-5000/- and were designated as Assistant Registrar

(Desk)/Assistant Finance Officer (Desk)/ Administrative Officer (Desk). The pay scale was revised to ₹10000-325-15200/- in terms of the Fifth Pay Commission recommendation. It is averred that because of merger of the cadres into one cadre, anomaly had accrued, inasmuch as some of the senior secretariat staff members made representation that they being senior, were drawing less pay than the Ministerial staff/Accounts staff. The University considered the representation and granted the erstwhile Secretarial staff pay parity i.e stepping up of the pay of 19 secretarial staff at par with the respective counterparts of Ministerial staff/Accounts staff with effect from January 01, 1996 in the then scale of ₹10000-325-15200/-. It is averred that the payment of arrears of the enhanced salary was made to them.

4. The Senior Assistants like the petitioner herein who were promoted as Section Officer also made representations and their demand was accepted and their pay was stepped up vide notification dated December 10, 2004 with effect from January 01, 1996 in the, the then pay scale of ₹10000-325-15200/-. The pay parity granted to the petitioner is not in dispute. It is the case of the petitioner, the enhanced salary was not made to the petitioner and other staff Members. Despite representations to grant him revised salary consequent upon pay parity with effect from January 01, 1996 and release of increments at par with the counterparts and other retirement benefits, the same was not acceded to. It appears, there was some audit objection with regard to the benefit of pay parity granted to the Senior Assistants, who were promoted as Section Officers like the

petitioner herein. Be that as it may, again on April 06, 2010, Executive Council of the University brought out a resolution, whereby it was decided that in case of those, who have retired prior to December 03, 2004 and covered under a decision but not drawn the pay with pay parity benefits may also be paid enhanced pension on the notional pay admissible to them with pay parity. It was also decided that the employees covered under the pay parity decision and retired/retiring after the date of decision may be allowed pension and other retirement benefits on the pay actually drawn at the time of retirement in terms of pension Rules. It was made clear that the financial effect of the decision shall accrue from the date of approval of the Vice Chancellor i.e December 03, 2004. It is the case of the petitioner that his fundamental rights have been violated, inasmuch as the petitioner having granted pay parity with effect from January 01, 1996 is entitled to the actual benefit thereof.

5. Another grievance of the petitioner is with regard to the retention of his date of increment at par with his counterpart Mrs. V.B. Vohra consequent upon grant of pay parity with financial benefits with retrospective effect i.e January 01, 1996. According to the petitioner, he was drawing annual increment with effect from April 01, 1995. On fixation of his pay in Fifth Pay Commission with effect from January 01, 1996, the petitioner was allowed to earn annual increment with effect from April 01, 1996 and continued to earn increment on 1st April of each year till his retirement in 2004. It is his case that consequent upon grant of pay parity with Mrs. V.B. Vohra with effect from

January 01, 1996 in 5th CPC vide notification dated December 10, 2004 in the pay scale of ₹10000-325-15200-, Mrs. Vohra was allowed to draw increment on April 01, 1996. In fact, it is his case that she continued to draw annual increment on 1st April every consequent year, whereas the date of increment of the petitioner has been changed by the University from April 01, 1996 to January 01, 1997. The effect thereof is that Mrs. Vohra was drawing more pay on April 01, 1996 than him. He also states, the grant of annual increment to him with effect from January 01, 1996 debarred him the benefit of qualifying service rendered by him w.e.f April 01, 1995 to December 31, 1995 and raised a disparity between him and Mrs. Vohra. It is averred that the Private Secretaries/PA's, who were granted pay parity with their counterparts in the Ministerial staff/Accounts staff have been allowed the same date of increment as their counterpart, so as to maintain pay parity. He pleads discrimination in this regard.

6. On the other hand, the respondent's stand, in its counter affidavit is that the Senior Personal Assistant / Private Secretaries represented that many of their juniors in the Senior Assistant/Assistant stream superseded their counterparts in the Stenographer stream and requested, they may be given pay parity with their junior counterparts in the Senior Assistant cadre. Therefore, an administrative decision was taken by the Vice Chancellor on September 24, 1997, that Senior Personal Assistants and Private Secretaries be given the benefit of qualifying service while considering their cases for grant of upward movement vis-a-vis their counterparts in the University

and this benefit shall be extended for the limited purpose of their placement in the next upward movement. Accordingly, 19 Private Secretaries/Senior Personal Assistants were given the benefit of pay parity with their counterparts in the Senior Assistant cadre. As a consequence of this decision, several representations were received from the staff Members pointing out anomalies in pay at the level of Senior Assistant and Section Officers with the Private Secretaries/Personal Assistants, who were junior to them in the combined cadre of Senior Assistants/ Personal Assistants and SO/PS started drawing higher pay and therefore they demanded that their pay may also be stepped up at par with them. The issue was examined by the University and the Vice Chancellor vide order dated December 03, 2004 decided to (i) approve the grant of pay parity to 12 Section Officers, vide notification dated December 10, 2004 subject to the condition that the pay of the affected staff Members shall be stepped up at par with the juniors w.e.f January 01, 1996 but the financial benefit of pay parity shall be extended only w.e.f the date of approval by the Vice Chancellor i.e December 03, 2004; (ii) the employees, who have already retired from the University's service shall be given the revised enhanced pension w.e.f the date of approval i.e December 03, 2004. For the remaining retirement benefits, they shall have to wait for finalization of pay scales of all the employees of the University. It appears that there was some observation of the internal audit section of the University. It is stated by the respondent that the University Grants Commission has desired that the conditions attached at the time of grant of pay parity to 12 Section Officers including the petitioner may also be treated as fulfilled and the retirement benefits of those Section Officers, who were granted pay parity may also be regulated accordingly. The case of the 12 Section Officers was placed before the Executive Council, which in its decision on April 06, 2010 has decided as under:-

> *"(i) The employees covered under the pay parity decision and retiring after the date of decision i.e 3.12.2004 may be allowed pension and other retirement benefits on the pay actually drawn at the time of retirement (inclusive of pay parity benefits) in terms of Pension rules;*
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> *(ii) In the case of those who have retired prior the orders of the Vice Chancellor dated 3.12.2004 and covered under the decision, may also be paid enhanced pension on the notional pay admissible to them with pay parity; and*
>
> *(iii) The financial effect of the order shall accrue w.e.f the date of approval of Vice Chancellor i.e 3.12.2004 in respect of both the categories."*

7. In view of the aforesaid decision, all the retired employees including the petitioner were given revised pension only based on the pay notionally fixed with pay parity benefits w.e.f December 03, 2004 i.e the date of approval of Vice Chancellor with financial benefits. The respondent justified grant of financial benefits w.e.f December 03, 2004. Therefore, it is their case that the petitioner is not entitled to financial benefits w.e.f January 01, 1996.

8. Insofar as the issue of increment is concerned, it is the stand of the respondent that the petitioner was granted pay parity

to remove the anomalies and stepping up as per pay of Mrs. V.B. Vohra on January 01, 1996 as approved by the Vice Chancellor vide his approval dated December 03, 2004 amongst 12 Section Officers/Assistant Registrar (D). The pay of the petitioner was fixed at ₹11,300/- on January 01, 1996 but as per the approval/condition of the notification, the financial benefit of pay parity was extended only w.e.f December 03, 2004. Furthermore, it is stated that on the request of the petitioner for grant of increment w.e.f April 01, 1996 as applicable to Mrs. V.B. Vohra, the pay is fixed/stepped up to remove the anomalies,, the next increment is due after a requisite period of 12 months from the date of stepping up the pay as per the note below Rule 7 CCS (RP Rules 1997, F.R. 27 and Govt. of India memorandum dated April 02, 1996.

9. The petitioner, who appeared in person has reiterated the case set up by him in the writ petition. According to him, when the Private Secretaries have been granted the benefit of pay parity with actual benefits w.e.f January 01, 1996, there is no reason, the petitioner be denied the same benefit. It is stated that the petitioner having been granted initially the benefit of increment w.e.f April 01, 1996 and also Mrs. Vohra qua whom the pay parity was given to the petitioner w.e.f January 01, 1996 was drawing increment w.e.f April 01, 1996, there is no reason, the same could be denied to the petitioner. He would rely upon Chapter 2 under the heading *'Increment'* [reference for Central Government Employees (page 120 of the paper book)] to contend in the case of pay fixation in revised pay scales w.e.f January 01,

1996, the next increment shall be drawn on the original date of increment in the pre-revised scale.

10. On the other hand, Ms. Monika Arora, apart from reiterating the stand of the respondent in the counter affidavit, would submit, the petitioner was considered for grant of pay parity/step up amongst others at par with Mrs. Vohra w.e.f 01.01.1996 subject to the condition that financial benefits of pay parity shall be extended only with effect from the date of approval of the proposal by the Vice-Chancellor i.e 03.12.2004. However, it is submitted that the petitioner retired from the University service w.e.f October 31, 2004. She would state, re-fixation of pay of the petitioner was done as per rules w.e.f January 01, 1996 and he was not eligible for grant of increment shall be drawn after full incremental period of 12 months i.e January 01, 1997 as per rules (5th Pay Commission).

11. Having considered the record and the rival submissions, two issues arises for consideration; whether the petitioner is entitled to the actual benefit of pay parity w.e.f January 01, 1996. There is no dispute that a decision has been taken by the Vice Chancellor followed by the Executive Council to grant the benefit of pay parity w.e.f December 03, 2004. On December 03, 2004, the petitioner already stood retired w.e.f October 31, 2004. It is not the case of the petitioner that w.e.f December 03, 2004, he has not been given the revised pension on the basis of pay parity granted w.e.f January 01, 1996. It is also not the case of the petitioner that 12 other Section Officers, who were already granted pay parity w.e.f January 01, 1996 have been granted the

actual benefits w.e.f the said date i.e January 01, 1996. No doubt, the Private Secretaries/Personal Assistants, who were granted pay parity in the year 1997 w.e.f 1996 have been given the actual benefits but in the case in hand, the decision was taken only in the year 2004 with a back date. If a decision has been taken not to give the actual benefits w.e.f January 01, 1996 but only w.e.f the date of decision of the Vice Chancellor i.e December 03, 2004, the same cannot be faulted. Rather, the petitioner has been treated alike as there are other 12 Section Officers, who are also not granted the said benefit. Since, such a decision has a financial implication of at least eight years, such a decision cannot be faulted nor this Court can sit as an Appellate Court over such a decision.

12. Insofar as the plea of the petitioner that he is entitled to stepping up of pay/pay parity w.e.f April 01, 1996 at par with Mrs. Vohra, the same is appealing. There is no denial to the fact that the petitioner was granted pay parity qua Mrs. V.B.Vohra w.e.f. January 01, 1996. It is also the case of the petitioner that his actual date of increment was April 01, 1996. The petitioner was given the benefit of pay parity equivalent to Mrs. Vohra on April 01, 1996. For the reasons best known to the respondent University, the said benefit was shifted to January 01, 1997. The stand of the University is that an employee need to complete 12 months before he is entitled to an increment is concerned, the same shall be without any basis for the simple reason when a pay parity has been given to the petitioner qua Mrs. V.B. Vohra w.e.f January 01, 1996 and Mrs.

V.B. Vohra having been given increment w.e.f April 01, 1996 which resulted in her drawing a higher pay, the petitioner surely would be entitled to the pay parity/stepping up qua Mrs. V.B. Vohra on the same reasoning, which weighed with the University to grant a pay parity qua Mrs. V.B. Vohra w.e.f January 01, 1996. The shifting of the date of increment of the petitioner from April 01, 1996 to January 01, 1997, in fact, has resulted in washing of the period between April 01, 1995 to December 31, 1995 as the said period is not being counted for the purpose of increment. This stand of the respondent has resulted in Mrs. Vohra drawing a higher pay than the petitioner, which again resulted in the same anomaly, which has been rectified by the respondent w.e.f January 01, 1996. In this regard, I would like to reproduce the following chart for a better appreciation of the plea.

Pay	*G.S. Tayal*	*V.B. Vohra*
10000-15200	*On parity 11,300 (w.e.f 01.01.1996)*	*11300 (01.01.1996)*
	No increment granted w.e.f 01.04.1996	*Rs.11625/- (w.e.f 01.04.1996)*
	Pay on 01.01.1997 Rs.11625/-	
Note: Mrs. V.B. Vohra started drawing higher pay w.e.f 01.04.1996		

13. The reliance placed by Mr. Tayal on the Referencer for Central Government Employees Chapter II under the heading *'Increment',* which refers to Rule 8 of the CCS (Revised Pension Rules) 1997 that in case of pay fixation in the revised pay scales w.e.f January 01, 1996, the next increment shall be drawn on the

original date of increment in the pre-revised scale, is also appealing. Even in view of this provision, the date of increment of Mr. Tayal could not have been shifted to January 01, 1997.

14. Accordingly, the present petition is only allowed to the extent, the petitioner shall be entitled to increment w.e.f April 01, 1996 and his pay be fixed at par with the pay of Mrs. V.B. Vohra and on that basis, the petitioner shall be entitled to revised pension w.e.f December 03, 2004. The arrears of the same shall be granted to the petitioner with interest @ 9% per annum. The aforesaid order shall be complied with in three months.

V. KAMESWAR RAO, J

MARCH 23, 2018/ak