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

\+ W.P. (C) 7653/2000

K.L. KHERA & ORS. ..... Petitioner

Through Ms. Jyoti Singh, Sr.Adv. with Ms. Niyati Patwardhan, Mr. Padma Kumar and Mr. Himanshu Gautam, Advs.

versus

UOI & ORS. ..... Respondent

Through Mr. Rajesh K. Gogna, CGSC with Mr. Rijul Singh Uppal and Mr. Akhilesh Sagar, Advs. for R-1.
Mr.Amitesh Kumar, Ms. Priti Kumari and Ms. Binisa Mohanty, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T**
01.07.2019

1. The petitioners are working as Assistant Directors, Deputy Directors and Directors in the Indian Council of Social Science Research (ICSSR). Some of them are designated as Documentation Officers (in Library). They have been appointed on different dates. Their pay scales were, initially, upgraded, *vide* order dated 29th June, 2000, by granting them the pay scales prescribed by the University Grants Commission (UGC), in respect of lecturers, readers/Assistant Professors and Professors employed in universities. Later, however, *vide* individual Office Orders issued to them on 30th November, 2000, the said upgraded scales were withdrawn with retrospective effect.

Aggrieved thereby, the petitioners have moved this Court by means of the present writ petition.

<u>The facts, as stated in the Writ Petition</u>

2. The writ petition avers, on the very outset, that, as per the Rules governing the ICSSR, which was established by Resolution dated 12th December, 1968 of the Ministry of Education and Youth Services, and started functioning as an autonomous organisation w.e.f. 1st August, 1969, the power to appoint all categories of officers and staff, for conducting its affairs, and to fix their remunerations and define their duties, vested in the ICSSR itself. It is further averred that the ICSSR decided, in its own interest, to recruit, as Directors, Deputy Directors and Assistant Directors, personnel having qualifications analogous to those held by faculty members in Universities, i.e. lecturers, Assistant Professors and Professors. This, it is also averred, was intended at attracting academicians into the ICSSR. In order to operationalise this objective, three categories of professional staff, i.e. Assistant Directors, Deputy Directors and Directors were created, with qualifications, as per their Recruitment Rules (hereinafter referred to as "RRs") being similar/identical to those which were prescribed by the UGC in respect of lecturers, readers and Professors. Some features of the said RRs, in respect of the aforementioned three categories of posts, i.e. the posts of Assistant Director, Deputy Director and Director, may be extracted thus:

"(i) <u>Assistant Director</u>:

Scale of pay: ₹ 700-40-900-EB-40-1100-15-1300

Educational and Other Qualifications for Direct recruitment: Masters degree with 50% marks in any of the social sciences with 2 years teaching or research experience, or a doctorate degree in any of the social sciences

Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotion: Age limit may be relaxed

Method of recruitment: 50% Direct Recruitment, 50% by promotion

Whether selection post, or non-selection post, if recruitment is for promotion: Selection

In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made: Persons with requisite qualifications and at least 5 years service as Research Assistant Grade II

(ii) Deputy Director:

Scale of pay: ₹ 1100-1600

Educational and other qualifications required for direct recruitment: Doctorate degree in any of the social science of at least 5 years experience in teaching or research (for direct recruitment)

Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotion? No.

Method of recruitment: 75% by direct recruitment/deputation and 25% by promotion

Whether selection post or non-selection post, if recruitment is by promotion: Promotion on the basis of seniority subject to rejection of the unfit.

In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made: As Assistant Director with the minimum service of 5 years will be eligible.

(iii) Director (Research):

Scale of pay: ₹ 1500-60-1800-100-2000

Educational and other qualifications required for direct recruitment: PhD degree in 1 of the social sciences, at least 7 years experience in teaching or guiding research

Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotion: -

Method of recruitment (Whether by direct recruitment or by promotion or by deputation and percentage of vacancies to be filled by various methods): Direct (by advertisement of personal contact) or deputation"

3. The writ petition avers that "these posts correspond to the posts of Professors, readers and lecturers in the University system" and that "as per the Recruitment Rules in vogue in the Council, the qualifications of the post of Directors, Deputy Directors and Assistant Directors are similar and identical to that of qualifications prescribed by the UGC for Professors, readers and lecturers". Equivalently, it is averred that, on the establishment of the ICSSR, the "professional staff were given the pay scales as applicable to the teaching staff of the Central Universities as prescribed by the UGC", and that this position continued till 1st January, 1973. W.e.f. 1st January, 1973, the writ petitioner avers that the professional staff of the ICSSR were given scales pursuant to the recommendations of the 3rd Central Pay Commission (hereinafter referred to as "Pay Commission"), as recommended for Central Government employees and that, even though the said Pay Commission revised the scales of pay of university faculty members, on the basis of recommendations made by the review committee of the UGC, these scales were not made applicable to the petitioners. Resultantly, it is averred, the pay scales of the petitioners became lower than the pay scales of the teaching staff of the Central Universities, as fixed by the UGC.

4. This resulted in a communication, dated 21st September, 1974, from the ICSSR to the Ministry of Education and Social Welfare (hereinafter referred to as "the Ministry"), pointing out that, in its 19th meeting held on 3rd August, 1974, the Administrative Committee of the ICSSR had conveyed its approval to the adoption, in the ICSSR, of the following scales of pay, in respect of its professional staff, based on the recommendations of the UGC in respect of teaching posts in the University:

S. No.	**Designation of post**	**Existing Scale (₹)**	**Proposed Scale (₹)**
1	Director (Research)	1100-50-1300-60-1600-100-1800	1500-60-1800-100-2000-125/2-2500
2	Deputy Director	700-50-1250	1200-50-1300-60-1900
3	Assistant Director	400-40-800-EB-50-950	700-40-1100-50-1600

The letter also conveyed the desire, of the Administrative Committee of the ICSSR, that the revised pay scales be cleared by the Government of India, before the adoption thereof. It was also observed, in the said letter, that the RRs of the above-mentioned three posts in the ICSSR, i.e. the posts of Assistant Director, Deputy Director and Director (Research) "compared favourably with those generally prescribed by Universities in respect of the posts of Lecturer, Reader and Professor".

5. Consequent upon, and pursuant to, the recommendations of the 4th Central Pay Commission, the writ petition avers that the 3rd Review Committee of the ICSSR was set up which, in its report, again highlighted the necessity of equating the petitioners which the teaching staff of the University system. Para 6.45 of the report of the said Review Committee, which is specifically relied upon, in the writ petition, reads thus:

> "The council's ability to attract and retain academic staff depends not only on providing challenging job opportunities but also on salaries and working conditions that are comparable with those available at research Institutes and Universities. The present salaries and working conditions should be revised to enhance the advantage of working with the Council."

This recommendation, apparently, was approved by the ICSSR and sent, to the Ministry, for approval, but no response was received thereto.

6. On 29th September, 1987, the Deputy Secretary in the Ministry wrote to the Director, as under:

"   DO No. F-30-/87-US (Pt.)

Gurbax Singh,
Deputy Secretary (U),
Tele: 389375

Ministry of Human Resource Development,
Department of Education,
Government of India,
New Delhi-110001

29 September 1987

Dear Dr. Sareen,

As you are aware, the pay scale of teachers in University and Colleges have recently been revised. A copy of this Ministry letter No F.1-2/87-U.I.dated 17th June, 1987, revising the pay scales of teachers in universities and colleges and letter dated 7th September 1987 in with certain modifications to the above scheme were made, is enclosed.

It has been brought to our notice that the revised pay scales of some of the academic staff in the specialised research councils, i.e. ICSSR, ICHR, ICPA and IIAs would be lower than the revised pay scales of Lecturer (Senior scale) and Reader. The academic staff in these Councils expected to provide high level of scrutiny of research proposals which more often than not are received from the academics at the level of readers and Professors. They are also required to play a leading role in contributing to the academic and research activities. It has, therefore, been felt that it may not be possible to attract academic staff of requisite calibre and qualifications in these organisations. You may, therefore, consider reviewing the pay scales of the academic staff of your organisation and place the matter before the competent authorities in the light of the revision of pay scales of teachers and universities and colleges keeping in view the qualifications prescribed in the job requirements of the academic staff in the Council vis-à-vis in the colleges and universities. Proposals for the revision of pay scales based on the recommendations of the competent authorities together with detailed justification in support thereof may please be sent to this Ministry for further consideration of the matter.

With regards,

Yours sincerely,

Sd-

(Gurbax Singh)

Shri T. R. Sareen,
Director,
5, Ferozeshah Road,
New Delhi-110001"

7. The request contained in the above-extracted communication dated 29th September, 1987, from the Ministry – which, needless to say, was welcome, insofar as the ICSSR was concerned – resulted in the constitution, in the ICSSR, of a Committee of two Members of the Governing Council, to suggest replacement scales for the petitioners. This Committee submitted its recommendations in August, 1988, which were considered by the Governing Council in its 58th meeting held on 17th December, 1988 resulting in the following resolution:

"The report submitted by Dr A. K. Jain Committee for adoption of pay scales for professional staff of the Council was discussed at length. The Council desired that the conclusions at Sl. No. 9 may be modified so that the pay scales of Assistant Directors, Deputy Directors and Directors are equated with the revised pay scales for lecturers, readers and Professors in the Central Universities. It was also decided that the pay scales of the Member Secretary in the Council shall correspond to that of Vice Chancellor of the Central Universities. It was decided that with these modifications the report may be sent to the Department of Education for their approval."

8. No response was received, from the Ministry, to this proposal either, resulting in placement of the proposal, yet again, before the Governing Council in its meeting held on 12th July, 1992, in which the proposal was reiterated. It was once again sent to the Ministry for approval, but, yet again, to no avail. The petitioner has, in the writ petition, asserted that there was no justification for the ICSSR to repeatedly send the proposal for enhancement of pay scales to the Ministry, as, under the Rules governing the ICSSR, the power to fix pay scales of officers and staff, employed by it, vested in the ICSSR itself, and no approval, of the Ministry, was required at any stage. At the same time, the writ petition also asserts, in a somewhat contrary vein, that the Ministry was bound to consider the recommendations made by the Governing Council of the ICSSR and "if approved, restore the pay scales as applicable to the Teaching Staff in the Central Universities". There is, therefore, a certain degree of ambivalence, in the stand of the petitioner, as set out in the writ petition.

9. The above exercise was repeated in 1995. Yet another Committee, under the chairmanship of the former Education Secretary of the Government of India, was set up, to look into, *inter alia*, the pay scales of the petitioners and other staff of the ICSSR. The Committee endorsed and reiterated the recommendations of the earlier Committee, for adoption of the same pay scales as were being granted to lecturers, Assistant Professors and Professors of Universities, as fixed by the UGC. This was approved and accepted by the Governing Council, in its meeting dated 31st October, 1996. As on previous occasions, the recommendations were sent to the Ministry for approval, to no response. Yet another Committee, under the Chairmanship of Prof. A. Vaidyanathan, was set up, to suggest modalities for implementation of the recommendations of the earlier Committee. The said Committee again recommended the need for implementation of University scales to the petitioners, and forwarded the recommendations to the Ministry for approval. Predictably, there was no response to this either.

10. Drawing attention to the recommendations of all these Committees, the Member-Secretary of the ICSSR wrote, on 11th November, 1998 and on 10th February, 1999, to the Ministry, setting out the historical background of the case and requesting that approval be conveyed, forthwith, for parity of the pay scales to be paid to the professional staff in the ICSSR, with the teaching staff in the Universities.

11. As the Ministry continued to maintain a stoic – and, I am constrained to say, stubborn – silence, regarding the above communications, from the ICSSR, to it, with respect to the enhancement of pay scales of the personnel employed in the ICSSR, making them equivalent to teaching staff in the Universities, the Chairman of the Governing Council of the ICSSR took the decision that, w.e.f. 29th June, 2000, the Assistant Directors, Deputy Directors and Directors in the ICSSR would be placed in the pay scales applicable to lecturers, Assistant Professors and Professors in Universities, as fixed by the UGC, on a personal basis. Following this, individual Office Orders were issued, to the petitioners, placing them in the pay scale of lecturers, Assistant Professors and Professors, as fixed by the UGC, on a personal basis, as a one-time measure, w.e.f. 29th June, 2000. One such Office Order may be reproduced, thus, as an example:

> "Consequent upon careful consideration and approval by the Chairman, ICSSR Smt. Abida Vajahat, Deputy Director is placed in the pay scale of ₹ 12,000-375-18,000 w.e.f. 29.06.2000 (forenoon). This grade is personal to Smt. Vajahat as a one-time measure, without setting a precedent."

12. As a result, the pay scale of Directors was revised from ₹ 12,000-18,000 to ₹ 14,000-22,400, the pay scale of Deputy Directors was revised from ₹ 10,000-15,200 to ₹ 12,000-18,000 and the pay scale of Assistant Directors was revised to ₹ 10,000-15,200. These scales, the writ petition points out, was still lower than the pay scales prescribed by the UGC for teaching staff in the Universities, and was given as a one-time measure pending decision of the Ministry, on the proposals for revision submitted by the ICSSR.

13. The petitioners continue to draw the above scales, as granted to them w.e.f. 29th June, 2000, till 30th November, 2000, when the ICSSR abruptly withdrew the said scales with retrospective effect, purportedly in accordance with directives issued by the Ministry on 13th October, 2000. The withdrawal is stated to have been effected with the approval of the Chairman. A sample Office Order of withdrawal may be reproduced thus:

> "This is in continuation of earlier office order No PS/CH/ICSSR/99-2000 dated 29.06.2000 regarding upgradation of Dr. Prahlad Singh, Assistant Director from pay scale of ₹ 8000-275-13,500 to ₹ 10,000-325-15,200, the upgraded scale is hereby withdrawn with retrospective effect under the directive of the Ministry's letters No D.O.F. 10-32/97-U.5 dated 13.10.2000 and No F.8-6/2000-U-5 dated 22.10.2000, and approved by the Chairman."

14. Asserting that there was no justification for withdrawing the higher pay scales granted, to them, on 29th June, 2000, the petitioners have moved this Court by means of the present writ petition. The writ petition asserts that the right to fix pay scales vested in the ICSSR and that, therefore, it could not be controlled by any directives issued by the Ministry, whose approval, too, was not required for such fixation. That apart, it has pointed out the fact that the Ministry had itself, *vide* letter dated 29th September, 1987 *supra*, directed the ICSSR to enhance their pay scales to be at par with the teaching staff in the Universities. This decision was also approved by various High Power Committees constituted by the ICSSR. The retrospective revocation, by the ICSSR, of its earlier decision to grant enhanced pay scales to the petitioners is, therefore, characterised as completely unfair and illegal.

Counter-Affidavits and Rejoinder thereto

15. In its counter-affidavit, the Union of India has emphasised the fact that the ICSSR is fully funded by the Government of India by way of grants in aid from the Ministry and is, therefore, bound to abide by the guidelines issued by the Ministry of Finance from time to time. Reference has been made to Office Memorandum (OM) No. 9 (4)-E. (Coord)/84, dated 15th October, 1984, which reads thus:

"No. 9 (4)-E(Coord)/84
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 15th October, 1984

OFFICE MEMORANDUM

Subject: Financial powers of autonomous bodies-restrictions regarding.

The Rules and Bye-laws of autonomous bodies which are fully or partly funded by the Government of India should invariably incorporate restrictive clauses relating to the power of the Governing Bodies of such organization in matters of creation of posts, revision of pay and allowances of their staff and similar establishment expenditure and provide for prior approval of the Central Government in specific cases. It has come to the notice that this has not been done in a number of cases resulting the Governing Bodies of some Autonomous Organisation taking decisions on the above matters which do not conform to the general pattern of the Central Government.

2. With a view to ensuring that the provisions relating to the powers of the Governing Bodies in such matters having financial implications are properly exercised, Ministries/ Departments are requested to take following action:-

(i) A clause may be incorporated in the relevant Rules/Bye-laws/Regulations of the autonomous bodies that proposals relating to emoluments structure i.e. adoption of pay scales, allowance and revision thereof and creation of posts above a specified pay level would need the prior approval of the Govt. of India in consultation with the Ministry of Finance, Department of Expenditure;

(ii) In the case of larger autonomous bodies a suitable clause may be incorporated in the relevant Rules/Bye-Laws/Regulations that a representative of the Ministry of Finance/Integrated Finance Division of the Ministry concerned should be nominated to the Executive Council of the Autonomous Organisation. The choice of the nominee would be made in consultation with the Ministry of Finance; and

(iii) In the autonomous organizations referred to in (ii) above, a provision would also be made in the Rules/Bye-laws/Regulations that in the event of disagreement between representatives of the Ministry of Finance and the Chairman of the Governing Body of the Autonomous Organisation on the financial matter beyond the delegated powers of the Ministry/Department of the Govt. of India the matter may be referred to the Minister of the Administrative Ministry concerned and the Finance Minister for a decision.

3. Ministries/Departments are requested to take immediate action to incorporate the necessary amendments suggested in the preceding para in the Rules/Bye-laws/Regulations of the Autonomous Organisations under their administrative control under intimation to this Ministry. They are also requested to ensure that before a new autonomous body is formed, the Rules/Bye-laws/Regulations concerning financial matters are finalized in consultation with this Ministry.

Hindi version will follow.

Sd/-

(S.C. Mahalik)
Jt. Secretary to the Govt. of India

To,
All ministries/Departments
(By name to an officer of the rank of Jt. Secretary).

Copy to all Financial Advisers

Implementation of this O.M. may please be watched by them carefully and reported to this Ministry from time to time.

Sd/-

(S.C. Mahalik)
Jt. Secretary to the Govt. of India"

It is sought to be contended that, by virtue of the afore-extracted OM dated 15th October, 1984, the ICSSR, being, though an autonomous body, wholly funded by the Government of India, had necessarily to obtain approval of the Government of India before enhancing its pay scales. The counter-affidavit also draws attention to the fact that, while revising the pay scales of the posts of Assistant Director, Deputy Director and Director in the ICSSR, the Ministry, in its letter dated 26th March, 1998 (consequent on the recommendations of the 5th Pay Commission), specifically stipulated that the ICSSR would not alter/modify the emoluments, structure, terms and conditions of service and scales of pay, without prior approval of the government. The said communication, too, merits reproduction, thus:

" No. F: 10-32/97-U.5

Government of India
Ministry of Human Resource Development
(DEPARTMENT OF EDUCATION)

New Delhi, the 26th March 1998.

To

The Member Secretary
Indian Council of Social Science Research
Aruna Asaf Ali Marg
New Delhi - 110 067.

Subject: I.C.S.S.R., New Delhi - Pay revision of employees of autonomous organisation, etc. pursuant to the Recommendations of the Fifth Central Pay Commission

Sir,

I am directed to refer to Ministry of Finance, (Department of Expenditure)'s O.M. No. F7(34)E.III-A/97 dated 2nd December, 1997 on the subject mentioned above and to convey that the Government of India have no objection to the revision of scales of pay of the Officer and employees of Indian Council of Social Science Research, New Delhi as per the details given in the Annexure (I). This approval is subject to the following conditions:-

i) Revision of scales will be in accordance with the provisions of O.M. of Ministry of Finance cited above. The revised scales of pay as incorporated in Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 1997 will only be admissible. Payment of the arrears will be regulated in accordance with Para 3 thereof.

ii) The revision of scales of pay is subject to the condition that the I.C.S.S.R will undertake to amend its rules relating to medical facilities to the staff to bring them in line with the CS(MA) Rules.

iii) 10% of the additionality on account of pay revision will be met by the Council through saving under various Heads and another 10% by generation of additional resources. Government's liability would therefore only be 80%;

iv) The revised scales would be admissible to those employees who opt for these in accordance with the rules. Deduction on account of Provident Fund and Contributory Provident Fund, as the case may be, will have to be made on the basis of the revised pay with effect from the date the employees opt to elect the revised pay scales;

v) The pattern of emoluments structure and conditions of service will be exactly similar to those of the Central Government employees;

vi) Benefit of any 'Personal Promotion' or 'Career Growth Scheme', if any, extended to the employee, without the approval of the Government of India will not be available for the purposes of the revision. In other words, the pre-revised scales for which replacement scales will be given will be only such as were approved by the Government and not those resulting from any such schemes;

vii) Revision of pay scales would be in respect of such posts which have been created/upgraded only after obtaining Government of India's approval;

viii) I.C.S.S.R., shall not alter/modify the emoluments structure, terms & conditions of service and scales of pay of the posts without the prior approval of the Government; and

ix) The orders above are subject to corrections in respect of any omission or commission of errors that may have occurred.

Yours faithfully,

(R.S. DUA)
Under Secretary to the Govt. of India"

16. In this context, the Union of India also relies on Articles 6(a) and 8 of the Memorandum of Association and Rules of the ICSSR, which read thus:

> "6.(a) The income and property of the Council, however derived, shall be applied towards the promotion of the objects thereof as set forth in the Memorandum of Association, subject, nevertheless, in respect of the expenditure of grants made by the Government of India to such limitations as the government of India may, from time to time, impose.
>
> 8. (a) the Government of India may give directives to the Council in respect of its policies and programmes.
>
> (b) If at any time a difficulty arises in the functioning of the Council because of any lacunae in the Memorandum of Association or the Rules, or the failure of any of the provisions to operate, the Government of India shall have powers to give directives to resolve the difficulty and such directives shall be binding on the officers of the authorities of the Council."

17. The Union of India seeks to defend its decision, to direct the ICSSR to reverse the upgradation of the pay scales of the petitioners, on the ground that the said upgradation had been effected without obtaining the prior approval of the Ministry, as required by clause viii in the above-extracted communication dated 26th March, 1998. The decision to reverse the upgradation of the scales, therefore, it is asserted, “set right the wrong action of ICSSR” and obviated similar demands being raised by other organisations.

18. On merits, the counter-affidavit of the Union of India asserts that, as per Governmental policy, UGC scales were admissible only to posts where teaching or research work was actually being done. Inasmuch as Directors, Deputy Directors and Assistant Directors in the ICSSR did not perform any teaching or research activities, no pay scales, as fixed by the UGC for teaching faculty in Universities was, it is submitted, applicable to them. The counter-affidavit further points out that faculty members, in research institutes supported by the ICSSR were already enjoying the pay scales fixed by the UGC. Assistant Directors, Deputy Directors and Directors, it is sought to be submitted, were merely administrative staff, not involving research work, and could not be entitled, therefore, to the pay scales fixed by the UGC for teaching faculty. The counter-affidavit points out that such administrative staff were, in fact, being granted the pay scales applicable to similar positions in sister organisations such as the ICHR and the ICPR.

19. The counter-affidavit of the Union of India also contests the stand, canvassed by the petitioner, that the qualifications prescribed for recruitment to the posts of Assistant Director, Deputy Director and Director in the ICSSR were comparable or similar to those of lecturers, Assistant Professors and Professors in central Universities. This is sought to be demonstrated by means of the following tabular statement:

S. No.	Name of Posts	Educational qualification as per RR	Revised Pay Scales
1	Asstt. Director	A master degree with 50% marks in any of the social sciences subject with two years teaching experience or research work or a doctorate degree in any of the social sciences.	8000-13500
	Lecturer	Good Academic record with at least 55% marks or equivalent grade at Master's degree level and the candidate should have cleared the eligibility tests (NET) conducted by the UGC, CSIR or similar tests accredited by the UGC.	8000-13500
2.	Dy. Director	A doctorate degree in any of the social sciences with at least 5 years experience in teaching or research.	10000-15200
	Reader	(1) should have completed 5 years of service as senior lecturer, (2) should have obtained a Ph.D degree or equivalent.	12000 -18300
3.	Director	Ph.D. degree in one of the social sciences with at least 7 years experience in teaching or guiding research	12000 -16500
	Professor	An eminent scholar with 10 years of experience in post graduate teaching/ experience in research at the University /National level institution.	16400 -22400

20. The counter-affidavit also alleges that the petitioners had not been selected in accordance with the RRs, but were promoted on *ad hoc* basis even in the absence of sanctioned posts, without fulfilling the requisite qualifications. As such, the petitioners' claim to pay parity with lecturers readers and Professors is, it is asserted, "totally illogical and unwarranted".

21. The Union of India has, in its counter-affidavit, also pointed out that the recommendations of the Committees, which had recommended grant, to the petitioners and other like officers, of the "University" pay scales, were subjected to scrutiny, by it, by constituting a High Powered Committee under the Chairmanship of V. S. Malimath, J. (hereinafter referred to as "the Malimath Committee"). The Malimath Committee, it is pointed out, opined that the petitioners' appointments, to the post of Assistant Director, Deputy Director and Director, in the ICSSR, were made in violation of the RRs, inasmuch as they were *ad hoc* appointments made in excess of sanctioned posts. Though the recommendations of the Malimath Committee were communicated to the ICSSR, Respondent No. 1 complains that no action was taken by the ICSSR in accordance therewith and that, therefore, it would be improper for the ICSSR to implement the recommendations of the said Committee.

22. It is further sought to be contended, in the counter-affidavit of Respondent No.1, that, by enhancing the pay scales of Assistant Directors, Deputy Directors and Directors, the ICSSR had effectively upgraded the said posts. Reliance has been placed, for this purpose, on OM No. F-7 (18E) (Co. ord.)/71, dated 16th September, 1991, issued by the Ministry of Finance. The said OM does not, however, lay down any such proposition, and merely states that upgradation of the post amounts to creation of a higher post. Respondent No.1 has also referred to certain instructions, issued by the Ministry of Finance, regarding creation/filling up of posts in autonomous bodies. It cannot be said that, by issuing the Office Orders enhancing the pay scales of the petitioners' w.e.f. 29th June, 2000, the ICSSR had, in any manner, created posts. As such, it is not necessary to refer to the said instructions, either.

23. A separate counter-affidavit has been filed by the ICSSR. The preliminary objection, to the amenability of the ICSSR to the jurisdiction of this Court under Article 226 of the Constitution of India, on the ground that the ICSSR is not "state", as defined in Article 12, has been taken; however, the said objection has advisedly not been pressed during the course of hearing and, in any event, can hardly be sustained, the law having developed to a point where it is, by now, clear that Article 226 is not limited, in its applicability, to authorities which are, *stricto sensu*, "state". (One may, if required, refer, with advantage, in this connection, to the judgment of A. K. Sikri, J., in ***K.K. Saxena v. International Committee on Irrigation & Drainage, (2015) 4 SCC 670.***). The ICSSR has also concurred with the stand, of Respondent No. 1, to the effect that it is bound to follow all reasonable directions issued by Respondent No. 1, by virtue of sub-clauses (a) and (b) of its Memorandum of Association. On merits, the

ICSSR has merely sought to contend that, as its decision to enhance the pay scales of the petitioners was not approved by Respondent No. 1, it had no option but to withdraw the said decision.

24. The petitioner has filed separate rejoinders, to the counter-affidavits of the Union of India and of the ICSSR. It is not necessary to refer to the rejoinder, of the petitioner, to the counter-affidavit of the ICSSR, given the limited nature of submissions contained in the said counter-affidavit.

25. In response to the counter-affidavit of the Union of India, the petitioners have emphatically disputed the assertion, therein, that they were performing only administrative functions. It has been reiterated that the qualifications required for appointment of the petitioners were equivalent to those of teaching staff of the University. Apropos the nature of duties, it is averred that the petitioners coordinated research activities, released grants, organised seminars and workshops, which were also done by academic staff in any University. It is pointed out, in this connection, that there were instances in which persons, working in different Universities, in academic capacities, were posted in the ICSSR, as Assistant Directors, Deputy Directors and Directors.

26. The petitioners have also contested the stand, of the Union of India, that the fixation of scales of their scales of pay was subject to approval by the Ministry. It is pointed out that the Governing Body of the ICSSR was competent to revise the pay scales of its employees and that, once that had been done, there was no reason for nonimplementation thereof, in favour of the petitioners. It is categorically averred that "there is no necessity to take approval of the Government of India before implementing upgraded pay scales". The allegation that the upgraded pay scales had been implemented in violation of the prescribed procedure has also, consequently, been denied. It is also asserted that, in the ICSSR, apart from administrative staff, there were also professional staff, and the petitioners claim to belong to the said category, which is altogether different from the category of administrative staff. It is also asserted that the claim of the petitioners was not for grant of pay scales as fixed by the Pay Commission, but as fixed by the UGC in respect of teaching staff in Central Universities. The fixation of their pay scales, on the basis of the recommendations of the 5^{th} Pay Commission is, therefore, alleged to be illegal and such illegality, it is asserted, could not be allowed to be perpetuated.

27. Apropos the similarity in RRs, it is pointed out that an incumbent in the ICSSR had also to possess teaching experience, or experience in research work, apart from a postgraduate degree or a Ph.D., before he could be considered for appointment professionally in the ICSSR. The allegation that the petitioners had not been selected in terms of the RRs is also denied, emphatically asserting that they fulfilled the requisite qualifications for the post, at the time of their appointments thereto.

28. While the petitioners do not deny the fact that the ICSSR is fully funded by the Government of India, it is reiterated, in rejoinder, that the grant of pay scales to its employees was within the exclusive province of the Governing Council of the ICSSR, and that the Government of India had no say therein. It is further contended that Articles 6 (a) and 8 of the Memorandum of Association did not empower the Government to tinker in the matter of extension of pay scales of the employees of the ICSSR, or deny, to them, the pay scales fixed by the Governing Council of the ICSSR. It is also asserted that revision of pay scales of employees of the ICSSR did not require prior concurrence of the Ministry of Finance, and did not involve any upgradation of the post. No creation of posts had, either, it is asserted, been undertaken by the Governing Council of the ICSSR, while granting enhanced pay scales to the petitioners. It is also asserted that the duties performed by the petitioners were the same as those performed by academic staff in the University.

29. During the passage of this writ petition through the annals of this Court, on 28th September, 2015, a contention, to the effect that certain similarly situated persons, who had moved this Court by way of WP (C) 5533/2000, WP (C) 7490/2000 and WP (C) 975/2001 and had, consequent to their withdrawing their writ petitions, been granted, by the respondents, relief identical to those sought by the present petitioners, was sought to be advanced by learned counsel appearing for the petitioners. The ICSSR was, therefore, directed to file an additional affidavit on this aspect.

30. Pursuant thereto, the ICSSR has filed an additional affidavit, on 2nd March, 2016. In the said affidavit, it is contended thus:

(i) Rule 23(a) of the ICSSR Rules empowered the ICSSR to, with the previous approval of Respondent No. 1, and in a manner not inconsistent with the Memorandum of Association, frame Regulations for the administration and management of its affairs. Further, Rule 24 of the ICSSR Rules empowered the ICSSR to, *inter alia*, "appoint all categories of officers and staff before conducting the affairs of the Council, to fix the amount of their remuneration, subject to the budget provision, and to define their duties." These provisions, the affidavit seeks to submit, "made it clear that the Council cannot frame or amend its Regulations (1) in a manner inconsistent with the Memorandum of Association and Rules and (2) without prior approval of the Government of India."

(ii) In exercise of the powers so conferred, the ICSSR, with the prior approval of the Government of India, framed the ICSSR Service Regulations, 1970 (hereinafter referred to as "the Service Regulations"). Regulations 4 and 20, thereof, read as under:

"**SR 4. Grades in Categories of posts**

(1) The posts under the Council shall be divided according to the pay scales into 6 groups specified in the 1st schedule.

(2) The Council may direct

(i) The creation of any new grade or category of posts,

(ii) The abolishing of any grade or category of posts; or

(iii) The division of the pay scale of any post except that of Member Secretary and posts carrying a of ₹ 2500 and above.

and thereupon the first Schedule shall stand amended in accordance with such direction."

"**SR 20. Scales of Pay**

The scales of pay for the posts under the Council shall be as specified in the first Schedule, as amended from time to time."

(iii) In view of the above, upgradation of the pay scale, of any employee in the ICSSR, or modification thereof, required amendment of the First Schedule to the Service Regulations which, in turn, required prior approval of the Government of India. At the same time, mere revision of the existing pay scale could be effected by adopting the recommendations of the Pay Commission, as approved by the Government of India from time to time.

(iv) The ICSSR Rules were amended, with the prior approval of the Government of India, in 2014. The amended Rule did not empower the ICSSR to fix the pay of its employees. Where Rule 24(a) of the unamended ICSSR Rules specifically empowered the ICSSR to "appoint all categories of officers and staff for conducting the affairs of the Council, to fix the amount of their remuneration, subject to the budget provision, and to define their duties", Rule 25(a) of the amended ICSSR Rules, conspicuously, empowered the ICSSR only "to appoint all categories of officers and staff for conducting the affairs of the Council, subject to the budget provisions, and to define their duties". It is clear, at first glance, that the specific power, to fix the pay of the officers and staff of the ICSSR, was specifically divested in the amended Rules.

Submissions at the Bar

31. The petitioners were represented by Ms. Jyoti Singh, learned Senior Counsel, and the respondents were represented by Mr. Amitesh Kumar and Mr. Rajesh Gogna, arguing for the ICSSR and the Union of India, respectively.

32. Having raised a preliminary objection to the ICSSR opposing the cause of the petitioners, having earlier espoused it, in its communications to the Ministry, Ms. Jyoti Singh, learned Senior Counsel voiced, as her first submission, the contention that Respondent No. 1 had no role to play, insofar as fixation of scales of the petitioner was concerned. She invited my attention, in this context, to Service Regulation (SR) 4 and SR 20 of the Service Regulations, which read thus:

"**SR 4. Grades and Categories of posts**

(1) The posts under the Council shall be divided according to the pay scales into 6 groups specified in the 1st schedule.

(2) The Council may direct

(i) The creation of any new grade or category of posts;

(ii) The abolishing of any grade or category of posts; or

(iii) The revision of the pay scale of any post except that of Member Secretary and posts carrying a pay of ₹ 2500 and above.

and thereupon the first Schedule shall stand amended in accordance with such direction."

"**SR 20. Scales of pay**

The scales of pay for the posts under the Council shall be as specified in the first Schedule, as amended from time to time."

Asserting that SR 4 continues to retain its above form till date, Ms. Jyoti Singh submits that, in view thereof, the ICSSR exercised absolute autonomy and authority, in respect of creation of posts, abolition of posts as well as revision of pay scales of any post, to the extent that, on a direction being issued by the ICSSR revising the pay scales of any post, or creating or abolishing any post, the First Schedule to the Service Regulations would, *ipso facto*, stand amended in accordance with the said decision.

33. In this context, Ms. Jyoti Singh also drew attention to SR 5 in the Service Regulations, which reads thus:

"**SR 5. Number and Duties of Posts**

> The Sanctioning Authority in relation to any category of posts shall, subject to the direction of any higher authority, have the power
>
> (i) to determine the number of posts in that category;
>
> (ii) to create or abolish any post in that category;
>
> (iii) to determine whether any post created in that category shall be temporary or permanent;
>
> (iv) to specify the period for which a temporary post is created; and
>
> (v) to determine the duties attached to any post in that category,
>
> provided that the creation of abolishing of any post in Group VI shall be made with the prior approval of Government."

Seeking to capitalise on the requirement of "prior approval of Government", as envisioned in SR 5 *supra*, Ms. Singh would seek to contend that it was only in the said circumstances, specifically contemplated by the Regulations, i.e. the circumstance of creation of abolition of a post in Group VI, that the prior approval of the Government was mandatory. In this context, Ms. Singh also points out that, under the First Schedule to the Service Regulations, the posts of Assistant Director, Deputy Director and Director are all in Group V, Group VI being limited to the post of Member-Secretary. In line with the aforementioned stipulation contained in SR 5, Ms. Singh draws attention to SR 6, too, which reads thus:

> "**SR 6. Appointing Authorities**

> Appointment to a post under the Council shall be made –
>
> (i) in the case of a post in Groups I and II, by the Administrative Officer;
>
> (ii) in the case of a post in Groups III and IV, by the Member-Secretary; and
>
> (iii) in the case of a post in Groups V and VI, by the Chairman, provided that appointments to a post in Group VI shall be made with the approval of Government."

Ms. Jyoti Singh also points out that "sanctioning authority" is defined, in clause (m) of SR 3 as meaning

> "(i) in relation to posts in Groups I to IV, the Member-Secretary,
>
> (ii) in relation to posts in Group V, the Administrative Committee of the Council; and
>
> (iii) in relation to posts in Group VI, the Council."

"Council", it may also be noted in this context, is defined, in clause (g) of SR 3 as meaning the ICSSR.

34. The upshot of a combined reading of these provisions, Ms. Jyoti Singh would plead, is that, once the Administrative Committee of the ICSSR took a decision to enhance the pay scales of the posts of Assistant Director, Deputy Director and Director of the ICSSR, the matter ended there, and there could be no question of any prior, or later, Governmental clearance or sanction being necessary to validate such enhancement. The *raison d' etre* for reversing the said enhancement, by issuance of the impugned Office Orders – being the non-approval of the said enhancement by Respondent No. 1 and the direction, of Respondent No. 1, to reverse the same – was, therefore, Ms. Jyoti Singh would seek to submit, completely misguided, and the decision to reverse the said enhancement of pay scales also stood, consequently, vitiated in its entirety.

35. Ms. Jyoti Singh places reliance, in this context, on an order, dated 9th September, 2009, passed by a learned Single Judge of this Court, disposing of WP (C) 5533/2000 (***N. K. Talwar v. I.C.S.S.R.***). The said order reads as under:

> "#R-109,110 & 112
>
> % 09.09.2009
>
> Present: Mr. A.P.S. Gambhir, Advocate for petitioners with petitioners in person.
> Dr. K.D. Prasad with Mr. Vishal Prasad and Mr. D.K. Sinha, Advocates for respondent-Indian Council of Social Science Research
>
> \+ W.P (C) Nos. 5533/2000, 7490/2000 and 975/2001
>
> Today, learned counsel for respondent no. 1 has handed over in Court a supplementary affidavit dated 9 September, 2009. The relevant portion of the said affidavit reads as under:-
>
> > "2. That the then Member Secretary of Indian Council of Social Science Research (Respondent No. 1 herein) Mr. Bhaskar Chattejee in his D.O. letter bearing No.F-15-12/2001 dated 15th June, 2001 addressed to Sri Champak Chatterjee the then Joint Secretary, Department of Secondary and Higher Education, Ministry of HRD, Shastri

Bhawan. New Delhi has taken the following stand on behalf of ICSSR-

"You would no doubt kindly appreciate that the position as it now obtains is that the ICSSR can create, abolish or revise the pay scales of its employees (except that of Member Secretary) as per the ICSSR Service Rules 1970."

A copy of said letter is annexed and marked as Annexure R-1 to this affidavit.

3. The deponent has accordingly through its letter No. 5-38/2000-2001 dated 7.9.2009 instructed Dr. .K. D. Prasad, Advocate who is also the Legal Adviser of Indian Council of Social Science Research to do the needful in view of aforesaid stand of the then Member Secretary of Indian Council of Social Science Research, Mr. Bhaskar Chatterjee which may be treated as the stand of Indian Council of Social Science Research, Respondent No.1.

In view of the aforesaid stand of respondent no. 1, learned counsel for petitioners, Mr. A.P.S. Gambhir, upon instructions of petitioners, does not wish to press the present writ petitions. Accordingly, present writ petitions are dismissed as having become infructuous."

36. Ms. Jyoti Singh would further seek to submit that, even on merits, the petitioners were entitled to pay scales at par with those granted to faculty in the universities, by the UGC. She submits that her clients are professional officers in the ICSSR. She draws attention to the fact that all expert committees, from 1987 to 1995, recommended parity of pay scales, of Assistant directors, Deputy directors and Directors, in the ICSSR, with academic staff in the universities. The Ministry, she would seek to submit, had no reason to differ with the recommendations of the said expert committees. Highlighting the rationale for recommending parity, in pay scales, of the Assistant Directors, Deputy Directors and Directors, in the ICSSR, with the UGC scales granted to lecturers, readers/Assistant Professors and Senior readers/Professors in Central Universities that had adopted the said scales, Ms. Jyoti Singh drew especial attention to Item 6.3 of the Minutes of the 67th Meeting of the ICSSR, held on 10th August, 1992, which reads as under:

> " The Council approved the revised pay scales of the professional staff viz. Assistant Director, Deputy Directors and Directors to bring them at par with the pay scales of lecturers, readers and professors of the central universities.
>
> The Council also approved that the pay scales of the Member-Secretary of the ICSSR should correspond with that of the Vice-Chancellor of the central Universities.
>
> It was decided that the revised pay scales should be made applicable w.e.f. 1.4.1992. It was, however, desired that an exercise should be undertaken to lay down certain norms and procedures for internal assessment of each staff member to be covered in the new grades."

37. Ms. Jyoti Singh also took me through the communication, dated 10th February, 1999 *supra*, from the ICSSR to the Department of Education, Ministry of Human Resource Development, and the rationale provided, in the said communication, for enhancement of the pay scales of Assistant Directors, Deputy Directors and Directors in the ICSSR.

38. Ms. Jyoti Singh also relied on the counter-affidavit of the Union of India, filed in response to the writ petition, in which teaching or research experience is a mandatory requirement for recruitment to the posts of Assistant Director, Deputy Director and Director in the ICSSR.

39. For all these reasons, Ms. Jyoti Singh would seek to submit, the decision, of the ICSSR, to reverse the enhancement of the pay scales of Assistant Director, Deputy Director and Director of the ICSSR, as effected *vide* the Office Order is, which took effect from 29th June, 2000, could not sustain the scrutiny of law.

40. In response to the submissions of Ms. Jyoti Singh, Mr. Amitesh Kumar, arguing on behalf of the ICSSR, would seek to submit that SR 4 only empowered the ICSSR to revise the pay scale of a post. Mr. Amitesh Kumar would seek to submit that the ICSSR had, on its own volition, granted, to the petitioners, all revisions of pay scales to which they were entitled. What the petitioners were seeking, Mr. Amitesh Kumar submits, is enhancement of pay scales, in excess of the revised pay scales already being drawn by them. Such enhancement, he would submit, could only be with Governmental approval. In this context, Mr. Kumar emphasises the fact that, under the General Financial Rules, all finances of the ICSSR came from the Central Government.

41. Mr. Kumar also submits that, as per the Memorandum of Association (MOA) of the ICSSR, amendment of the Service

Regulations could only be with the prior sanction of the Government. He seeks to place reliance on the judgment, of a Division Bench of this Court, in ***U.O.I. v. U.G. C. Class-I Officers Association, 2006 (87) DRT 783 (DB)***.

42. No exception could, therefore, Mr. Kumar would seek to submit, be taken to the decision of the ICSSR to withdraw the decision to grant higher pay scales to the petitioners.

43. Mr. Rajesh Gogna, arguing on behalf of Respondent No. 1, draws my attention to a communication, dated 13th October, 2000, from Respondent No. 1 to the ICSSR, which opines that the ICSSR, "being an organisation fully funded by the Government of India, is not authorised to alter/modify the emolument structure, terms and conditions of service and scales of pay of the posts without the prior approval of the Government of India." The communication goes on to state that, as per instructions of the Government of India, "upgradation of a post effect amounts to creation of a higher post", so that it was "necessary that in all such cases of upgradation, the same procedure as prescribed for creation of posts is observed". Pointing out that, *vide* its letters dated 26th March, 1998 and 30th March, 1998, Respondent No.1 had approved only grant of 5th Pay Commission scales to the officers and staff of the ICSSR, the communication directed that the said approved scales alone should continue, and the orders issued for revision/upgradation of the pay scales of ICSSR employees was required to be withdrawn forthwith, along with consequent recovery of the excess pay granted to the officials as a consequence thereof.

44. Mr. Gogna also draws attention to Office Memorandum (OM), dated 15th October, 1984, issued by the Department of Expenditure, Ministry of Finance, which reads thus:

" No. 9 (4)-E(Coord)/84
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 15th October, 1984

OFFICE MEMORANDUM

Subject: Financial powers of autonomous bodies-restrictions regarding.

The Rules and Bye-laws of autonomous bodies which are fully or partly funded by the Government of India should invariably incorporate restrictive clauses relating to the power of the Governing Bodies of such organization in matters of creation of posts, revision of pay and allowances of their staff and similar establishment expenditure and provide for prior approval of the Central Government in specific cases. It has come to the notice that this has not been done in a number of cases resulting the Governing Bodies of some Autonomous Organisation taking decisions on the above matters which do not conform to the general pattern of the Central Government.

2. With a view to ensuring that the provisions relating to the powers of the Governing Bodies in such matters having financial implications are properly exercised, Ministries/ Departments are requested to take following action:-

(i) A clause may be incorporated in the relevant Rules/Bye-laws/Regulations of the autonomous bodies that proposals relating to emoluments structure i.e. adoption of pay scales, allowance and revision thereof and creation of posts above a specified pay level would need the prior approval of the Govt. of India in consultation with the Ministry of Finance, Department of Expenditure;

(ii) In the case of larger autonomous bodies a suitable clause may be incorporated in the relevant Rules/Bye-Laws/Regulations that a representative of the Ministry of Finance/Integrated Finance Division of the Ministry concerned should be nominated to the Executive Council of the Autonomous Organisation. The choice of the nominee would be made in consultation with the Ministry of Finance; and

(iii) In the autonomous organizations referred to in (ii) above, a provisions would also be made in the Rules/Bye-laws/Regulations that in the event of disagreement between representatives of the Ministry of Finance and the Chairman of the Governing Body of the Autonomous Organisation on the financial matter beyond the delegated powers of the Ministry/Department of the Govt. of India the matter may be referred to the Minister of the Administrative Ministry concerned and the Finance Minister for a decision.

3. Ministries/Departments are requested to take immediate action to incorporate the necessary amendments suggested in the preceding para in the Rules/Bye-laws/Regulations of the Autonomous Organisations under their administrative control under intimation to this Ministry. They are also requested to ensure that before a new autonomous body is formed, the Rules/Bye-laws/Regulations concerning financial matters are finalized in consultation with this Ministry.

Hindi version will follow.

Sd/-

(S.C. Mahalik)
Jt. Secretary to the Govt. of India

To,
All ministries/Departments
(By name to an officer of the rank of Jt. Secretary).

Copy to all Financial Advisers

Implementation of this O.M. may please be watched by them carefully and reported to this Ministry from time to time.

Sd/-

(S.C. Mahalik)
Jt. Secretary to the Govt. of India"

45. To emphasise the extent of Governmental control, over the affairs of the ICSSR, Mr. Gogna relies upon Clauses 6, 7 and 8 of the Memorandum of Association of the ICSSR, which read as under:

> "6. (a) The income and property of the Council, however derived, shall be applied towards the promotion of the objects thereof as set forth in the Memorandum of Association, subject, nevertheless, in respect of the expenditure of grants made by the Government of India, to such limitations as the Government of India may, from time to time, impose.
>
> (b) No portion of the income and property of the Council shall be paid or transferred, directly or indirectly, by way of dividends, bonus or otherwise howsoever by way of profit, to the persons who are or at any time have been members of the Council or to any of them or to any person claiming through them:

Provided that nothing herein contained shall prevent the payment, in good faith, or remuneration to any member or any other persons in return for any services rendered to the Council or for travelling allowances, halting, or other similar charges."

7. The Government of India may appoint one or more persons to review the work and progress of the Council and to hold enquiries into the affairs thereof and to report thereon, in such manner as the Government of India may stipulate; and upon receipt of any such report, the Government of India may take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report and the Council shall be bound to comply with such directions.

8. (a) The Government of India may give directives to the Council in respect of its policies and programmes.

(b) If at any time a difficulty arises in the functioning of the Council because of any lacunae in the Memorandum of Association or in the Rules, or the failure of any of their provisions to operate, the Government of India shall have powers to give directives to resolve the difficulty and such directives shall be binding on the officers and authorities of the Council."

46. Mr. Gogna also highlights Rule 22, the proviso to clause (iii) in Rule 23(b), and clause (a) of Rule 24 of the Rules of the ICSSR, which may be reproduced thus:

"22. The Member-Secretary shall keep a record of the proceedings of the meetings of the council and a copy thereof shall be sent to the Government of India.

23. Regulations:

(b) Without prejudice to the generality of the foregoing provision, such regulations may provide for the following matters:

(iii) the procedure, terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Council;

Provided that the prior approval of the Government of India shall be obtained for the creation of all posts with a salary of Rs.2,500 per month or more and for making appointments to such posts;

24. Subject to the Memorandum of Association, Rules and Regulations, the Council shall have the power:

(a) to appoint all categories of officers and staff for conducting the affairs of the Council, to fix the amount of their remuneration, subject to the budget provision, and to define their duties;"

47. Insofar as equivalence of the requirements for recruitment as Assistant Director, Deputy Director and Director, in the ICSSR, with the conditions governing recruitment to the posts of Lecturer, Reader and Professor in Central Universities, was concerned, Mr. Gogna points out that clearance of the National Eligibility Test (NET), conducted by the Government, was a mandatory pre-requisite for recruitment to the latter posts. Even otherwise, he would seek to submit, there is no equivalence between the RRs, governing recruitment to the posts of Lecturer, Reader and Professor in Central Universities, vis-à-vis recruitment to the posts of Assistant Director, Deputy Director and Director in the ICSSR.

48. Mr. Gogna seeks to contend, in fine, that the reliance, by Ms. Jyoti Singh, on the recommendations made by various Committees, for enhancement of the pay scales of Assistant Director, Deputy Director and Director in the ICSSR, to bring them at par with the UGC pay scales of Lecturer, Reader and Professor in Central Universities, cannot help the petitioner any further, as the said Committees were all constituted by the ICSSR itself.

49. Advancing submissions in rejoinder, Ms. Jyoti Singh would contend, in response to the reliance, by Mr. Gogna, on the communication, dated 13th October, 2000, from Respondent No. 1 to the ICSSR, that the said communication provides no reason for not granting, to her clients, the scales of pay being granted to lecturers, readers and Professors in Central Universities. Regarding the issue of equivalence in qualifications and conditions for recruitment, Ms. Jyoti Singh would submit that the reliance, by Mr. Gogna, on the fulfilment of the NET as a condition for recruitment to the posts of Lecturer, Reader and Professor in Central Universities, is misguided, as the NET is only an eligibility test, and cannot be a basis for discrimination in pay scales.

50. Apropos the judgment of this Court in ***U.G.C. Class I Officers Association (supra)***, on which Mr. Amitesh Kumar places reliance, Ms. Jyoti Singh would submit that the said decision does not lay down any inflexible proposition of law, or any such legal principle as could constitute a valid precedent. Neither, she would submit, can the said judgment militate against the mandate of SR 4.

51. Ms. Jyoti Singh would further seek to rebut the submission, of Mr. Amitesh Kumar, on the question of "revision" of pay scales, and the scope of "revision", by contending that "revision" included any change in the existing state of affairs. She submits that grant of replacement pay scales does not, in any event, require prior approval of the Government, or recourse, by the ICSSR, to SR 4. SR 4, Ms. Singh would seek to submit, applies only where higher scales are being granted to officials of the ICSSR.

52. Written submissions were also filed by learned counsel for both the parties. While the written submissions of the petitioners essentially reiterate the submissions advanced by Ms. Jyoti Singh, learned Senior Counsel, in court, the written submissions filed by Mr. Amitesh Kumar were more elaborate, in content, as compared to the submissions advanced by Mr. Kumar in court. The main contentions advanced, in the written submissions filed by Mr. Amitesh Kumar may broadly be enumerated thus:

(i) Rule 24 of the Rules of the ICSSR permitted the ICSSR to fix the remuneration of its officers and staff, subject to the budget provision, which is dependent and controlled by the grant and funding to be made by Respondent No. 1.

(ii) "Revision" and "upgradation" of the work are, jurisprudentially, different concepts. Reliance has been placed, in this context, on the following definition of "revision of pay scale", as contained in ***State of Kerala v. P. V. Neelakandan Nair, (2005) 5 SCC 561***:

> "…On the other hand, in case of revision, the pay scale is revised which may incidentally result into increment. Rule 60(c) does not refer to pay revision which is conceptually different from annual increments within prescribed pay scale."

As against this, it is contended that upgradation of pay scale may involve conferment of financial benefits by providing higher pay scale, which may not be the actual replacement of the pre-existing pre-revised pay scale, which the employee was enjoying.

(iii) The core pay scales, for various posts in the ICSSR, was prescribed in the First Schedule to the Service Regulations. The employees of the ICSSR were being extended the said pay scales. As and when Respondent No. 1 revised any particular pay scale or grade, in terms of the recommendations of the Pay Commission, revised pay scale was adopted by the ICSSR and, in terms of Regulation 4(2)(3) of the Service Regulations, the ICSSR directed grant of such revised pay scale, vis-à-vis the pre-revised pay scale referral to the core pay scale contained in the First Schedule to the Service Regulations. In such cases, no amendment of the Regulation was required, as the First Schedule stood automatically amended in terms of the directions of the ICSSR.

(iv) Rule 209(6)(iv)(a) of the General Financial Rules made by Respondent No. 1, which bound Respondent No. 1 as well as the ICSSR, as an institution which was entirely funded by grants given by Respondent No. 1, read thus:

> "All grantee institutions or organisations which receive more than 50% of the recurring expenditure in the form of grants-in-need, should ordinarily formulate terms and conditions of service of their employees which are, by and large, not higher than those applicable to similar categories of employees in Central Government. In exceptional cases relaxation may be made in consultation with the Ministry of Finance."

In this context, the written submissions filed by the respondent again rely on the judgment of this Court in ***U.G.C. Class I Officers Association (supra).***

(v) On merits, too, the petitioners could not be said to have made out a case for parity of pay with lecturers, readers/Assistant Professors and Professors in Central Universities.

For all these reasons, avers the written submissions of the ICSSR, the writ petition deserves to be dismissed.

<u>Analysis</u>

53. The controversy in issue, seen in the backdrop of the rival stances taken before me, throws up, essentially, two questions for determination; firstly, whether the impugned Office Orders, dated 30th November, 2000, issued to the petitioners by the ICSSR, revoking, with retrospective effect, the upgraded pay scales granted to them *vide* the earlier Office Order dated 29th June, 2000 *supra*, could sustain in law; secondly, in case the answer to the first question is in the affirmative, whether the petitioners would, independently, be entitled to parity of pay with lecturers, readers/Assistant Professors and Professors in Central Universities, as fixed by the UGC. In case this Court finds that the impugned Office Orders, withdrawing the enhanced pay, granted to the petitioners, were unsustainable, for want of jurisdiction for any other reason, the inevitable sequitur would be that the said Office Orders would require to be set aside, the consequence being that the petitioners would become entitled to the enhanced/upgraded pay scales, as earlier granted to them *vide* Office Order dated 29th June, 2000 *supra* of the ICSSR. In that event, the necessity of examining, independently, whether Assistant Directors, Deputy Directors and Directors, in the ICSSR, would be entitled to parity of pay with lecturers, readers and Professors in the Central Universities, would stand obviated.

54. The determination of the first question, as set out herein above, would require an analysis of the merits of the primary contention advanced by Ms. Jyoti Singh, learned Senior Counsel appearing for the petitioners, to the effect that the ICSSR enjoyed absolute autonomy in the matter of fixation of pay scales of its officials, including enhancement and upgradation thereof and that, therefore, neither could Respondent No. 1 direct reversal of the said upgraded pay scales, nor could the ICSSR reverse the upgraded pay scales, in obedience to such directive of Respondent No. 1.

55. For this, it would be necessary to examine the MoA, as well as the Rules and Regulations governing the ICSSR, especially regarding the power to enhance/upgraded the pay scales of its officials. In this connection, this Court deems it appropriate to clarify, even at this juncture, that the determination of this question could not depend on the order, dated 9th September, 2009 *supra*, passed by this Court in ***N. K. Talwar (supra)***, irrespective of the emphasis placed, on the said order, by Ms. Jyoti Singh. The issue is essentially one of law, to be determined by reference to the relevant provisions, and this Court cannot shirk from its responsibility in examining the issue, by merely placing reliance on the affidavit filed by the ICSSR before this Court in the said case. It is trite that there can be no concession on a point of law, and that any such concession, even if granted, cannot act as a precedent for future cases.

56. The ICSSR is a Society, registered under the Societies Registration Act, 1860, and is governed by its MoA and Rules, which constitute an integrated document, bearing the title "Memorandum of Association and Rules". Sub-clause (a) of Clause 6 of the MoA, governing the ICSSR, stipulates thus:

> "6(a). The income and property of the Council, however derived, shall be applied towards the promotion of the objects thereof as set forth in the Memorandum of Association, subject, nevertheless, in respect of the expenditure of grants made by the Government of India,

to such limitations as the Government of India may, from time to time, impose."

It is open, therefore, for the Government of India, i.e. for Respondent No. 1, to impose limitations, in respect of expenditure of grants made by it to the ICSSR.

57. Clause 8 of the MoA, additionally, stipulates thus:

> "8.(a) The Government of India *may give directives to the Council in respect of its policies and programmes*.
>
> (b) If at any time difficulty arises in the functioning of the Council because of any lacunae in the Memorandum of Association order and the Rules, or the failure of any of their provisions to operate, *the Government of India shall have powers to give directives to resolve the difficulty and such directive shall be binding on the officers and authorities of the Council*."

58. Read in conjunction, therefore, Clauses 6(a) and 8 of the MoA, governing the ICSSR, empower Respondent No. 1 to (i) impose limitations in respect of expenditure of grants made by it to the ICSSR, (ii) give directives to the ICSSR in respect of its policies and programmes and (iii) give directives, to the ICSSR, to resolve any difficulty which may arise in the functioning of the ICSSR because of any lacunae in the MoA or the Rules, or the failure of any of their provisions to operate, in which event such directives would be binding on the ICSSR.

59. Clause 10 of the MoA of the ICSSR states that "a copy of the Rules of the Council, certified to be a correct copy by 3 members of the Administrative Committee, is filed along with the Memorandum of Association". Though this Clause is none too happily worded, the intention behind it is, apparently, to treat the Rules as part of the MoA, and as equally binding on the ICSSR and it's functioning.

60. The Service Regulations expressly recite that they were "approved by the Government of India vide Ministry of Education and Social Welfare letter No. 12-34/76 PLG II, 6 December 1976".

61. There is, unquestionably, substance in the submission, of Ms. Jyoti Singh, that SR 4 empowers the ICSSR to direct "revision of the pay scale of any post except that of Member-Secretary and posts carrying up a of ₹ 2000/– and above", and further ordains that, upon such direction being issued, "the First Schedule (to the Service Regulations) shall stand amended in accordance with such direction". One may, in juxtaposition with this Regulation, also refer to SR 20, which deals with "Scales of pay" and reads thus:

> "**SR 20. Scales of Pay**
>
> The scales of pay for the posts under the Council shall be as specified in the first Schedule, as amended from time to time."

A conjoint reading of SR 4 and SR 20 would, therefore, seem to invite the inescapable inference that, once the ICSSR directs division of the pay scale of any post (except that of Member-Secretary – the only post, in the scale of ₹ 2000/–, or above, as it existed on the date of framing of the Service Regulations being that of Member-Secretary), the First Schedule to the Service Regulations would stand accordingly amended, and the holder/holders of such post/posts would, *ipso facto*, become entitled to such “revised” pay.

62. Mr. Amitesh Kumar has sought to contend that there is a distinction between upgradation of the pay scale of a post and revision thereof. To my mind, in the facts of the present case, this is a distinction without a difference. The extremely limited manner in which Mr. Kumar would seek to interpret the expression “admission”, in my view, would fly in the face of SR 4(2) of the Service Regulations, and reduce the said Regulation to a redundancy, as has rightly been submitted by Ms. Jyoti Singh, learned Senior Counsel. Grant of replacement scales merely follows from recommendations of Pay Commissions, and does not involve any conscious exercise of “revision” of pay scales. I am also unable to see how the definition of “revision of pay scale”, as conceptualised by the Supreme Court in its judgment in ***P. V. Neelakandan Nair (supra)***, aids the respondent. The said definition, which stands reproduced in para 52 *ibid*, is of no assistance, whatsoever, in interpreting the expression “revision”, as used in SR 4(2)(iii) of the Service Regulations.

63. The ambit of the expression “revision”, used in the context of wages, came up for consideration before the Supreme Court in ***Workmen of Indian Turpentine & Rosin Co. v. Indian Turpentine & Rosin Co. Ltd, AIR 1961 SC 1365***. The appeal before the Supreme Court in that case, arose from an award, made by the Industrial Tribunal, the term of reference, with respect to which, was worded thus:

> "Whether the existing rates of basic wages given to one skilled, semiskilled, skilled and highly skilled workmen employed in this concern need any revision? If so, with what details and from which date?"

The appellant-workmen before the Supreme Court claimed that, adjudicating the afore-extracted term of reference, the Industrial Tribunal was empowered to fix the scales and grades of different categories of workers. The Industrial Tribunal, however, opined that the reference, as made, did not authorise it to fix any scales of rates of wages but only related to increase over the existing minimum wages. Before the Supreme Court, the workman contended, *inter alia*, that the Tribunal was wrong in thinking that the reference, as made, did not authorise it to fix timescales of wages. (Other issues, raised before the Supreme Court, are not relevant for the purposes of the present case, and reference thereto is, therefore, eschewed.) The Supreme Court, adjudicating the controversy, first relied on its earlier decision in ***Express Newspapers Ltd v. U.O.I., (1959) SCR 12***, which included, within the ambit of the expression "rates of wages", scales of wages as well. Paras 6 and 7 of the report read thus:

> "**6.** In our opinion, there is no substance in this argument. *If the dispute was only on the question whether the present rates should be increased it would not have been necessary to use the word "revision" and it will be more proper to say whether the existing rates need to be raised. There were the existing rates of basic wages. Assuming they were not time scale wages there is no reason to think that the dispute could only be whether these present rates of wages should be raised. The dispute could very well be whether the existing rates should be substituted by time scale rates. The word "revision" used in the reference aptly includes this question. Whether in the peculiar facts and*

circumstances of the case, a time scale should be introduced or not is for the Tribunal to decide; but there is no warrant for saying that the words used in the reference ... "whether the existing rates of basic wages ... need any revision ..." do not authorise the Tribunal to consider the question at all.

7. Besides, it is conceded that under the present system of wages workmen in the same categories draw different wages and that this disparity is due partly to their respective lengths of service. It is true that the increments in wages due to the length of service is at present at the sweet will and pleasure of the respondent; but even so there is a scale of wages with increments in operation at present. *Its revision would mean putting the said wage scale on a rational basis, and that is what the appellants demand.* In our opinion, such a demand is clearly included in the terms of reference."

(Emphasis supplied)

64. Applying the principles enunciated by the Supreme Court in the afore-extracted passages from ***Workmen of Indian Turpentine & Rosin Co. (supra)***, it is clear that the expression "revision", as contained in SR 4(2)(iii) cannot be interpreted in as narrow a manner as that canvassed by Mr. Amitesh Kumar. Fixing new scales of pay, in respect of officers and staff employed in the ICSSR would, in the opinion of this Court, therefore, legitimately come within the ambit of the expression "revision", as employed in the said clause.

65. If one were, therefore, to read the Service Regulations in isolation, it would certainly appear that Respondent No. 1 has no role to play in the matter of fixation of pay scales of officers and staff of the ICSSR, or in the amendment of the First Schedule to the Service

Regulations, which sets out the various posts in the ICSSR, and the scales applicable thereto. All that is required, as per SR 4, would be a decision by the ICSSR to revise the pay scales of its officers/staff, and the pay scales would, thereby, stand revised.

66. The chromosomal identity of the Service Regulations is, however, to be found in Rule 23 of the Rules of the ICSSR. For ready reference, clauses (a) and (b), with sub- clause (iii) of the latter clause, of Rule 23, may be reproduced thus:

> **"23. Regulations:**
>
> (a) *With the previous approval of the Government of India*, the Council shall have power to frame amendment Regulations, *not inconsistent with the Memorandum of Association and these Rules*, for the administration and management of its affairs.
>
> (b) Without prejudice to the generality of the foregoing provision, such regulations may provide for the following matters:
>
> > (iii) the procedure, terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Council;
> >
> > Provided that the prior approval of the Government of India shall be obtained for the creation of all posts with the salary of ₹ 2500 per month or more and for making appointments to such posts;"

67. Reference may also be invited, in this context, to clause (a) of Rule 24, which reads as under:

> "**24.** *Subject to the Memorandum of Association, Rules and Regulations*, the Council shall have the power:
>
> > (a) to appoint all categories of officers and staff for conducting the affairs of the Council, *to fix the amount of their remuneration, subject to the budget provision*, and to define their duties;"

68. It is clear, *ex facie*, that the Rules do not confer, on the ICSSR, any unbridled power to tinker with the pay scales, emoluments, or remuneration, of its officers and staff. Sub-rule (a) of Rule 23 clearly stipulates that the power to frame or amend the Regulations, for the administration and management of its affairs, vests in the ICSSR, but has to be exercised (i) which the previous approval of Respondent No. 1 and (ii) in a manner not inconsistent with the MoA and the Rules. The expression "affairs" is comprehensive and all-encompassing, and would, in the opinion of this Court, certainly include disbursement of pay to the officials and staff of the ICSSR. Equivalently and per corollary, the expression "administration and management of his affairs" would include fixation of pay scales and emoluments of the officers and the staff of the ICSSR. SR 4 itself stipulates that, on direction being made, by the ICSSR, for revision of the pay scale of any of its posts, the First Schedule shall start amended in accordance with such direction. This stipulation directly invites the application of Rule 23, which permits amendment of the Service Regulations only which the previous approval of Respondent No. 1. It is, therefore, in the opinion of this Court, not permissible to read SR 4, or even SR 20, of the Service Regulations, in isolation. Being creatures of Rule 23 of the Rules, these Service Regulations have, in their application, to abide, and be bound, by the constrictions contained in Rule 23. If any need for further clarification on this issue were required, it is to be found in clause (iii) of sub- rule (b) of Rule 23, which makes specific reference to "emoluments … of the officers and staff of the Council", as well as in Rule 24, which empowers the ICSSR to, inter alia, "fix the amount of… remuneration" of "all categories of officers and staff", subject, however, to the MoA, Rules and Regulations.

69. In view of the above position which, in the opinion of this Court, unambiguously flows from a conjoint reading of the Rules and the Service Regulations, the necessity of referring to the other provisions of the Rules, to which Mr. Amitesh Kumar sought to invite attention, stands obviated.

70. Mr. Amitesh Kumar also sought to place reliance on the judgment of the Division Bench of this Court, speaking through Markandeya Katju, C.J. (as he then was) in ***U.G.C. Class-I Officers Association (supra)***. The situation that obtained, in the said case, bears striking similarities to that which obtains in the present. In the said case, the UGC had taken a decision, on 12th December, 1995, to revise the pay scales of its Joint Secretary and Additional Secretary, from ₹ 4500-5700/– to ₹ 5100-6300/–, and from ₹ 5100-5700/– to ₹ 5900-6700/–, respectively. Subsequently, however, the UGC refused to give effect to the said order on the ground that approval of Respondent No. 1 had not been obtained,. This provoked the respondent-Association (before the Division Bench) to move this

Court, under Article 226 of the Constitution of India, for issuance of a direction, to the UGC, to implement its decision dated 12th December, 1995 *supra*. The learned Single Judge allowed the writ petition, whereagainst the Union of India moved the Division Bench by way of LPA, which stands decided by the aforesaid judgment.

71. The contentions of the respondent-Association (before the Division Bench), as recorded in the following passages from the judgment, merit reproduction:

> "**10.** The respondents have relied on Section 10 of the UGC Act which states:
>
> > "***Staff of the Commission***.—Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint a Secretary and such other employees as it may think necessary for the efficient performance of its functions under this Act and the terms and conditions of service of the employees shall be such as may be determined by the Commission."
>
> **11.** It is alleged in the petition that the Central Government has framed rules in 1958 and 1983 but *none of these rules prescribe that the matter regarding revision of pay scales has to be referred to the government for its approval.*
>
> **12.** The petitioner has also relied on Section 26(1)(c) of the UGC Act *which empowers the Commission to make regulations specifying the terms and conditions of the employees appointed by the commission.*
>
> **13.** The respondent (petitioner) contended that *it is for the Commission to decide the terms and conditions of service including pay scales. The Commission being an autonomous body its decision dated 12-12-1995 has to be*

implemented. In para 7 of the petition it is alleged that the Commission before taking the decision had duly taken note of the fact that the pay scale of the Secretary and Financial Advisor of the Commission has been revised from 1-1-1986, as also other factors highlighted by the petitioner from time to time. In fact it was thought appropriate to agree to the demand of the petitioner for higher pay scale to its officers and this does not call for any interference."

(Emphasis supplied)

72. As against this, the appellant, before the Division Bench, contended thus:

"**15.** A counter affidavit was filed by the Central Government, Union of India in the writ petition. In para 1 of the preliminary objections therein it was stated that the UGC, although an autonomous body constituted under the UGC Act, 1956 *has no authority to make or change the service conditions of its employees on its own without the prior approval of the government*. The respondents have relied on Section 26 (2) of the UGC Act which states:

"No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) or clause (h) or clause (i) or clause (j) of sub-section (1) *except with the previous approval of the Central Government*."

16. *Thus it is alleged that the Commission has no authority either to frame regulations specifying the terms and conditions of its employees or to change the pay scales without prior approval of the Central Government*. This is particularly so because UGC is entirely financed by the Central Government.

17. There is no dispute that the UGC did not obtain prior approval of the Central Government before revising the pay scales by its order dated 12-12-1995.

18. The Central Government has also relied on Section 25 of the Act which states:

> "(i) The Central Government may, by notification in the Official Gazette, *make rules to carry out the purposes of this Act.*
>
> (ii) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:*
>
> > (a) *the terms and conditions of service of employees appointed by the commission."*

19. Thus it is contended by learned counsel for the Central Government that *both Sections 25 and 26 make it clear that the Central Government alone can make rules specifying the terms and conditions of service of its employees, or at least its approval has to be obtained by the Commission*.

20. The Commission has no independent source of income and all its expenditure is borne by the Central Government. Hence also it is alleged that the approval of the Central Government has to be taken before incurring any financial liability.

21. It is also alleged that *the terms and conditions of service of the Central Government employees cannot be looked into for claiming parity for employees of the University or Commission as they are all performing different kinds of duties. The members of the association are not performing duties of lecturers/readers/Assistant Professors or professors but they are performing administrative duties. Hence, they cannot claim parity with the professors/readers/Assistant Professors/lecturers or scientists in the universities*.

22. The members of the association are getting pay scales as per the recommendations of 4th Central Pay

Commission which was approved for them by the Central Government. Until the Central Government approves payment of pay scales of the 5th Central Pay Commission for them they cannot get those pay scales. The decision of the commission is not binding on the Central Government."

(Emphasis supplied)

73. It is obvious, requiring no unnecessary elaboration, that a reading of the above passages from the judgment of this Court in ***U.G.C. Class-I Officers Association (supra)*** serves to effectively underscore the similarity, not only between the controversy in that case, vis-à-vis that which arises in the present matter, but also in the rival submissions made before this Court in that case, as compared to this.

74. Cogitating on the said submissions, the Division Bench of this Court proceeded to hold as under:

"**23.** On the facts of the case we are of the opinion that this appeal has to be allowed.

24. There is no dispute that the UGC did not take the approval of the Central Government for its decision dated 12.12.1995.

25. *A perusal of the various provisions of the UGC Act which have been referred to above clearly show that it is the Central Government which frames the terms and conditions of the service of employees of the Commission vide Section 25(1)(2)(d) or at least its approval is required vide section 26(2) particularly when there are financial implications*.

26. It may be noted that the entire funds of the UGC come from the Central Government. *Hence it is only* *logical that before taking any decision which has financial implications the approval of the Central Government has to be taken by the UGC. If we take a different interpretation then it will follow that the UGC can raise the salaries and allowances of its members and employees even to exorbitant levels which the Central Government may not be in a financial position to bear. Clearly such an interpretation which results in absurdity is to be eschewed.*

27. *Hence we are in agreement with the counsel for the Central Government that the decision of the UGC dated 12.12.1995 would remain ineffective until it has been approved by the Central Government, and no direction can be issued by the Court to the Central Government to approve the aforesaid decision. It is entirely in the discretion of the Central Government to approve the decision of the Commission dated 12.12.1995 or not to do so, and no mandamus can be issued by the court as it is purely a discretionary matter.*

28. It may be noted that the Central Government had made rules known as UGC (Terms and Conditions of Service of Employees) 1983 in which various posts were mentioned along with their pay scales. Hence it follows that *if the pay scale is to be revised by the Commission it has to take approval of the Central Government as the same is subject to the general financial limit of the budget expected by the Government of India for UGC. It follows that any decision of the UGC relating to pay scales which has an effect on the grant made by the Central Government must have prior approval/sanction of the Central Government. It may be noted that the functions and duties of the Additional Secretaries and Joint Secretaries of UGC are not similar to those of Additional Secretary and Joint Secretary in the Central Government. They are also not similar to teaching posts in the universities. Hence there can be no question of parity in the pay scales.*

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> **31.** *We fully agree with the submission of the learned counsel of the Central Government that the UGC has no power to take a unilateral decision regarding pay scales of its officers as such view would mean that the Commission need not even bother about the financial capacity of the Central Government to pay a higher pay scale. After all the funds have to come from the Central Government* and hence an interpretation should be taken of the Act and Rules which is practical."
>
> (Emphasis supplied)

75. While considering the applicability of the above decision of the Division Bench of this Court in ***U.G.C. Class-I Officers Association (supra)***, to the facts of the present case, the three submissions, advanced by learned Senior Counsel Ms. Jyoti Singh, in response to the reliance, by Mr. Amitesh Kumar on the said decision, deserved to be noted.

76. The first submission, of Ms. Jyoti Singh, was that the aforesaid decision of this Court in ***U.G.C. Class-I Officers Association (supra)*** cannot be said to be laying down any definitive legal principle, as would serve as a precedent for future cases. This submission is, apparently, founded on the caveat, contained in para 23 of the said decision, to the effect that it was being rendered "on the facts of this case". I am of the opinion that this fact, by itself, cannot divest the judgment, rendered by a Division Bench of this Court and, therefore, binding on me, of its precedential value. Every case is decided on its facts, and no Court can decide the matter *de hors* the facts before it. A mere mention, in the judgment, to the effect that it was being passed on the facts before the Court is, therefore, merely stating the obvious, and does not, in any manner, diminish, far less denude, the judgment of its value as a precedent for future cases especially where the facts are, as stated in paras 70 and 73 (supra), "strikingly similar". No doubt, if the Court, while rendering the judgment, were to specify that the judgment was being rendered keeping in mind the peculiar facts before the Court, or were to enter an unequivocal disclaimer, to the effect that the judgment would not be treated as a precedent for future cases, the legal position may be different. No such mention, or disclaimer, finds place in the judgment of this Court in ***U.G.C. Class-I Officers Association (supra)***. The judgment is reasoned, and proceeds on certain fundamental principles. It cannot, therefore, be said to be lacking in precedential value.

77. The second submission of Ms. Jyoti Singh, apropos the judgment of this Court in ***U.G.C. Class-I Officers Association (supra)***, was that it could not efface the effect of SR 4. I have already held, hereinabove, that SR 4 cannot be read in isolation, but has to be read in the light of Rules 23 and 24 of the Rules governing the ICSSR. Though the judgment of this Court in ***U.G.C. Class-I Officers Association (supra)*** does not expressly reproduce all the provisions that apply to the said case, a reading of the passages, from the said decision, as extracted hereinabove, would leave no manner of doubt that, in the said case, too, the respondent-Association specifically urged that the applicable provisions, which empowered the UGC to revise the pay scales of its officers, did not contemplate obtaining of any approval, by the Government of India, prior thereto. The provisions of the UGC Act, which stand reproduced in the said decision, too, do so indicate. The statutory scenario available before this Court in ***U.G.C. Class-I Officers Association (supra)*** was, therefore, to all intents and purposes, similar to that which obtains in the present case, in the form of Rules 23 and 24 of the Rules of the ICSSR, vis-à-vis SR 4 and SR 20 of the Service Regulations. For this reason, too, the existence of SR 4, in the present case, cannot be used as a ground to wish away the applicability of the judgment of this Court in ***U.G.C. Class-I Officers Association (supra)***.

78. Ms. Jyoti Singh chose, thirdly, to draw the attention of this Court to Rule 39 of the Rules of the ICSSR, according to which the funds of the ICSSR consist of (a) grants made by Respondent No. 1, (b) contributions from other sources, (c) income from the assets of the ICSSR and (d) receipts of the ICSSR from other sources. In view of this Rule, the assertion, in the written submissions of the ICSSR, to the effect that the ICSSR was entirely funded by grants from Respondent No. 1, does not appear to be correct. This single distinction, however, in my view, cannot erode, to any substantial degree, the applicability, to the present case, of the principles enunciated in ***U.G.C. Class-I Officers Association (supra)***. Annexed, to the counter-affidavit of Respondent No. 1, is a letter, dated 26th March, 1998, from Respondent No. 1 to the ICSSR, in which it is categorically stated thus:

> "10% of the additionality on account of pay revision will be met by the council through saving under various Heads and another 10% by generation of additional resources. Government's liability would therefore only be 80%."

Even if, therefore, *arguendo*, one were to assume that the ICSSR is not entirely funded by Government grants, a substantial portion of its revenue resource comes from Respondent No. 1. Applying the reasoning contained in the judgment of the Division Bench of this Court in ***U.G.C. Class-I Officers Association (supra)***, therefore, any enhancement of the pay scales of officers and staff of the ICSSR, before implementation, would necessarily require the approval of Respondent No. 1.

79. As has already been observed hereinabove, even de hors the decision in ***U.G.C. Class-I Officers Association (supra)***, this legal position clearly emanates from a reading of Rules 23 and 24 of the Rules of the ICSSR, in conjunction with SR 4(2)(b).

80. The first submission of the petitioner, to the effect that the withdrawal, by the ICSSR, of its earlier orders, enhancing the pay scale of the petitioners, by the impugned Office Orders dated 30th November, 2000, was unjustified, as the ICSSR at the absolute authority to increase/enhance the pay scales of its officers and staff, and did not require the approval of Respondent No. 1 therefor has, consequently, to be rejected.

81. On merits, too, I am of the opinion that the petitioners have not been able to make out any case for grant, to them, of the pay scales granted by the UGC to lecturers, readers/Assistant Professors and Professors in Central Universities. Seeking to equate the petitioners, with these officers, would be equating chalk with cheese. The mere fact that the petitioners may, at one point of time, have been drawing scales equivalent to those drawn by lecturers, readers/Assistant Professors and Professors in Central Universities, cannot create a right, in the petitioners' favour, to draw the said scales in perpetuity. Fixation of pay scales is an issue which, ordinarily, has to be left to the discretion of the executive, and courts are ill-equipped to rule thereon. It is hardly necessary for this Court to expound on the differences between Assistant Directors, Deputy Directors and Directors in the ICSSR, as compared to lecturers, readers/Assistant Professors and Professors in Central Universities. The onus was on the petitioners, if they so chose, to establish, with adequate evidence and material, fulfilment of all the requisite conditions which would entitle them to claim parity with lecturers, readers/Assistant Professors and Professors in Central Universities. No such effort has been made in the writ petition. That apart, even at a plain glance, the nature of duties performed by the petitioners can hardly be equated with the duties of lecturers, readers/Assistant Professors or Professors in Central Universities, the duties of the officials in the ICSSR being essentially executive and administrative in nature, whereas the duties rendered by lecturers, readers/Assistant Professors and Professors in Central Universities are fundamentally academic. Even if, *arguendo*, one were to assume that there was some degree of overlap between the duties rendered by the two sets of officers, they cannot be said to be discharging "equal work", so as to invoke the "equal pay for equal work" doctrine. A glance at the qualifications and eligibility required for recruitment to Assistant Directors, Deputy Directors and Directors in the ICSSR, vis-à-vis those required for recruitment as lecturers, readers/Assistant Professors and Professors in Central Universities, also discloses that they are different. Neither in the matter of nature of duties, nor on the issue of essential qualifications for recruitment, therefore, can any equivalence be said to exist, between the officials in the ICSSR and the officials of the Central Universities. So far as the law is concerned, there is wealth of authority on the issue of parity of pay, and one need refer only to the following passages from the recent judgment of the Supreme Court in ***Punjab State Electricity Board v. Thana Singh, (2019) 4 SCC 113***, to drive home the point:

> "**10.** It is fairly well settled that <u>equation of pay scales must be left to the Government and on the decision of the experts and the Court should not interfere with it</u>. Observing that equation of pay scales of posts must be left to the Government and the experts, in ***SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192*** , this Court held as under: (SCC p. 133, para 26)
>
>> "26. In ***Union of India v. S.L. Dutta, (1991) 1 SCC 505 : 1991 SCC (L&S) 406, Union of India v. N.Y. Apte, (1998) 6 SCC 741 : 1998 SCC (L&S) 1673, State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71 and Kshetriya Kisan Gramin Bank v. D.B. Sharma, (2001) 1 SCC 353 : 2001 SCC (L&S) 1000***, this Court held that the <u>determination that two posts are equal or not, is a job of the Expert Committee and the court should not interfere with it unless the decision of the Committee is found to be unreasonable or arbitrary or made on extraneous considerations. More so, it is an executive function to fix the service conditions, etc. and lies within the exclusive domain of the rule-making authority</u>. (See also ***T. Venkateswarulu v. Tirumala***

Tirupathi Devasthanams, (2009) 1 SCC 546 : (2009) 1 SCC (L&S) 202.)"

11. In ***S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897***, observing that the grant of pay scales is a purely executive function and the court should not interfere with the same, this Court held as under: (SCC pp. 292-94, paras 33 & 35)

> "33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide ***Indian Drugs & Pharmaceuticals Ltd. v. Workmen, (2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270*** .
>
> ***
>
> 35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay)."
>
> (emphasis in original)

12. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, this Court, in ***SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192***, held as under: (SCC pp. 133-34, para 30)

"*30.* … the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties."

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15. For considering the equation of posts, the following factors had been held to be determinative:

1. The nature and duties of a post;

2. The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

3. The minimum qualifications, if any, prescribed for recruitment to the post; and

4. The salary of the post (vide ***Union of India v. P.K. Roy, AIR 1968 SC 850***).

16. After referring to ***P. K. Roy case [Union of India v. P. K. Roy, AIR 1968 SC 850***], this Court, in **SAIL**, held as under: (***SAIL v. Dibyendu***

Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192] , SCC p. 132, para 25)

> "25. In ***State of Maharashtra v. Chandrakant Anant Kulkarni, (1981) 4 SCC 130 : 1981 SCC (L&S) 562*** and ***L.N. Mithila University v. Dayanand Jha, (1986) 3 SCC 7 : 1986 SCC (L&S) 378***, a similar view has been reiterated observing that <u>equal status and nature and responsibilities of the duties attached to the two posts have to be taken into consideration for equivalence of the post</u>. Similar view has been reiterated in ***E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165*** and ***Rooplal v. Lt. Governor, (2000) 1 SCC 644 : 2000 SCC (L&S) 213***, wherein this Court following the earlier judgment in ***Union of India v. P.K. Roy, AIR 1968 SC 850*** held that the salary of the post alone may not be a determining factor, the other three criteria should also be fulfilled."

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19. <u>The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales</u>. After referring to a number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in **SAIL**, held as under: (SCC p. 131, para 22)

> "22. <u>It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of 'equal pay for equal work' as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who</u>

are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is *wholesome/wholesale identity between the holders of two posts*. The burden of establishing right and parity in employment is only on the person claiming such right. (Vide ***U.P. State Sugar Corpn. Ltd. v. Sant Raj Singh, (2006) 9 SCC 82 : 2006 SCC (L&S) 1610, Union of India v. Mahajabeen Akhtar, (2008) 1 SCC 368 : (2008) 1 SCC (L&S) 183, Union of India v. Dineshan K.K., (2008) 1 SCC 586 : (2008) 1 SCC (L&S) 248] , Union of India v. Hiranmoy Sen, (2008) 1 SCC 630 : (2008) 1 SCC (L&S) 271, Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943, U.P. SEB v. Aziz Ahmad, (2009) 2 SCC 606 : (2009) 1 SCC (L&S) 418*** and ***State of M.P. v. Ramesh Chandra Bajpai, (2009) 13 SCC 635 : (2010) 1 SCC (L&S) 287.***)"

(emphasis in original)

20. Burden of establishing parity in pay scale and employment is on the person claiming such right. There were neither pleadings nor any material produced by the respondents to prove that the nature of work performed by the Sub Fire Officers is similar with that of the Head Clerks and the Internal Auditors to claim parity of pay scale. As pointed out earlier, the burden lies upon the party who claims parity of pay scale to prove similarity in duties and responsibilities. In the writ petition, the respondents have only claimed parity of pay scale with those of the employees working under the Punjab Government which was not accepted by the learned Single Judge. Determination of parity or disparity in duties and responsibilities is a complex issue and the same should be left to the expert body. When the expert body considered revision of pay for various posts, it did not revise the pay scale of Sub Fire Officers. When the expert body has taken such a view, it is not for the courts to substitute its views and interfere with the same and take a different view.

21. As pointed out earlier, though the Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors were earlier placed in the same group viz. Group XII; but educational qualifications requisite for these posts and mode of recruitment are different. Likewise, there is no similarity in the work performed by the employees on those posts. Only in cases of complete similarity in the nature of work, duties, responsibilities and promotional channels, parity of pay scale can be claimed. Merely on the ground that Sub Fire Officers are categorised in Group XII along with Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors cannot be a ground for seeking parity of pay scale. As submitted by the learned Senior Counsel for the appellant Board, the nature of work, duties, responsibilities and initial qualification for recruitment of each post are entirely different as all these posts belong to different cadre.

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26. The respondents have not produced any material to show that there is any similarity/identity between the posts of Sub Fire Officers and the Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors in terms of the nature of duties, responsibilities, qualifications and mode of recruitment, etc. to apply the principle of parity of pay scale. The learned Single Judge did not keep in view that the nature of duties and responsibilities performed by the Sub Fire Officers are different and parity cannot be claimed merely on the ground that they are categorised in one group. The judgment [***Thana Singh v. Punjab SEB, 2010 SCC OnLine P&H 877***] of the learned Single Judge and the impugned judgment [***Punjab SEB v. Thana Singh, 2010***

> ***SCC OnLine P&H 9060***] of the Division Bench cannot be sustained and are liable to be set aside."
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> (Underscoring supplied)

82. It is also trite that the mere fact that, in the past, the two sets of posts may have been drawing the same pay, or in the same scale, does not create a right, in favour of the holders/holders of either of the posts, to claim parity of pay in perpetuity for the future. (Refer ***Delhi Transport Corporation Security Staff Union v. D.T.C., (2018) 16 SCC 619***)

83. On merits, too, therefore, it cannot be said that the petitioners have a legally enforceable right to claim the scales fixed by the UGC for lecturers, readers/Assistant Professors or Professors in Central Universities.

<u>Conclusion</u>

84. In view of the above discussion, it cannot be said that, in reversing the decision to enhance the pay scales of Assistant Directors, Deputy Directors and Directors in its organisation, the ICSSR committed any illegality, as would merit interference, by this Court, in exercise of the extraordinary jurisdiction vested in it by Article 226 of the Constitution of India. Equally, it cannot be said that the petitioners have made out a case for parity of pay with lecturers, readers/Assistant Professors or Professors in Central Universities, or for grant, to them, of the pay scales fixed by the UGC in respect of such officers.

85. Resultantly, the writ petition has necessarily to fail. It is accordingly dismissed, with no orders as to costs.

C. HARI SHANKAR, J

JULY 01, 2019/HJ