

12.10.2023
SL No.59
Court No.8
(gc)

**MAT 1946 of 2023
CAN 1 of 2023**

**Soumyendra Sen & Anr.
Vs.
Union of India & Ors.**

Mr. Anjan Bhattacharya,
Ms. Anita Shaw,
Ms. Susmita Das,
...for the Appellant.
Mr. Indrajeet Dasgupta,
Ms. Puspita Bhowmick,
...for the Respondent/University.

1. The dispute is essentially with regard to wrong fixation of pay scale. The University has submitted that the writ petitioners were given increments and higher scale of pay without having the proper qualification. The higher pay band to which they were positioned at the relevant time was erroneous. The learned Single Judge has restrained the University from recovering any amount before November, 2016.
2. In view of the fact that the petitioners are in service, the petitioners cannot get the benefit of decision of the Hon'ble Supreme Court in ***The State of Punjab Vs. Rafiq Mashri*** reported at **(2015) 4 SCC 334**. However, we make it clear that any

recovery made pursuant to the communication dated 28th March, 2023 shall abide by the result of the writ petition.

3. It is needless to mention that in the event the petitioners able to establish that they were entitled to financial upgradation of which they were denied subsequently, they would be entitled to all financial benefits and all the amounts deducted in terms of the letter dated 28th March, 2023 shall be refunded with interest at the rate of 8% per annum.
4. Accordingly, the appeal and the application stand disposed of.
5. However, there shall be no order as to costs.
6. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)