

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-4701-2016

Date of Decision: 19.09.2023

Awnish Kumar Tripathi and Others**...Petitioners****Versus****Union of India and Others****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Anurag Goyal, Advocate for the petitioners
Mr. Aseem Aggarwal, Advocate
for respondent No.1-Union of India
Mr. A.S. Virk, Advocate for respondent Nos.2 and 3

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners, through instant petition under Articles 226/227 of the Constitution of India, are seeking direction to respondents to re-fix their initial pay as well as extend benefit of 7 non-compounded advance increments.
2. During the pendency of the petition, the respondent Nos.2 and 3 filed affidavit dated 30.08.2023 wherein it was submitted that a committee was constituted by respondent Nos.2 and 3 and on the basis of recommendation of the committee, the initial pay of ₹25,600/- inclusive of AGP ₹7,000 instead of ₹22,600/- as earlier, has been fixed.
3. On the basis of aforesaid affidavit, the petitioners submitted that petitioners would make representation to the appropriate authority with

respect to fixation of initial pay because as per their opinion initial pay should be ₹25,750/- whereas respondent has re-determined ₹25,600/-.

4. In view of statement of both sides, the issue with respect to fixation of initial pay came to be settled. Now the prayer of the petitioners is confined to grant of 7 non-compounded advance increments.

5. Respondent No.2 was earlier known as Regional Engineering College, Kurukshetra. It was upgraded as National Institute of Technology, Kurukshetra (Deemed University) and later on it was declared as Institute of National Importance under NIT Act, 2007. The petitioners are working with respondent-institute as Assistant Professors.

6. The petitioners are holding degree of Ph.D. and they applied for the post of Assistant Professor. The petitioners came to be selected in terms of Model Recruitment Rules, 2011 (hereinafter referred to as '**2011 Rules**'). The petitioners were having degree of Ph.D., thus, they were entitled to AGP ₹7,000. The petitioners were granted pay band of ₹15,600/- with AGP ₹7,000. The petitioners were not granted benefit of 7 non-compounded advance increments.

7. Learned counsel for the petitioner *inter alia* submits that petitioners are entitled to 7 non-compounded advance increments. The case of the petitioners is squarely covered by instructions dated 18.08.2009 issued by Ministry of Human Resource Development. The clarification dated 09.03.2010 issued by Ministry of Human Resource Development did not debar petitioners from their right to 7 non-compounded advance increments.

8. In support of their claim, the petitioners rely upon communication dated 17.06.2015 whereby Ministry of Human Resource Development has clarified that minimum pay in Pay Band-3 for Assistant Professor on contract with AGP ₹ 7000 shall be ₹15,600/- plus 7 non-compounded advance increments. The petitioner further relies upon paragraph 1 (b) of circular dated 27.10.2017 wherein question of pay of Assistant Professors has been considered. There is a table annexed with said circular.

9. As per afore-stated paragraph read with table, an Assistant Professor Grade-II is entitled to pay of ₹84,800/-, if he is getting grade pay ₹7000. The petitioners were appointed at grade pay of ₹ 7000, thus, their pay should be ₹84,800/-. The respondent with respect to its institute at Meghalaya issued an advertisement dated 25.02.2019 and as per the said advertisement, initial pay of Assistant Professor Grade-II, Pay Level 11 i.e. AGP ₹7000 is ₹84,800/-. Similarly, N.I.T, Durgapur in its advertisement dated 21.06.2019 has declared that Assistant Professor Grade-II, Pay Level 11 shall be entitled to pay ₹ 84,800/-. The claim of the respondent that pay re-fixed by Board of Governors includes ₹3,000/- is factually incorrect because as per recommendation of 6th Pay Commission, the revised pay is 1.86 times of the earlier pay i.e. pay as on 01.01.2006, thus, there is no question of consideration of advance increments while re-fixation of pay.

10. *Per contra* learned counsel for respondent Nos.2 and 3 submits that prior to implementation of 2011 Rules, AGP of ₹6,000 was extended at entry level w.e.f. 01.01.2006. The intent and purport of grant of 7 non-compounded advance increments was to recognize edge of qualification because prior to 2011, M.Tech. was minimum qualification for appointment

as Lecturer. The candidates having higher qualification i.e. Ph.D. were recognized by way of grant of 7 non-compounded increments. The persons having qualification of M.Tech. as well as Ph.D. were entitled to AGP ₹6,000/-. With the introduction of 2011 Rules, the appointment of Assistant Professor was classified into three categories i.e. i) M.Tech; ii) Ph.D. without experience and iii) Ph.D. with three years experience. The candidates having qualification of M.Tech. were entitled to AGP ₹6000/- whereas candidates having qualification of Ph.D. without experience were entitled to AGP ₹7,000/- and candidates having Ph.D. with experience of three years were entitled to AGP ₹ 8000/-. The Ministry of Human Resource Development vide circular dated 18.08.2009 recognized concept of 7 non-compounded advance increments. The said circular was modified vide circular dated 09.03.2010. In the circular dated 09.03.2010, it was clarified that 7 non-compounded advance increments would be available to two categories of appointees i.e. (a) direct recruit lecturers in the pre-revised scale of Rs.8000-13500 appointed between 01.01.2006 and 17th August 2009 and (b) Direct recruit Assistant Professors in the revised pay of PB-3 with AGP of Rs.6000 from 18th August 2009 onwards. The petitioners do not fall in either of aforesaid categories, thus, they are not entitled to 7 non-compounded increments. The respondent in its meeting of Board of Governors has considered the issue and to redress the grievance of the petitioners, basic pay has been re-fixed which includes additional sum of ₹3,000/- and the said fixation is on the basis of fitment table.

11. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

12. The petitioners were concededly appointed post 2011 Rules. The Ministry of Human Resource Development vide instructions dated 18.08.2009 has provided that 7 non-compounded advance increment shall be admissible at the entry level of recruitment as Assistant Professors to persons possessing the degree of Ph.D. The relevant extracts of instructions dated 18.08.2009 read as:

“2. For other Centrally Funded Technical Institutions.

The pay structure and designations for all other Centrally Funded Technical Institutions will generally be the same as per the scheme of revision of pay of teachers, etc. in Universities, etc. as notified by the Ministry of HRD vide letter No.1-32/2006-U.II/U.I.(i) dated 31st December, 2008 and clarification issued thereon from time to time. However, in the case of National Institutes of Technology (NITs), Indian School of Mines University (ISMU), Indian Institutes of Information Technology (IITs) and Schools of Planning & Architecture (SPAs), the following accelerated promotional benefits will be given while maintaining the UGC Pay Structure and designations;

(a) Seven non-compounded advance increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degree of Ph.D. awarded in the relevant discipline.”

13. Ministry of Human Resource Development issued clarification dated 09.03.2010 whereby it was clarified that direct recruit lecturer in pre-revised scales appointed between 01.01.2006 and 17.08.2009 and direct recruit Assistant Professors in the revised pay of PB-3 with AGP ₹6000 from

18.08.2009 onwards shall be entitled to 7 non-compounded advance increments. The relevant extracts of the instructions dated 09.08.2010 read as:

“1. Non compounded Advance increments

- a) As advance increments are treated as integral to pay, grant of non compounded advance increment at the rates mentioned in Paragraph 7 of this Ministry’s order No.1-32/2006 UII/UI(1) dated 31st December, 2008 and No.23-1/2008 TS.II dated 18th August 2009 would apply only to (a) direct recruit lecturers in the pre-revised scale of Rs.8000-13500 appointed between 1.1.2006 and 17th August 2009 and (b) Direct recruit Assistant Professors in the revised pay of PB-3 with AGP of Rs.6000 from 18th August 2009 onwards. Therefore, the decision on the non compounded advance increments as communicated vide this Ministry’s letter referred to above dated 31st August 2008 and 18th August 2009 will not be applicable to those faculty who were appointed upto 31st December 2005. Those appointed prior to 1.1.2006 will be governed by instructions the in force.”*

14. The prime contention of the respondent-institute is founded upon afore-cited clarification dated 09.03.2010. The respondent is of the opinion that non-compounded advance increments were admissible post 09.03.2010 only to those recruits who were directly appointed as lecturer in the pre-revised scale of ₹8000-13500 between 01.01.2006 and 17.08.2009 and direct recruit Assistant Professor in the revised pay band of 3 with AGP of ₹6000 from 18.08.2009 onwards. The petitioners were appointed Assistant

Professors post 09.03.2010 and they were not appointed with AGP ₹6000, thus, they were excluded from the earlier circular dated 18.08.2009.

15. The contention of the petitioners is that prior to 09.03.2010 there was no Assistant Professor who was appointed with AGP ₹7000 and petitioners came to be appointed with AGP ₹7000 after 2011 Rules. As at the time of issuance of instruction dated 09.03.2010, there was no appointment of Assistant professors with AGP ₹7000, thus, there was no question for the Government to consider Assistant Professor with AGP ₹7000.

16. This Court specifically asked respondent to clarify whether any Assistant Professor with AGP ₹7000 was appointed on or before 09.03.2010. Learned counsel for the respondent expressed his inability to point out any appointment of Assistant Professor with AGP ₹7000 on or before 09.03.2010.

17. In view of doubt created by instructions dated 09.03.2010, it is imperative to look at subsequent letters/circulars issued by the respondent. The respondent has issued communication dated 17.06.2015 whereby it has been clarified that minimum pay in Pay Band-3 for Assistant Professor on contract with AGP ₹7000 shall be ₹15600 plus 7 non-compounded annual increments. The relevant extracts of said communication read as:-

<i>Anomalies</i>	<i>Recommendations</i>
<i>The detailed Recruitment Rules specify minimum starting pay of Rs.15,600/- + 07 non-compounded initial increments for recruitment of</i>	<i>It is clarified that the minimum pay in Pay Band (PB)-3 for Assistant Professor on contract with AGP of Rs.7000/- shall be Rs.15,600/- plus 07 non-</i>

<i>Assistant Professor on contract with AGP Rs.6000/-.</i> <i>But it is silent on the same subject for faculty recruited to AGP of Rs.7000/-.</i>	<i>compounded increments.</i>
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The respondent has further issued circular dated 27.10.2017 wherein question of pay of Assistant Professor has been considered. The relevant extract of said circular read as :-

“(b) The nomenclature of Assistant Professors (Contractual) is changed into Assistant Professor Grade-II (Presently in AGP 6,000 and AGP 7,000) and Assistant Professor Grade-I (Presently in AGP 8,000 and AGP 9,000). There shall be no change in the terms and conditions of appointment, or nature of appointment as done earlier as per MHRD letter no.23-01/2008-TS-II dated 18.08.2009 read with 16.09.2009. Institutes should put in place a process for discontinuation of non-performers. The initial pay for Assistant Prof. Grade-II (level 10) be mapped to cell no.8 of the Annexure –I i.e. Rs.70,900 instead of the 7 non-compounded increments.”

18. N.I.T. Meghalaya has issued advertisement dated 25.02.2019 and N.I.T. Durgapur has issued advertisement dated 21.06.2019 wherein respondent has declared pay of Assistant Professor, Grade-II Pay (Level 11) ₹84,800/-. The said amount is composite amount and it comes if 7 non-compounded advance increments are included in basic pay plus AGP.

19. Learned counsel for the respondent submitted that N.I.T. Durgapur and N.I.T. Meghalaya have fixed pay of the Assistant Professors considering applicable rules and regulations.

20. From the perusal of clarification dated 18.08.2009 read with clarification dated 09.03.2010, it comes out that Assistant Professors having degree of Ph.D. are entitled to 7 non-compounded advance increments. There is substance in the contention of petitioners. The respondent has created confusion on the basis of AGP of ₹7000 paid to the petitioners. The respondent has tried to make difference between Assistant Professors getting AGP ₹6000 and AGP ₹7000. The respondent is claiming that Assistant Professor getting AGP ₹6000 are entitled to 7 non-compounded advance increments whereas Assistant Professor getting AGP ₹7000 are not entitled to the said benefit. Letter dated 17.06.2015 issued by Ministry of Human Resource Development has made the things clear. It clearly provides that Assistant Professor with AGP ₹7000 shall be entitled to pay ₹15,600/- plus 7 non-compounded advance increments. The letter dated 27.10.2017 issued by Ministry of Human Resource Development further clarifies the position. As per paragraph 1 (b) of the said letter, it is quite clear that Ministry has accepted that Assistant Professor would be entitled to lump sum ₹84,800/- in terms of table enclosed with the letter instead of 7 non-compounded advance increments. The letter indicates that, Government, at this stage, has decided to include 7 non-compounded advance increments into composite amount as pointed out in the annexure enclosed with the said letter. The respondent is unable to controvert the fact that Annexure-I enclosed with letter dated 27.10.2017 prescribing pay ₹84800 to Assistant Professor Grade-II includes 7 non-compounded advance increments. The respondent with respect to its institutes at Meghalaya and Durgapur has prescribed pay which is in

consonance with communication dated 27.10.2017 of Ministry of Human Resource Development.

21. All the above-noted letters collectively indicate that there was always intention of the Government to extend 7 non-compounded annual increments to Assistant Professor appointed in PB-3 with AGP ₹7000.

22. The respondent has contended that after implementation of 6th Pay Commission and 7th Pay Commission, the pay of the petitioners has been re-fixed. As per fitment table which is based upon 6th Central Pay Commission, in the pay of the petitioners, a sum of ₹3000/- has been included in the basic pay.

Learned counsel for the petitioner while controverting the aforesaid contention of the respondents submits that contention of respondent that a sum of ₹3000/- has been included in basic pay in fitment table is factually incorrect because fitment table was prepared considering basic pay 1.86 times of pre-revised pay. The minimum revised pay was notified ₹15600/- thus, wheresoever, applying multiplier of 1.86 times to pre-revised pay, pay comes to less than ₹15600/-, the pay is fixed ₹ 15,600/-. Every entry of fitment table is based upon this formula, thus, there is no question of inclusion of ₹3,000/- in the basic pay as per fitment table. Court finds substance in the contention of the petitioners, however, it loses significance in the wake of above findings, on the issue involved.

23. In view of aforesaid facts and findings, this Court is of the considered opinion that petitioners are entitled to benefit of 7 non-

compounded advance increments. The petition deserves to be allowed and accordingly allowed.

(JAGMOHAN BANSAL)
JUDGE

19.09.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>