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

% ***Date of decision: 5th May, 2022***

+ **LPA 298/2022**

PRADEEP KUMAR & ORS. Appellants

Through: **Mr. S.N. Sharma, Advocate**

versus

THE ASSOCIATION OF INDIAN UNIVERSITIES & ANR.

..... Respondents

Through: **Dr. Ashwani Bhardwaj, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

CM APPL. 21532/2022 (Exemption)

1. The application is allowed, with a direction to the applicant to file requisite certified copies, original copies, true typed copies and margins of dim annexures within four weeks.
2. The application is accordingly disposed of.

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3. This appeal has been filed seeking the following prayers:
“i. Set-aside the impugned order dated 10.12.2021 so passed by the Ld. Single Judge in W.P.(c) No. 11563 of 2021.
ii. Direct the respondents to grant and release the difference of pay or remuneration to the appellants on the post of consultants, consequent to revision of pay for the period of their re-employment between 2016-2019 with 18% of interest p.a.”
4. The present appeal is filed on the ground that the learned Single Judge



has failed to appreciate that the appellants are not the pension holders and as such are not receiving pension of the service put in by them in the Association of Indian Universities (hereinafter referred to as 'AIU') as there is no pension scheme in the respondents' Department and as such no Pension Payment Order has been issued to the appellants and the superannuation benefits have been paid to the appellants.

5. Learned Single Judge has further failed to appreciate the fact that the claim of the appellants is not contrary, as similarly situated employees of the respondents, who were also re-employed on various posts namely, Mr.Sampson David, retired as Joint Secretary and another Shri Sambhav Srivastav, retired as Under Secretary, who were also retired after attaining the age of superannuation and re-employed on the post of Consultant as the appellants.

6. The aforesaid employees were paid as per the revised pay scale of 7th Central Pay Commission for re-employment period and not paying the same to the appellants, is clearly discriminatory against the appellants under Articles 14, 16 and 21 of the Constitution of India which has been stated by the appellants in the representation made to the respondents.

7. Learned counsel appearing on behalf of the appellants submits that the learned Single Judge has not taken into account the report of the respondents about the adoption of 7th Central Pay Commission in AIU vide its report dated 26.10.2017. However, the learned Single Judge has failed to appreciate the fact that the respondents had taken a decision by the Governing Council dated 18.12.2015 that the Committee is of the view that re-appointment of AIU staff needs to be made on contractual basis and in such cases, there emoluments be fixed as per scale in which the employee



retired. Accordingly, the Committee recommended that the emoluments of Mr. Prabir Guha be fixed as per the scale in which he retired.

8. The case of the respondents is that the appellants were given the benefit of the revision of pay scales as regular employees of respondent No. 1 organisation, which includes the arrears w.e.f. January 1, 1996. On perusal of the impugned order, it is revealed that the learned Single Judge did not agree with the plea advanced by the learned counsel for the appellants that though remuneration as Consultants given to the appellants on the Basic Pay+Grade Pay+Dearness Allowance drawn on the date of retirement but the fact remains that the appellants after retirement are receiving the pension for the service put in by them in AIU.

9. Learned counsel appearing on behalf of the appellants submits that there is no pension scheme. However, it is wrongly recorded by the learned Single Judge. We do not dispute the said fact. However, the terms of the appointment being what they are, the claim is contrary to the same and cannot be claimed as a matter of right. That apart the revision of pay scale w.e.f. January 1, 2016 was given in favour of the appellants because they were holding regular posts in the organization unlike the post of Consultant which is not a sanctioned post and the appointments have been made only to meet the contingencies arising because of shortage of employees.

10. It is not in dispute that as per the appointment letter, the appellants were re-employed as Consultants purely on temporary and contractual basis for a period of six months w.e.f. April 1, 2016 on a consolidated remuneration equal to the sum total of the Basic Pay+Grade Pay+Dearness Allowance drawn as on the date of his retirement besides payment of Medical Allowance @ Rs. 500/- and Conveyance Allowance @ Rs. 500/-



per month, respectively. It is not in dispute that the appellants get consolidated remuneration equal to the sum total of Basic Pay+Grade Pay+Dearness Allowance as on the date of their retirement and therefore they cannot be equated with the regular employees to be directed to the respondents to pay at par with the appellants with regular employees along with Medical Allowance and Conveyance Allowance. Learned counsel for the respondents submits that the persons mentioned above were also getting remuneration as per their appointment and are not paid more remuneration than the appellants herein.

11. Thus, we find no ambiguity and infirmity in the order passed by the learned Single Judge.

12. Finding no merit in the present appeal, the same is accordingly dismissed.

SURESH KUMAR KAIT, J

SUDHIR KUMAR JAIN, J

MAY 5, 2022/rd