

\$~

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

+ W.P. (C) 8584/2015

DR. VARSHA SHARMA

..... Petitioner

Through: Mr. Shanker Raju and Mr. Nilansh
Gaur, Advs.

versus

MINISTRY OF HUMAN RESOURCES DEVELOPMENT

& ORS

..... Respondents

Through: Mr. Kamal Kant Jha, Sr. Panel
Counsel/UOI with Mr. Krishna
Kumar, Mr. Siddharth Jha and Mr.
Prabhakar Thakur, Advs.
Mr. Mohinder J.S. Rupal, Mr. Prang
Newmai and Ms. Slomita Rai,
Advs. for R-JNU.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T
21.10.2019

1. The petitioner, who is working as Technical Officer in the University Science Instrumentation Centre (USIC), seeks, by means of this writ petition, the benefit of Academic Grade Pay (AGP) and the Career Advancement Scheme (CAS), as is granted to teaching staff in universities, under the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards

in Higher Education) Regulations, 2010 (hereinafter referred to as “the 2010 UGC Regulations”).

Facts

2. USICs were the brainchild of the UGC, and were governed by a programme formulated by the UGC in that regard. The need for USICs was felt in view of the requirement of highly reliable sophisticated instruments, for teaching and advanced research, in departments and colleges of various universities. This, it was felt, would entail, in turn, the need for regular and proper maintenance of such instruments, so that optimum utility could be made thereof. In this regard, the reality that advanced instruments, in colleges and universities, often remain underutilised and, at times, even unutilised, for want of maintenance facilities and trained technicians to look after them, was also kept in mind. Side by side, the fact that modern instruments were more sophisticated and expensive, and liberal purchase thereof was not, therefore, economically viable, was also treated as a valid consideration, to justify the creation for USICs. Under the programme, (which would be referred to hereinafter, for the sake of convenience, as “the USIC programme”), the UGC assists universities to create essential support facilities, where all major instruments in the university could be centralised for their maximum utilisation, with workshops supported by well-qualified personnel for fabrication, repairs and maintenance of all types of instruments.

3. The above recital is to be found in the preambular comments to the Guidelines governing the USICs, as issued by the UGC in 1993 (hereinafter referred to as “the 1993 Guidelines”) which have been placed on record by the petitioner. These Guidelines also set out the overall objectives of the USIC programme. The very first objective of the said programme is “to encourage Universities to establish and develop USICs with a view to strengthen their technological infrastructure if required through collaborative efforts of the academic community of the University.”

4. As per the 1993 guidelines, the USICs were envisaged as existing at three levels namely Level I, Level II and Level III. USICs Level I would normally be created in universities wishing to start a first level activity in instrumentation. USICs Level II were to be started in universities which had already shown appreciable activity in instrumentation and, therefore, such USICs were required to be equipped with more facilities, so that they could undertake developmental activity in instrumentation particularly suitable for teaching and fabrication. USICs Level III were essentially upgraded USICs Level II, which had shown sustained and vigorous activity in instrumentation. USICs Level III were to undertake organised training programmes to generate suitably trained manpower and to inculcate the culture of instrumentation in the university and the state.

5. The 1993 Guidelines further designated USICs as “non-vacation academic departments”. The functions of the USICs, which are set out in

Clause 3 in Part I of the 1993 Guidelines, merit reproduction, *in extenso*, thus :

“USIC LEVEL I

1. The USIC shall act as an agency of the University in the matters of repairs and maintenance of instruments and fabrication of instruments and teaching aids, done either in-house or with the help of other agencies.
2. It shall execute work orders/jobs submitted by the university departments and/or colleges, with the help of facilities available.
3. It shall prepare and maintain an up-to-date inventory of major instruments costing Rs. 2 lakhs or more, available in the departments of the university, giving essential details. (Annexure II)
4. It shall provide necessary analytical services on the specialized instruments assigned to USIC.
5. The USIC shall maintain or assist the different departments to maintain suitable log-books of use of instruments showing details such as the period for which it was used for research, training and maintenance, down time, etc. (Annexure III).

USIC LEVEL II

In addition to the functions given above for USIC level I, the other functions of USIC level II shall be as follows :

1. To conduct short-term courses in repairs and maintenance and in use of instruments for researchers, laboratory technicians, attendants, etc., with a view to upgrade their skills and knowledge in instrumentation.
2. To undertake design and development of teaching aids and instruments.
3. To design and fabricate instruments and/or accessories suitable for research, if necessary, in collaboration with the academic staff of the departments.

USIC LEVEL III

In addition to the functions of USIC Level I & II, the other functions of USIC Level III shall be as follows :

1. To conduct special courses in instrumentation designed specially to up-grade the knowledge of technical and scientific staff of the USICs and of other institutions in maintenance of instruments.
2. To conduct short-term courses on various aspects of instrumentation and training programmes on proper use of instruments for students, teachers of university departments as well as colleges in the State.
3. To conduct courses leading to post-B.Sc.Diploma in instrumentation if necessary in collaboration with the other departments of the university.
4. To prepare annual report on the performance of all USICs in the State/region where it is located as per the format provided by the Commission and submit it to the Standing Committee for its assessment.”

6. Clause 6 in Part I of the 1993 Guidelines deals with the organisation of USICs. Sub-clause (C) thereunder, which is relevant for the purposes of the controversy in this writ petition, separately deals with “teaching staff”, “technical staff” and “administrative staff”. Inasmuch as the present writ petition deals with a claim for parity by a Technical Officer (hereinafter referred to as “TO”) with teaching staff, the relevant part of sub-clause (c) may be reproduced thus :

“(C) USIC Staff

The staff of the USICs shall consist of teaching, technical and administrative personnel, with qualifications as given below:

(a) Teaching Staff and their status:

The USICs may have a teaching staff consisting of Professors, Readers and Lecturers. They shall be treated on par with the other teaching staff of the university in every respect. However, they will not be entitled to vacations normally available to the teaching staff of the university, in view of their different time table of work.

(b) Teaching staff and their status:

The technical staff of the USIC consist of Technical Officers (Technical Officers) and technicians in the grades as specified in these guidelines. They will have the status of non-vaction academic/non-teaching staff of the university.

The pay scales and the corresponding allowances for the technical staff appointed in the USIC shall be as per the scales given here under :

(i) Technical officers

The Technical Officers in the Centre will be in the following categories :

Technical Officer (III), Technical Officer (II), Technical Officer (I-Selection grade), Technical Officer (I-Senior scale) and Technical Officer (I).

(ii) Technicians

The technicians of the Centre be categorized in five levels with distinct essential qualifications and experience in view of the technological nature of the Centre.

While fixing the grades of the existing technicians in the USICs in the prevailing university scales, care should be taken to

match experience and to protect his/her present emoluments.

The university may appoint the technicians sanctioned by the UGC in suitable university scales after taking due care to match qualifications and experience with respect to the grades given in these guidelines.”

7. Clause 7 in Part I of the 1993 Guidelines deals with the procedure for selection of teaching and non-teaching staff. It stipulates, *inter alia*, that the procedure for selection of Technical Officers, and teaching staff, in USICs, would be identical.

8. Clause 12 in Part I of the 1993 guidelines stipulates that teaching staff and Technical Officers may be sent for conferences or meetings in the country or abroad, and that they should be treated on par with teachers for these purposes.

9. Apart from the 1993 guidelines, the petitioner has placed, on record, the Ninth Plan Guidelines for USICs, as published by the UGC in 2000. To a large extent, these guidelines are similar to the 1993 Guidelines and also designate the USICs as “non-vacation academic departments”. The functions of USICs, as set out in clause 3 of the Ninth Plan Guidelines, are as under :

“3. Functions of USICs

In order to achieve the above objectives, the USICs of various levels will have the following functions :

USIC Level I

1. The USIC shall act as an agency of the University in the matters of repairs and maintenance of instruments and fabrication of instruments and teaching aids, done either in-house or with the help of other agencies.
2. It shall execute work orders/jobs submitted by the university departments and/or colleges, with the help of facilities available.
3. It shall prepare and maintain an up-to-date inventory of major instruments costing Rs.5.00 lakhs or more, available in the departments of the university, giving essential details. (Annexure II)
4. It shall provide necessary analytical services on the specialized instruments assigned to USIC.
5. The USIC shall assist the different departments to maintain suitable log-books of use of instruments showing details such as the period for which it was used for research, training and maintenance, down time, etc.(Annexure III)

USIC Level II

In addition to the functions given for USIC level I, the other functions of USIC level II shall be as follows :

1. To conduct short-term courses in repairs and maintenance in use of instruments for researchers, laboratory technicians, etc., with a view to upgrade their skills and knowledge in instrumentation.
2. To undertake design and development of teaching aids and instruments.
3. To design and fabricate instruments and/or accessories suitable for research, if necessary, in collaboration with the academic staff of the departments.

USIC Level III

In addition to the functions of USIC Level I & II, the other functions of USIC Level III shall be as follows :

1. To conduct special courses in instrumentation designed specially to up-grade the knowledge of technical and scientific staff of the USICs and of other institutions in maintenance of instruments.
2. To conduct short-term courses on various aspects of instrumentation and training programmes on proper use of instruments for students, teachers of university departments as well as colleges in the State.
3. To conduct courses leading to post-B.Sc.Diploma or equivalent in instrumentation in collaboration with the other departments of the university.
4. To prepare annual report on the performance of all USICs in the State/region where it is located, as per the format provided by the Commission and submit it to the Standing Committee for its assessment.”

10. Clause 6(A) of the Ninth Plan Guidelines for USICs, deals with the organisation of USICs. Sub-clauses (a) and (b) deal with teaching staff, and technical staff, and their respective status, and read as under :

“a) Teaching Staff and their Status :

The “USICs may have teaching staff consisting of Professors, Readers and Lecturers or their equivalent. They shall be treated on par with the other teaching staff of the university in every respect. However, they will not be entitled to vacations normally available to the teaching staff of the university, in view of their different nature of work. The age of retirement for these posts will be the same as for the teachers of the Universities.

b) Technical staff and their status:

The technical staff of the USIC will consist of Technical Officers (Technical Officers) and technicians in the grades as specified in these guidelines. Technical Officers will have the status of non-vacation academic staff and the technicians will be non-teaching staff of the University.

The pay scales and the corresponding allowances for the technical staff appointed in the USIC shall be as per the scales given hereunder :

i) Technical Officers

The Technical Officers in the Centre will be in the following categories :

Technical Officer (III), Technical Officer (II), Technical Officer (I-Selection grade), Technical Officer (I-Senior scale), and Technical Officer (I).”

11. As in the case of the 1993 Guidelines, the Ninth Plan Guidelines, too, stipulated that the procedure for selection of Technical Officers would be the same as that for teaching staff.

12. In the matter of pay scales and allowances of the staff of USICs, the Ninth Plan Guidelines stipulated, in respect of teaching staff and technical staff, thus :

“8. Pay scales and allowances of staff

The pay scales and the allowances of the staff of the USICs shall be governed by these guidelines and shall be as under :

i) **Teaching Staff**

The pay scales and the corresponding allowances for the teaching staff appointed in the USIC shall be as per the scales applicable to the other teachers of the university.

The teaching staff of the USICs shall be entitled to the same benefits including Provident fund, Gratuity, pension, housing, medical benefits, leave travel concession, age of superannuation, superannuation benefits, facility to attend conferences, etc. and periodic pay revision, made available to the other teaching staff of the university.

ii) **Technical Staff**

The pay scales and the corresponding allowances for the technical staff appointed in the USIC shall be as per the scales given hereunder :

Technical Officers

The Technical Officers of the USIC shall be entitled to the same benefits including Provident Fund, Gratuity, Pension, Medical benefits, Leave Travel Concession, age of superannuation, superannuation benefits, facility to attend conferences, etc. and periodic revision of pay scales made available to the teaching staff of the university. Their pay-scales shall be as follows :

Designation	Revised pay scales
1. Prof./Technical Officer (III)	4500-150-5700-200-7300
2. Reader/Technical Officer (II)	3700-125-4950-150-5700
3. Lecturer/Technical Officer(I)	3700-125-4950-150-5700

(Selection Grade)

4. Lecturer/Technical Officer (I) (Senior Scale) 3000-100-3500-125-5000
5. Lecturer/Technical Officer (I) 2200-75-2800-100-4000”

13. Clause 9(b) of the Ninth Plan Guidelines permits incumbents in the cadre of Technical Officers, to opt, for redesignation to the corresponding teaching post, in writing to the university authorities.

14. Clause 12 of the Ninth Plan Guidelines deals with career advancement. The said clause merits reproduction, *in extenso*, thus :

“12. Career Advancement

The career advancement of the staff of the USIC will be governed by the UGC norms and/or the rules of the University in this regard.

1. Teaching Staff of USICs

The modalities of career advancement for teaching staff of the USICs would be the same as those available to the university teachers.

2. Technical Officer I to Technical Officer I (Senior Scale)

Every Technical Officer I will be eligible for placement in the Technical Officer I (senior grade) subject to the following conditions :

1. Completed eight years of satisfactory service,
2. Attended two refresher courses/summer institutes,

3. Consistently satisfactory performance appraisal.

3. Technical Officer I (Senior Scale) to Technical Officer I (Selection Grade)

1. Completed eight years of service as Technical Officer (Senior Scale) or sixteen years service as Technical Officer I,

2. Attended two refresher courses/summer institutes.

3. Satisfactory evidence of research or design and development of instruments after placement in the Senior Scale,

4. Consistently satisfactory appraisal reports.

4. Technical and Administrative Staff

The policy regarding the promotions for these categories of staff shall be governed by the university rules.”

15. Certain Technical Officers, employed in the USIC, approached this Court by way of CWP 7384/2002, and connected cases (*V. P. Arya v. Union of India*), which was disposed of, on 8th August, 2003. A reading of the said order discloses that this Court (speaking through a learned Single Judge) merely noted, therein, that, *vide* communication, dated 3rd July, 2003, the UGC had granted approval to the proposal, mooted by the JNU, for enhancement, in the age of superannuation of the petitioners in the said writ petitions, up to the age of 62 years, as per USIC guidelines, with all consequential benefits and, in view thereof, held that, as, despite the said benefit having been extended by the UGC, the JNU had not allowed the petitioners to continue in service beyond the age of 60 years,

the period from 1st January, 2003 to 6th July, 2003, was required to be treated as on duty, without break in service.

16. The petitioner, who was the holder of a PhD qualification, had been working, since 19th March, 2008, as TO in the Jawaharlal Nehru University (JNU). Prior thereto, she was employed in the University of Lucknow, and had also worked for eight years, till 2000, as Research Associate and Woman Scientist in the JNU. The petitioner has, in the writ petition, set out, in lucid details, her achievements; however, as they are entirely irrelevant for adjudicating the controversy in issue, no reference is required to be made thereto. Suffice it to state that, *vide* Office Order dated 27th March, 2008, the petitioner was appointed TO in the pay scale of ₹ 8000-13,500 and was, on 24th February, 2009, transferred, along with her post of TO, to the School of Life Sciences, on 24th February, 2009.

17. In the interregnum, and consequent to the recommendations of the 6th Central Pay Commission, a Committee was set up by the UGC, to review the scale of pay of teachers of universities and colleges, *vide* Office Memorandum dated 6th September, 2007. The terms of reference, of the said Committee, as enumerated in the said Office Memorandum, read thus:

“(a) To review the implementation of the previous decision of the Government/UGC under the Scheme of Revision of Pay Scales approved for University and College Teachers, Librarians, Physical Education Personnel and other academic staff in Universities and Colleges, and in the process, to evaluate the extent to which the earlier recommendations in relation to qualifications, service conditions and pay-scales etc. have been implemented.

(b) To examine the present structure of emoluments and conditions of service of University and College Teachers, Librarians, Physical Education Personnel and other academic staff in Universities and Colleges and to suggest revision in the structure, taking into account the minimum qualifications, career advancement opportunities, and total package of benefits available to them (such as superannuation benefits, medical, housing facilities, etc.).

(c) To make recommendations on the basin means of attracting and retaining talented persons in the teaching profession, as well as for the furtherance of research in the University System and also for their career advancement teaching and equivalent positions in order to improve the quality of higher education.

(d) To look into the cases of anomalies, if any, in the matter of pay structure and/or career advancement opportunities for any categories of academic staff, consequent on revision of pay scales based on the recommendations of the preceding Pay Review Committee and to suggest remedial measures.”

The Office Memorandum went on to clarify, unequivocally, that “the pay structure and service conditions of the non-academic staff who will be governed by the Central Pay Commission’s recommendations, including those of the officers and staff working in the University Grants Commission shall be outside the purview of the Pay Review Committee.” Revision of pay of Technical Officers, quite clearly, was outside the scope of reference of the said Committee.

18. The recommendations of the aforesaid Pay Review Committee were accepted, by the MHRD, *vide* communication, dated 31st December, 2008, addressed to the UGC, and revision of pay scales of teachers and Central Universities, in accordance with the said recommendations, was approved. The petitioner has chosen to file only the first, fourteenth and

fifteenth pages of the said communication and, ordinarily, this Court would be loath to even advert to the communication. Be that as it may, the said communication also set out certain categories of officers, to whom the Scheme, approved by the MHRD, would not apply. The petitioner seeks to capitalise on this specification, by pointing out that Technical Officers did not fall within the said “excluded” categories of officers.

19. Any ambiguity, in the above regard, was set at rest by the UGC, *vide* its communication, dated 22nd May, 2012, addressed to the JNU, which clarified that “as per Notification issued by MHRD dated 31.12.2008 and UGC pay scale Regulations only Assistant Professor, Professor and Librarian, Dy. Librarian, Assistant Librarian, Physical Education Cadres are eligible to get the Academic Grade Pay.” This response was communicated, onward, by the JNU, to the petitioner, *vide* letter dated 26th June, 2012.

20. At the request of the MHRD, the UGC constituted, further, a Joint Cadre Review Committee (JCRC), to recommend uniform staffing pattern, service conditions, etc., for non-teaching staff of Central Universities and Deemed Universities maintained by the UGC, as well as colleges affiliated to the Delhi University. The JCRC drew a report, containing its recommendations in respect of 24 non-teaching cadres, which was submitted to the MHRD *vide* letters dated 18th January, 2008, 12th June, 2009 and 23rd September, 2010. Among these recommendations was the suggestion that the benefit of the Career Advancement Scheme (CAS) be extended to Technical Officers. These

recommendations were conveyed, for approval, to the Department of Higher Education, MHRD, by the UGC, *vide* its letters dated 12th January, 2009 and 23rd September, 2009.

21. In response thereto, on 7th May, 2014, the Central University & Language Bureau, Department of Higher Education in the MHRD wrote to the UGC, enumerating the proposals, in the report of the JCRC, which had been examined and approved, or not approved, by the competent authority. Paras XVII and XVIII of the said communication may be reproduced thus:

“XVII. Extension of Career Advancement Scheme (CAS) to the posts of Scientific Officers/Technical Officers is not agreed to. Instead, Modify Assured Career Scheme (MACP) will govern their career progression.

*XVIII. The following recommendations of JCRC in respect of University Science Instrumentation Centre (USIC) professionals are accepted with the stipulation that *utilising their services in teaching in absence of the specified work would not entail extension of the academic grade pay and applicability of CAS to them:**

- (a) Continuing with services of USIC personal until they vacate their positions.
- (b) Once the posts are vacated, the Universities will follow the XIth Plan guidelines to engage persons on contractual basis as per provisions under the Scheme, and
- (c) Expertise of Scientific and Technical Officers may be utilised for teaching in addition to the research and handling of sophisticated equipment assigned to them.”

(Emphasis supplied)

The writ petition impugns the communication, dated 7th May, 2014, from the Department of Higher Education to the UGC, to the extent of this stipulation.

22. The UGC wrote, in turn, to all Central Universities and Deemed Universities, on 1st October, 2014, conveying, *inter alia*, the disapproval, of the MHRD, to the proposal to extend, to Technical Officers in the USIC, the benefit of AGP and CAS. This decision of the UGC was, in turn, communicated, to the petitioner, by the University, on 19th June, 2015.

23. It is necessary to note, at this juncture, that, on 7th March, 2013, in response to an application made by some other person under the RTI Act, the UGC, to a query as to the career advancement scheme for USIC Technical Staff (I), responded that the CAS, for teaching staff, was also applicable to Technical Officers as per UGC Regulations issued from time to time and subject to fulfilment of terms and conditions laid down in the applicable Guidelines. This, however, does not appear to have been the correct position, as is reflected from the above recital. I am unable, therefore, to agree with Mr. Shanker Raju that this communication, under the RTI Act, could clothe the petitioner with any legally enforceable right to the benefit of the CAS.

24. Having thus adumbrated the factual arena, within which the present petition peregrinates, the prayer clause, in the writ petition may be reproduced, at this point, thus:

“In view of the submissions made above, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to issue appropriate writ/direction to;

a) Set aside the impugned orders at Annexure P-1 to Annexure P-3 to the extent it deny extension of Academic Grade Pay and Career Advancement Scheme to the petitioner (TO) by excluding the post of TO from the category of teaching staff (Teacher);

b) Direct the respondents to treat the petitioner as equivalent to a teaching staff for all attendant benefits at par with a Teacher to extend the benefits of AGP and CAS contained in UGC Regulations of 2010 with all consequential benefits including arrears, retirement age etc; and

c) Any order or further relief which this Hon'ble Court deems fit, just and proper in the peculiar circumstance of the case in the interest of justice may also please be awarded.”

Rival Submissions

25. I have heard Mr. Shanker Raju, learned counsel for the petitioner, and Mr. Kamal Kant Jha, learned counsel for the respondent, at length, and perused the material on record.

26. The petitioner premises her case, essentially, on the following averments/submissions:

(i) In the 1993 Guidelines, the USIC was designated as a non-vacation academic department.

(ii) In the 1993 Guidelines at Level III of the staffing pattern of the UISC, Technical Officers were equated with lecturers.

- (iii) In the Ninth Plan Guidelines,
- (a) the only non-teaching staff at USIC were technicians,
 - (b) the procedure for selection of TO was the same as that for teaching staff,
 - (c) qualifications of TO were at par in equivalent levels with teaching staff,
 - (d) all service conditions of Technical Officers, including pay scales, were at par with the teaching staff at different levels,
 - (e) TO-I was equated with lecturer, and was also entitled to senior scale, and selection grade, as was available to lecturers,
 - (f) TO-II was made equivalent to reader,
 - (g) TO-III was equivalent to professor, and
 - (h) till 2007, an incumbent in the cadre of TO could opt for redesignation to the corresponding teaching posts, by applying to the universities therefor.
- (iv) The recommendations of the 6th Central Pay Commission (hereinafter referred to as “the 6th CPC”) had been adopted by the UGC, which drafted a scheme for revision of pay of teachers and equivalent cadres *vide* letter dated 31st December, 2008 *supra*.

This scheme was extended to teachers and equivalent positions. The said order did not exclude, specifically, the benefit thereof to TO.

(v) Mr. A.C. Alexander, a TO in SLS JNU had been redesignated as STO by converting a post of Associate Professor. This indicated that the post of TO was equivalent, functionally, to post of teacher.

(vi) The UGC had confirmed, in response to an application under the Right to Information Act, 2005 (hereinafter referred to as “the RTI Act”) that the Career Advancement Scheme for teaching staff was also applicable to Technical Officers.

(vii) As late as on 7th March, 2013, the UGC had acknowledged that the grade pay of Technical Officers, as per the guidelines framed in 1998 governing USICs was the same as that of teaching staff. As such, the UGC had accepted the equivalence of Technical Officers with academic staff.

(viii) It was also accepted, by the UGC, that the procedure for selection of Technical Officers was the same as that of teaching staff.

(ix) Among the duties and functions of Technical Officers in the USIC, were included conducting of short courses and workshops, which included teaching. As such, well qualified Technical

Officers were equivalent to teachers, at all levels.

(x) Consequent to the 6th CPC recommendations, Technical Officers were placed in the same pay band as teaching staff. However, the benefit of AGP was not extended to Technical Officers. As a result, the designation of teacher had been arbitrarily denied to Technical Officers.

(xi) The Recruitment Rules (RRs) for the post of TO prescribed the same qualifications as were prescribed for teaching staff, as per UGC norms.

(xii) Technical Officers were recorded the status of non-vacation academic department, by the 1993 Guidelines as well as by the Ninth Plan Guidelines.

(xiii) The issue was covered by the judgment, dated 8th August, 2003, of this Court in *V. P. Arya v. Union of India (CWP 7384/2002)*, which upheld the application, to Technical Officers in the USIC, the age of superannuation which applied to other teaching staff, i.e. 62. the extension, to the petitioner, of the benefit of AGP and the CAS ought to have followed as a logical sequitur to extension, to the petitioner, of the benefit of superannuation at the age of 62.

(xiv) Despite possessing the qualifications prescribed for Assistant Professor, including a PhD, and having been selected, as TO by the

same procedure as applied to the selection of teaching staff, and despite the fact that she was performing teaching work, the petitioner had unjustly been denied the benefit of Academic Grade Pay (DCP) and Career Advancement Scheme (CAS).

(xv) In fact, there is no specific exclusion, of the post of TO, from the scheme of revision of pay of teachers and equivalent orders, the benefit whereof was extended to Assistant Professors, as well as library personnel and physical education personnel.

(xvi) In the light of the admission, by the UGC, that Technical Officers were entitled to be treated as non-vacation academic staff, they were also eligible to be regarded as teachers, performing teaching work.

(xvii) Apparently, therefore, the UGC had “inadvertently missed out” including Technical Officers in the UGC Regulations.

(xviii) Technical Officers in the USICs were being employed for teaching work, which indicated that they were equivalent to teaching staff and were covered in the expression “teaching/academic staff”. Non-extension, to Technical Officers, in the USIC, the benefit of AGP and CAS, as was granted to teaching staff, thereby, infringed the “equal pay for equal work” principle, enshrined in Article 14 of the Constitution of India.

(xix) The Department of Higher Education, MHRD, in its letter

dated 31st December, 2008, addressed to the UGC, with reference to the scheme of revision of pay of teachers and equivalent orders in universities and colleges following revision of pay scales of Central Government employees, consequent on the recommendations of the 6th CPC, observed, in the context of applicability of the said Scheme, that the Scheme did not “extend to the posts of professionals like System Analysts, Senior Analyst, Research Officers etc. shall be treated at par with similarly qualified personnel in the search/scientific organisations of the Central Government”. Technical Officers were not, consequently, excepted from the applicability of the pay revision Scheme.

(xx) To a query, under the RTI Act, as to whether the status of TO (I) in USICs, the UGC had responded, *vide* communication dated 7th March, 2013, that, as per the Ninth Plan Guidelines, the status of TO (I) in the USIC would consist of Technical Officers and technicians, in the rates specified in the guidelines, and that Technical Officers would have the status of non-vacation academic staff, whereas technicians would be non-teaching staff of the University.

(xxi) Further, in response to another query, under the RTI Act, as to whether teachers of USICs were non-vacation academic staff, the UGC had, while directing reference to sub-clause (a) of Clause 6(C) at page 6 of the USIC Guidelines, 1998, further clarified thus:

“Teaching staff consisting of professors, Readers and lecturers or their equivalent shall be treated on par with

the teaching staff of the University in every respect. Technical officers will have the status of non-vacation academic staff and the technicians with the non-teaching staff of the University.”

(xxii) The Jawaharlal Nehru University (JNU) act, *vide* Notification dated 20th July, 2017, resolved to approve the implementation of pay parity to Documentation Officers, at par with Assistant Librarian’s, along with parity of superannuation, AGP and CAS w.e.f. 1st July, 2006, as per the classification received from the UGC *vide* letters dated 24th June, 2015 and 16th December, 2016.

27. The above factors, Mr. Shanker Raju would endeavour to submit, make out a clear case for extension, to his client, of AGP and the benefit of the CAS, and denial thereof, in his submission, would infract Articles 14 and 16 of the Constitution of India.

Analysis

28. Having considered the submissions of Mr. Shanker Raju, I am of the opinion that, even cumulatively seen, they do not make out a case for grant, to the petitioner, of the reliefs claimed in the petition.

29. The prayer, of the petitioner, for being extended AGP, at par with teachers, is founded on the principle of “equal pay for equal work”. The prerequisites, which are required to be fulfilled, for such a claim to be countenanced, stand well established, in the law, that has developed over

a period of years. It is not necessary to cite multiple decisions on the point, and adverting to a few authorities would be sufficient.

30. In *Delhi Veterinary Association v. Union Of India*¹, the factors, required to be borne in mind while fixing pay scales, were set out, in para 5 of the report, thus:

“In addition to the principle of “equal pay for equal work”, the pay structure of the employees of the Government should reflect many other social values. Apart from being the dominant employer, the Government is also expected to be a model employer. It has, therefore, to follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. *The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.*”

(Emphasis supplied)

31. Reliance was placed, on the above passage, from *Delhi Veterinary Association*¹, in para 10 of the report in *State of W.B. v. Hari Narayan Bhowal*², which went on to hold thus:

“In the case of *State of U.P. v. J.P. Chaurasia*³ it was pointed out that *whether two posts are equal or should carry the equal pay, depends on several factors. It does not depend just upon either the*

¹ (1984) 3 SCC 1

² (1994) 4 SCC 78

³ (1989) 1 SCC 121

*nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of **State of M.P. v. Pramod Bhartiya**⁴ by a three-Judge Bench of this Court. Recently, in the case of **Shyam Babu Verma v. Union of India**⁵ a claim for equal pay by a group of Pharmacists was rejected saying that *the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.*"*

(Emphasis supplied)

32. **Hari Narayan Bhowal**² was, in turn, approvingly cited, by the Supreme Court, in **U.O.I. v Tarit Ranjan Das**⁶.

33. Myriad factors, therefore, govern fixation of pay and, to allow a claim for interference with the pay, statutorily fixed, or recommended by expert bodies, a finding of absolute equivalence on *all* the factors noticed in the above extracted passages from the judgment of the Supreme Court is, therefore, the *sine qua non*. Viewed thus, the factual material, cited by the petitioner in support of her claim for being extended the AGP granted to teachers, in my opinion, falls woefully short. Significantly, the petitioner does not even claim to be doing the same work as is being done by teaching staff, in Universities or even in the USICs. Her only claim is that Technical Officers are also, at times, assigned teaching duties. Whether such duties are similar to the duties performed by regular

⁴ (1993) 1 SCC 539

⁵ (1994) 2 SCC 521

⁶ (2003) 11 SCC 658

teaching staff in the USICs, who are designated as Lecturers, Associate Professors, Professors, etc., is anybody's guess. Suffice it to state that there is no material, cited by the petitioner, which would enable this Court to arrive at any definitive finding that the work done by Technical Officers is even similar, far less equal, to that done by teaching staff in the USICs. Rather, a reading of the 1993 Guidelines, as well as of the Ninth Plan Guidelines of the UGC, governing the USIC, reveals that the objectives and duties of the USIC, at all levels, i.e. Levels I, II and III, are distinct, and clearly distinguishable from teaching duties, which would ordinarily be performed by Lecturers, Readers, all Professors. The most fundamental requirement, to maintain a claim for equal pay for equal work, i.e., equality of work, is, therefore, itself wanting in the present case.

34. The petitioner predicates her case on

- (i) the designation, of the USIC, as a non-vacation academic department,
- (ii) the equation of Technical Officers Level III, with Lecturers, in the 1993 Guidelines,
- (iii) the fact that the procedure for selection of Technical Officers was the same as that of teaching staff,
- (iv) the past parity of pay, between teaching staff and Technical Officers, at various levels,
- (v) the entitlement, of Technical Officers, to apply for

redesignation to the corresponding teaching posts,

(vi) the non-exclusion, from the scheme for revision of pay of teachers and equivalent garters, as postulated *vide* letter dated 31st December, 2008, of Technical Officers,

(vii) the redesignation of A. C. Alexander as STO by converting a post of Associate Professor,

(viii) the placement of Technical Officers, consequent to the 6th CPC recommendations, in the same pay band as teaching staff, while denying, to them, the AGP granted to teaching staff, and

(ix) similarity in the qualifications prescribed for teaching staff and Technical Officers.

35. Mr. Raju would seek to contend that, in view of these facts, Technical Officers could not be denied the AGP which was granted to teaching staff.

36. On its face, the claim cannot be granted. The Guidelines governing the USICs, and the officers working therein, clearly differentiate between teaching staff and non-teaching staff, as well as Technical officers. They clearly observe that the teaching staff of the USICs are “Professors, Readers and Lecturers”, who would be entitled to be treated at par with other teaching staff of the universities in every respect. As against this, Technical Officers are specifically designated as “technical staff”, who would have the status of “non-vacation academic/non-teaching staff”. No parity, of such technical staff, with teaching staff, is contemplated by the

Guidelines governing the USICs. The mere fact that the procedure for selection of Technical Officers may be the same as that of teaching staff, cannot constitute a legitimate basis to claim pay parity, as, in an organisation, the selection procedure, for posts in various grades, may often be identical. The pay scale, attached to a post, has little, if anything, to do with the procedure for selection thereto. Nor, in my opinion, can any benefit enure, to the petitioner, by the fact that, in respect of one employee, the post of STO may have been converted, or that the petitioner may have, at times, been assigned teaching duties. *Complete congruence* is the definitive test. Insofar as pay scales were concerned, the Ninth Plan Guidelines stipulated that, while the pay scales and corresponding allowances, for teaching staff appointed in the USICs would be as per the scales applicable to other teachers of the University, separate, and distinct pay scales were prescribed for technical staff in the USICs, including Technical Officers. While it is true that the corresponding post/grade, in the teaching cadre, was also specified along with the pay scales attached to the various staff in the technical posts, this, by itself, would not clothe the technical staff of the USICs with the right, in perpetuity, to claim parity in pay with the teaching staff.

37. In fact, a reading of the Ninth Plan Guidelines reveals that there is a clear distinction, drawn therein, between Technical staff and teaching staff in the USICs. Clause 6 of Part I of the Guidelines, which deals with Organisation of USICs, clearly demarcates between teaching staff, which are stated to consist of Professors, Readers and Lecturers or their equivalent, and are required to be treated at par with other teaching staff of the University, vis-à-vis technical staff, i.e. Technical Officers and

technicians. Technical Officers are given the status of non-vacation and academic staff, while no such status is conferred on teachers. Pay scales and allowances of teaching staff and technical staff are also separately identified, in Clause 8. Insofar as the option, for redesignation to the corresponding teaching post, available to Technical Officers is concerned, Clause 9 b) postulates that this option would be subject to various conditions, which would include selection, by an appropriate selection committee of the University for University teachers. Even in the matter of pay revision, Clause 10 stipulates that, for staff of the USICs, *other than teaching staff*, the pay revision would be considered effective immediately on the revision being made for the other staff of the University. Clause 12, which deals with Career Advancement, clearly stipulates different modalities of career advancement, for teaching staff, and Technical Officers, in the USICs.

38. No equivalence, in the matter of conferment of AGP can, therefore, be said to have been contemplated by the UGC, while framing Guidelines governing the USICs. Where the UGC, the progenitor of the USICs, did not contemplate such equivalence, no mandamus can be issued, by a writ court, to grant, to Technical Officers, the AGP which is available to teaching staff.

39. The prayer, of the petitioner, for technical staff, in the USICs, to be extended the benefit of the CAS, which was available to teaching staff, is equally bereft of merit. Clause 12 of the Ninth Plan Guidelines, governing the USICs, clearly states that the modalities for career advancement of teaching staff of the USICs would be the same as those,

which apply to University teachers. As against this, for the posts of Technical Officers, at various levels, specific stipulations were required to be fulfilled in order to enable, or entitle, the Technical Officers for advancement. To move up from TO I to TO I (Senior Scale), the officer was required to have completed 8 years of satisfactory service, attended to refresher courses/summer institutes and had consistently satisfactory performance appraisal, whereas, for advancement from TO I (Senior Scale) to TO I (Selection Grade), the officer was required to have completed 8 years of service as TO (Senior Scale) or 16 years as TO I, attended two refresher courses/summer institutes, had satisfactory evidence of research design and development of instruments after placement in the Senior Scale, and consistently satisfactory appraisal reports. It is not, therefore, as though Technical Officers were stagnating, or did not have any avenues for career advancement in their cadre.

40. The issue of the posts, to which the CAS was required to be extended, is, at all times, a matter of policy. Neither is the CAS in the nature of a vested right, inhering in any post, or grade, nor could Mr. Raju, learned counsel appearing for the petitioner, bring, to my notice, any material which would indicate that his client had a right to the benefit of the CAS. So long as there is no stagnation, in any post or grade, it cannot lie in the mouth of the holder of any post, or grade, to claim that she, or he, must be extended the benefit of a career advancement scheme which is available to holders of other posts or grades. Pay parity, subject, of course, to satisfaction of the rigorous tests, postulated by the Supreme Court in *Delhi Veterinary Association*¹, *Hari Narayan Bhowal*² and *Tarit Ranjan Das*⁶, remains a constitutional imperative; the

right to the benefit of a particular career advancement scheme, however, does not. Expressed otherwise, there is no requirement, in law, for an authority to extend, to employees who may otherwise be identically situated, the benefits of the same career advancement scheme. All that is required to be ensured, at the level of the administration, is that there is no stagnation in any particular grade, or post. So long as this is ensured, the issue of the manner in which career advancement, for any particular post, or grade, should be ensured, is essentially a matter of administrative discretion and, ordinarily, would fall outside the pale of judicial review.

41. The decision, not to extend the benefit of the CAS, to Technical Officers in the USICs, was consciously taken by the MHRD, which chose to extend, instead, to Technical Officers, the benefits of the MACP scheme. This was a deliberate and well considered decision, and this Court is ill-equipped to interfere therewith, in the absence of any cogent material to indicate that the decision was not taken after due application of mind, or suffered from malice, in fact or in law. Neither does the petitioner pitch her case that high, nor as she had used any evidence or material, which could so indicate. I am unable to convince myself that, on the material on record, a case is made out, for me to substitute the conscious decision, of the MHRD, to extend, to Technical Officers in the USICs, the benefit of the MACP Scheme, instead of the CAS Scheme, with any other proposal whatsoever. It is trite that a writ court is not empowered to subjectively examine the merits of a scheme for career advancement, and is completely proscribed from substituting the decision of the administrative authority, in that regard, with its own, even if, on a dispassionate analysis, the writ court is of the view that the latter scheme

would be better, or more beneficial, or even more conducive to the legitimate interests of the employee/employees concerned.

42. The reach and sweep of Article 226 of the Constitution of India, vis-à-vis a claim such as the present, is required to be understood. Arbitrariness, in any and every form, is susceptible to annihilation, in exercise of writ jurisdiction. If, therefore, an employee of an organisation is arbitrarily denied his legitimate and lawful entitlement, there can be no law which restrains a writ court from interfering. What is required to be borne in mind, in all such cases, is, however, the scope of examination, by the writ court, of the question as to whether, in the facts of the case, the action of the administration is arbitrary. To take a simple example, in the context of the present controversy, if certain Technical Officers were to be extended the benefit of the CAS Scheme, and others were not, and there was no way of distinguishing one set of Technical Officers from the other, with respect to any indicia which would have a rational nexus with the applicability, or otherwise, of the CAS Scheme, a writ court would be entitled to interfere, for the simple reason that it would be arbitrary to pick and choose, from one homogeneous set of officers, some, to whom a beneficial dispensation was to be extended, while excluding others therefrom. The present case does not, however, fall in that select category. The contention of the petitioner is that the benefit of the CAS scheme, having been extended to teaching staff, would, *ipso facto*, be liable to be extended to Technical Officers as well. This would require an intricate qualitative analysis of whether Technical Officers and teaching staff are identically situated, for the purposes of extension of the benefit of the CAS scheme. This, however, is an exercise which a writ court

should forbear from undertaking. The various factors which might operate, in deciding whether Technical Officers – or any other category of technical staff – should be extended the benefit of the scheme of career advancement to which teaching staff are entitled, are best known to the administration, and a writ court is a poor judge thereof.

43. Here, too, however, one must enter a caveat. It is certainly open to a writ court to examine whether, in arriving at the decision that technical staff were not entitled to be extended the benefit of the career advancement scheme, to which teachers were entitled, the executive administration had acted arbitrarily. In doing so, however, a writ court cannot enter into a roving and fishing inquiry, merely on the basis of an allegation, or apprehension, that the executive administration had not exercised proper judgment in its decision, not to extend, to the Technical Officers, the career advancement benefit which was available to teachers. To make out a case for a writ court to inquire into the matter, the initial onus would be on the employee seeking parity, to establish, on the basis of cogent, credible and convincing material, that, *ex facie*, the administration could not have distinguished between Technical Officers and teaching staff, on the point of the career advancement scheme to which each was entitled. The credibility of the material, required to be cited in such a case, would be of a very high degree, as it would practically require a writ court to perform the function of the executive administration. Ordinarily, it may be reiterated, such an exercise is to be scrupulously avoided. Even if the writ court does so – in rare and exceptional cases – it would strike down the decision of the administration only if the decision is found, on the face of it, to be

arbitrary, and so unreasonable as could not legally be tolerated, and not because, in its own estimation, the decision ought to have been otherwise. The judiciary and the executive are co-equal players in our federal system, and the exercise of discretion, by the judiciary, can never be placed at a higher pedestal than the exercise of discretion by the executive. The exercise of discretion, by the executive, would be amenable to judicial interference, only where the exercise is patently and unconscionably arbitrary, and not otherwise.

44. In the present case, it cannot be said that the petitioner has adduced cogent and credible material, as would be sufficient to convince this Court to forage into the discretionary thicket, and hold that Technical Officers were entitled to the benefit of the CAS scheme, only because teaching staff, of the USIC, were extended the said benefit. Any such decision, on the part of this Court, would be an affront to the exercise of conscious discretion by the MHRD, without any adequate justification.

45. The petitioner has not, therefore, been able to make out a case for grant of the reliefs sought in the writ petition.

46. Before parting with this judgement, reference may profitably be made to certain relevant passages from a recent decision of the Supreme Court in ***Punjab State Power Corporation Limited v. Rajesh Kumar Jindal***⁷, which are self-speaking:

“14. Ordinarily, the courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission, etc. The aggrieved employees claiming parity must

⁷ (2019) 3 SCC 547

*establish that they are unjustly treated by arbitrary action or discriminated. In **Kshetriya Kisan Gramin Bank v. D.B. Sharma**⁸, this Court held as under: (SCC p. 363, para 7)*

“7. The next question that arises for consideration is, as to what extent the High Court would be justified in exercise of its extraordinary jurisdiction under Article 226 to interfere with the findings of an expert body like the Equation Committee. In **State of U.P. v. J.P. Chaurasia**³, this Court unequivocally held that in the matter of equation of posts or equation of pay, the same should be left to the Executive Government, who can get it determined by expert bodies like the Pay Commission, and such expert body would be the best judge to evaluate the nature of duties and responsibilities of the posts and when such determination by a commission or committee is made, *the court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.*”

15. In **S.C. Chandra v. State of Jharkhand**⁹, this Court held as under: (SCC pp. 292-94, paras 33 & 35-36)

“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**¹⁰.*

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*

⁸ (2001) 1 SCC 353

⁹ (2007) 8 SCC 279

¹⁰ (2007) 1 SCC 408

the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that *only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide State of W.B. v. Tarun K. Roy*¹¹ .”

(emphasis in original)

The same view was reiterated in *State (UT of Chandigarh) v. Manju Mathur*¹²; *State of Haryana v. Charanjit Singh*¹³ and in *Hukum Chand Gupta v. ICAR*¹⁴.

16. Observing that *granting parity in pay scales depends upon the comparative evaluation of job and equation of posts*, in *SAIL v. Dibyendu Bhattacharya*¹⁵, this Court 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.*”

¹¹ (2004) 1 SCC 347

¹² (2011) 2 SCC 452

¹³ (2006) 9 SCC 321

¹⁴ (2012) 12 SCC 666

¹⁵ (2011) 11 SCC 122

Burden of proof on the person claiming parity of pay scale

20. Ordinarily, the scale of pay is fixed keeping in view the several factors i.e.

- (i) method of recruitment;
- (ii) level at which recruitment is made;
- (iii) the hierarchy of service in a given cadre;
- (iv) minimum educational/technical qualifications required;
- (v) avenues of promotion;
- (vi) the nature of duties and responsibilities; and
- (vii) employer's capacity to pay, etc.

21. It is well settled that for considering the equation of posts and the issue of equivalence of posts, the following factors had been held to be determinative:

- (i) The nature and duties of a post;
- (ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;
- (iii) The minimum qualifications, if any, prescribed for recruitment to the post; and
- (iv) The salary of the post (vide **Union of India v. P.K. Roy**¹⁶).

23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. 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. After referring to 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**¹⁴, held as under: (SCC p. 131, para 22)

¹⁶ AIR 1968 SC 850

“22. 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 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*¹⁷, *Union of India v. Mahajabeen Akhtar*¹⁸, *Union of India v. Dineshan K.K.*¹⁹, *Union of India v. Hiranmoy Sen*²⁰, *Official Liquidator v. Dayanand*²¹, *U.P. SEB v. Aziz Ahmad*²² and *State of M.P. v. Ramesh Chandra Bajpai*²³.”

(emphasis in original)

25. It is thus well settled that it is the duty of an employee seeking parity of scale of pay to prove that the educational qualifications required for both the posts, mode of recruitment and the nature of work performed by them are one and the same. There are neither pleadings nor any material produced by the respondents to prove that the nature of work performed by the Internal Auditors is similar with that of the Head Clerks. In the writ petition, the respondents have claimed parity of pay scale

¹⁷ (2006) 9 SCC 82

¹⁸ (2008) 1 SCC 368

¹⁹ (2008) 1 SCC 586

²⁰ (2008) 1 SCC 630

²¹ (2008) 10 SCC 1

²² (2009) 2 SCC 606

²³ (2009) 13 SCC 635

only on the ground that they were categorised in Group XII along with the Head Clerks. Merely on the ground that the cadre of Internal Auditors are placed in Group XII along with the Head Clerks, cannot be a ground for seeking parity of pay scale.

26. Considering the differences in the nature of duties and responsibilities performed by the Head Clerks and Internal Auditors, the Pay Anomaly Committee decided to allow the revised scale for Internal Auditor at Rs 1800-3200 with benefit of promotional increments and Rs 2000-3500 for Head Clerks. *Merely because Internal Auditors are categorised in Group XII along with Head Clerks, the Internal Auditors cannot claim parity as the nature of duties and responsibilities of Internal Auditors are different from Head Clerks.*

39. *The only ground urged by the respondent Internal Auditors is that parity of pay scale between the Head Clerks and the Internal Auditors was maintained by the appellant Board for more than two decades and while so, disturbing the parity is arbitrary and illegal. The Court has to keep in mind that a mere difference in service conditions, does not amount to discrimination. Unless there is complete identity between the two posts, they should not be treated as equivalent to claim parity of pay scale. No doubt, Internal Auditors were earlier placed in the same group, namely, Group XII; but educational qualifications for the post of Head Clerk and mode of recruitment are different.* As submitted by the learned Senior Counsel for the appellant Board, that in the year 1980, there were only four posts in Group XII but subsequently some posts were added to Group XII and the total fourteen posts which were added to Group XII are: Punjabi Teacher, Drawing Teacher, Hindi Teacher, DPED Teacher, Master/Mistress, Science Teacher, Security Inspector, Modeller Divisional Head Draftsman, Prosecuting Inspector (now Law Officer), Law Officer Grade II, Medical Assistant, Librarian and Fire Officer, etc. For all these posts, source and mode of recruitment, qualifications and nature of work are entirely different. If the contention of the Internal Auditors for claiming parity of pay scale with that of Head Clerks merely on the ground that the post of Internal Auditor was placed in Group XII, then if such parity of pay scale may have to be extended to all other posts, it would have huge financial implication on the finance of the Board which is a service-oriented institution owing

to the consumers. As held in *Union of India v. Manik Lal Banerjee*²⁴: (SCC p. 649, para 26)

“26. It is now a well-settled principle of law that financial implication is a relevant factor for accepting revision of pay.”

(emphasis supplied)

41. As discussed earlier, *merely because various different posts have been categorised under Group XII, they cannot claim parity of pay scale as that of the Head Clerk.* All the more so, when the Internal Auditors are appointed 55% by direct recruitment and 45% by promotion from Circle Assistant/Assistant Revenue Accountant. *The High Court did not keep in view that the duties, nature of work and promotion channel of Head Clerks and Internal Auditors are entirely different* and that option to seek promotion apparently as Internal Auditors was the “conscious exercise of option”, the impugned judgment cannot be sustained and is liable to be set aside.”

(Emphasis supplied)

47. Equally, it is trite that parity in pay, which may have existed at some point in the past, or which may have continued for long periods of time, cannot be cited as a justification for continuing such parity. (Refer *State of W.B. v. Minimum Wages Inspectors Assn.*²⁵, which has been cited and followed in the well-known decision in *State of Punjab v. Jagjit Singh*²⁶.)

48. In this context, it is relevant to note that the CAS was the creation of the 2010 UGC Regulations. These regulations are a complete answer to both the claims ventilated by the petitioner in the instant case. The

²⁴ (2006) 9 SCC 643

²⁵ (2010) 5 SCC 225

²⁶ (2017) 1 SCC 148

CAS, as a consolidated scheme, came into existence by virtue of these Regulations, and the AGP was an inalienable component of the CAS. Though the petitioner has not annexed these Regulations, they are available in the public domain. The opening passage of these Regulations reads thus:

“These Regulations are issued for minimum qualifications for appointment and other service conditions of *University and College Teachers, Librarians, Directors of Physical Education and Sports* for the maintenance of standards in higher education and revision of pay scales.”

(Emphasis supplied)

The petitioner does not even profess to fall within any of the categories of posts/positions, italicised in the above extracted opening passage of the 2010 UGC Regulations. Without elaborating, further, on the content of the said Regulations, suffice it to state that a reading thereof indicates, unequivocally, that the 2010 UGC Regulations cater to teaching staff, is classically understood, apart from librarians and Directors of physical education and sports. The decision, of the MHRD, not to extend, to the petitioner and other such similarly situated Technical Officers in the USICs, the benefit of the CAS and the AGP is, therefore, only in consonance with the 2010 UGC Regulations, and is, consequently, impervious to challenge on merits, as well.

49. The impugned decision, not to extend, to Technical Officers in the USICs, the AGP granted to teaching staff, and to guarantee their career advancement via the MACP, rather than the CAS, are administrative decisions, taken in exercise of executive discretion. The fact that the MHRD has, in taking the said decision, departed from the

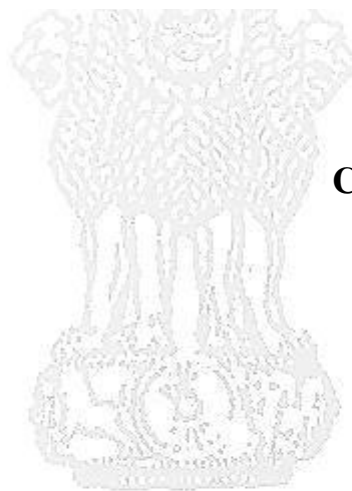
recommendations of the UGC, itself indicates that the decision was taken consciously, with due application of mind. In my opinion, it cannot be said that the petitioner has made out a case, which would warrant interference, by this Court, exercising jurisdiction under Article 226 of the Constitution of India, with the exercise of such discretion.

Conclusion

50. Resultantly, the writ petition is dismissed, with no order as to costs.

OCTOBER 21, 2019/kr

C. HARI SHANKAR, J.



सत्यमेव जयते