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

% *Date of Decision: 21st March, 2023*

\+ W.P.(C) 1227/2019

SH. ANIL KUMAR ..... Petitioner
Through: Mr. Shanker Raju, Mr. Nilansh Gaur, Ms. Anubha Bhardwaj and Mr. Rajesh Sachdeva, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY ..... Respondent
Through: Ms. Monika Arora and Mr. Subhrodeep Saha, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioner seeks setting aside of the impugned order dated 24.01.2019, whereby the Respondent has rejected his request for counting his past service in the post of Junior Assistant-cum-Typist from 01.01.1996. Writ of mandamus is sought for direction to the Respondent to count Petitioner's past service from 01.01.1996 to 03.02.2013 towards eligibility period for computation of 20 years for grant of 2nd financial upgradation under the Modified Assured Career Progression Scheme ('MACP Scheme') in PB-2 with Grade Pay of Rs.4200/-, along with arrears and other consequential benefits.

2. Shorn of unnecessary details, the facts necessary for adjudicating the issues arising in the present writ petition are that Petitioner was appointed as Junior Assistant-cum-Typist in the pay

scale of Rs.950-1500 (4th CPC) on 21.04.1995 on direct recruitment basis with the Respondent/Jawaharlal Nehru University ('JNU'), vide Office Order dated 15.05.1995 and was subsequently granted OUM (One Upward Movement) in the pay scale of Rs.1350-2200. Petitioner applied for the post of Semi Professional Assistant on direct recruitment basis and on being selected, was appointed to the said post on 01.02.2013 in Pay Band Rs.5200-20200 (PB-1) with Grade Pay of Rs.2800/- with the Respondent.

3. It is averred by the Petitioner that some employees of the Respondent, working as Caretakers, filed writ petitions in this Court including W.P.(C) 1050/2000 titled as ***Bam Dev Chhetri & Ors. v. Jawaharlal Nehru University & Anr., 2013 SCC OnLine Del 4705,*** challenging reduction of their pay scale from Rs.1350-2200 to Rs.950-1500. Case of the Petitioners therein was that looking at their onerous duties and responsibilities they had been correctly granted the pay scale of Rs.1350-2200 w.e.f. 21.03.1996 with notional benefits from 01.01.1986 and having granted the pay scale, Respondents were estopped from reducing the said pay scale to pay scale of Rs.950-1500. Case of the Respondents was that as per 4th CPC recommendations, core pay scale in the Central Government for Caretakers was Rs.950-1500 and by grant of higher pay scales in the University an anomaly had arisen, which was sought to be rectified by reducing their pay scale to Rs.950-1500.

4. After deliberating on the communications exchanged between University Grants Commission (UGC) and JNU, more particularly, letter dated 08.04.1998, whereby it was decided that wherever higher pay scales had been granted, even though different from the Central Government, they should be protected and treated as personal to the said employees, Court allowed the writ petitions vide judgment dated

22.11.2013 and directed that the pay scale of Rs.1350-2200, revised to Rs.4500-7000 under 5th CPC, be restored to the Petitioners with all consequential monetary benefits along with interest at the rate of 7.5% per annum on the arrears.

5. After the said judgment, Petitioner also took recourse to his legal remedies, in order to protect the pay scale of Rs.1350-2200 granted as OUM and filed W.P.(C) 2882/2016 in this Court along with a few other employees, claiming benefit of the judgment dated 22.11.2013. The writ petition was disposed of by the Court on 23.11.2016 by a consent order, directing that the judgment passed in ***Bam Dev Chhetri (supra)*** will govern the case of the Petitioners and Respondent shall, after giving appropriate hearing to the Petitioners, act in accordance with the said judgment.

6. It is stated that in compliance of the judgments, Respondent passed an Office Order dated 09.10.2017 and re-fixed the pay of the Petitioner in the pay scale Rs.1350-2200 w.e.f. 21.04.1995 and also gave benefits of subsequent pay revisions by placing him in the pay scale Rs.4500-7000 w.e.f. 01.01.1996 (5th CPC) and Pay Band Rs.5200-20200 with Grade Pay of Rs.2800/- under 6th CPC.

7. Contention of the learned counsel for the Petitioner is that the core pay scale of the Petitioner in the post of Junior Assistant-cum-Typist was restored to Rs.1350-2200 from Rs.950-1500 and due to consequent pay revisions under the 5th and 6th CPC, he was drawing pay in Grade Pay of Rs.2800/- in PB-1 in the year 2015. Since his Grade Pay in the post of Junior Assistant-cum-Typist was Rs. 2800/-, which was the same as in the new post, his past service ought to be counted from 21.04.1995 and thus counted, he has become eligible to be considered for 2nd financial upgradation under the MACP Scheme in 2015 i.e. on completion of 20 years. However, the Screening

Committee held on 03.12.2018 erroneously rejected his case for consideration on the ground that the Grade Pay for the post of Junior Assistant-cum-Typist is Rs.1900/-, which is different from the Grade Pay of Semi Professional Assistant i.e. Rs.2800/- and the service in the former post cannot be counted for computing 20 years for 2nd MACP.

8. It was urged that vide Office Order dated 09.10.2017, Respondent had, in implementation of order passed in W.P.(C) 2882/2016, premised on the judgement in ***Bam Dev Chhetri (supra),*** placed the Petitioner in pay scale of Rs.1350-2200 with effect from the date of his initial appointment on 21.04.1995 and in the revised PB-1 with Grade Pay of Rs.2800/- w.e.f. 01.01.2006 (pre-revised Rs.4500-7000 under 5th CPC) and thus it is not open to fall back on the Grade Pay of the post of Junior Assistant-cum-Typist, as that would amount to negating and nullifying the effect of relief granted to him by the Court and the resultant pay re-fixation order.

9. It was submitted that MACP Scheme was introduced by the Government of India vide O.M. dated 19.05.2009, made effective from 01.09.2008 and under the Scheme, an employee is entitled to three financial upgradations on completion of 10, 20 and 30 years' service respectively. MACP Scheme places an incumbent in the immediate higher Grade Pay as per First Schedule of CCS (Revised Pay) Rules, 2008 (hereinafter referred to as 'Pay Rules, 2008'). Since Petitioner was in PB-1 with Grade Pay Rs.2800/- w.e.f 01.01.2006 (pre-revised Rs.4500-7000 from 01.01.1996), he is entitled to 2nd financial upgradation under MACP Scheme in the Grade Pay of Rs.4200/-, which is being illegally denied to him. Petitioner has rendered over 28 years of service till date and is yet to receive any financial upgradation, which defeats the very objective of Schemes

such as MACP, which were introduced to remove stagnations on account of eligible employees not getting promotions due to lack of vacancies.

10. Learned counsel for the Respondent, *per contra,* opposes the writ petition and submits that Petitioner joined the Respondent as Junior Assistant-cum-Typist on 21.04.1995 in the pay scale of Rs.950-1500. He was granted OUM scale of Rs.1350-2200 but the same was objected to by UGC vide letters dated 31.10.1997 and 10.10.1999, on the ground that the higher pay scale was granted against the norms of the Central Government and without the consent of UGC. Accordingly, the scales were reduced by the University in each cadre and Petitioner was placed in the revised pay scale of Rs.5200-20200 with Grade Pay of Rs.2400/- vide Office Order No.75 dated 12.03.2009. Against this, Petitioner and others approached this Court and the core pay scale of Rs.1350-2200 was restored, pursuant to the order of the Court. Petitioner was appointed as Semi Professional Assistant through open recruitment in PB-1 Grade Pay of Rs.2800/- and was allowed to retain his previous pay. Case of the Petitioner for financial upgradation under MACP Scheme was placed before the Screening Committee on 03.12.2018, however, the Committee was of the view that Petitioner would be eligible for consideration for 1st MACP only on completion of 10 years from 04.02.2013, as his past service in the post of Junior Assistant-cum-Typist carrying Grade Pay of Rs.1900/- could not be counted.

11. Contention of the Respondent is that prior to his appointment as Semi Professional Assistant, Petitioner was already in the higher pay scale of Rs.5200-20200 with Grade Pay of Rs.2800/- due to the orders of the Court, which was equivalent to three financial upgradations under the MACP Scheme for the post of Junior Assistant-cum-Typist.

Moreover, the UGC approved core pay scale of the post of Junior Assistant-cum-Typist is Rs.5200-20200 with Grade Pay of Rs.1900/-, which is different from the Grade Pay of Semi Professional Assistant i.e. Rs.2800/-. Thus the Committee rightly declined counting of Petitioner's past service by virtue of Clause 9 of Annexure-I to the MACP Scheme which defines 'Regular Service'. Para 9 of the Scheme provides that any interpretation/clarification of doubt as to the scope and meaning of provisions of MACP Scheme shall be given by DOPT and accordingly a letter was sent to UGC on 02.04.2019 in this regard, for seeking clarification, but the outcome is unknown.

12. It was submitted that there is no illegality in the impugned decision and the same is in consonance with the clarification given by DOPT in response to the 'point of doubt' 13 in the FAQs pertaining to MACP Scheme, whereby past service in an earlier Department can only be counted for computing the eligibility period under MACP Scheme if it is in the same Grade Pay and without break in service. It is clearly spelt out in the impugned order dated 24.01.2019 that post of Junior Assistant-cum-Typist is in the Grade Pay of Rs.1900/-, which is different from Grade Pay of Rs.2800/- in the post of Semi Professional Assistant and thus past service in a different Grade Pay cannot be counted.

13. I have heard the learned counsels for the parties and examined their rival submissions.

14. It is not in dispute that Petitioner was appointed by the Respondent on direct recruitment basis as Junior Assistant-cum-Typist on 21.04.1995 in the pay scale of Rs.950-1500, however, subsequently OUM pay scale of Rs.1350-2200 was granted to the Petitioner by the Respondent. Petitioner was appointed as Semi Professional Assistant on 01.02.2013 with the Respondent in the Pay Band Rs.5200-20200

with Grade Pay of Rs.2800/- on direct recruitment basis.

15. At this stage, at the cost of repetition, it would be pertinent to refer to the litigation that ensued in this Court at the instance of some Caretakers in the Respondent University. The Caretakers in JNU were initially placed in the core pay scale of Rs.950-1500, which was subsequently enhanced to Rs.1350-2200 by the Respondent, vide order dated 21.03.1996, with notional benefits from 01.01.1986, but without arrears. On account of grant of the higher pay scale to the Petitioners, certain anomalies arose in the pay structure of other posts and as a result Respondent brought into force schemes for OUM and Second Upward Movement ('SUM') for compensating the employees working on other posts. UGC objected to the revised pay scale of Rs.4500-7000 (5th CPC) on the ground that the pre-revised scale Rs.1350-2200 was itself wrongly granted by the University and the Caretakers were only entitled to be placed in the pay scale of Rs.950-1500. Upon reduction of their pay scales, Petitioners approached this Court and all the writ petitions were decided by a common judgment dated 22.11.2013 in ***Bam Dev Chhetri (supra).*** After hearing the parties, Court allowed the writ petitions and it would be relevant to note the observations and the operative part of the judgment. Relevant passages are as follows:-

> *"6. A reading of the aforesaid communications of the UGC brings out the following admitted facts:-*
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> *(i) By its letter dated 8.4.1998 it was specifically stated that the non-teaching employees of respondent no. 1/University were to be given pay scales as specified in annexure to the letter, and which annexure gives the new pay scales as per the Fifth Pay Commission to care takers in the existing core scale of pay of Rs. 1350-2200/- the higher pay scale (pursuant to Fifth Pay Commission recommendations) of Rs. 4500-7000/-.*
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> *(ii) The issue arose as to the fact that actually care takers of Central Government did not have the core scale of pay of Rs. 1350-2200/-, but only had core scale of pay of Rs.950-1500/-, and therefore what would be actually the core scale of pay of*

care takers of respondent no. 1/University, the same was resolved in terms of para (2) of the letter of the UGC dated 10.4.1998 and which provided that the replacement pay scales no doubt would be as per the recommendations of the Fifth Pay Commission Report, however, if caretakers/category (ii) employees are already getting a different higher pay scales then such higher pay scales will be protected as personal rights of such existing employees with the condition that core scale of pay for new recruits (future recruitment) will be at the lower scale of Rs.950-1500/- and not at Rs. 1350-2200/-.

(iii) The communication of UGC dated 5.10.1999 did not in any specific manner override or deny benefit of higher pay scales to care takers being category (ii) employees of the respondent no. 1/University, and personal rights of such persons although actual core scale of pay would be lower as per the Fifth Pay Commission Report, the existing higher pay scales were protected, and it was simply specified as per para 4(iii) that core scale of pay would be the core scale of pay of corresponding posts in Central Government i.e. the personal entitlement of a higher pay scale given by the communication of UGC dated 10.4.1998 was not in any manner taken away by the communication of UGC dated 5.10.1999 and all that was specified was that only the core scale will remain equivalent to the corresponding post in Central Government for future recruitment, and this is when one so reads this with para (2) of the letter of the UGC dated 10.4.1998 and para 3(v) of the self-same letter dated 5.10.1999 of UGC, that existing incumbents of posts were to get the normal replacement scales as personal to them with new recruitments taking place in rationalized pay structure corresponding to Government pay scales for equivalent categories/posts.

(iv) Therefore once the higher pay scale already stood granted to category (ii) employees, including the care takers such as the petitioners, the Government did not and could not reduce the core pay scale of care takers from Rs. 1350-2200/- to Rs.950-1500/-, and once personal pay scales of Rs. 1350-2200/- are accepted so far as petitioners/caretakers are concerned, the pay scale which would then be granted to such persons as per the Fifth Pay Commission Report would be in the band of Rs. 4500-7000/-.

7. In view of the above, I do not agree with the contentions and arguments urged on behalf of the respondent nos. 1 and 2 that by the communication dated 5.10.1999 of the respondent no. 2 and 29.7.1999 of Ministry of Human Resource Development specified core scale of pay by the same core scale of pay as Central Government employees, and accordingly therefore such language means that already existing higher pay scales of petitioners as care takers would be taken away from them although such rights were preserved and personal to the existing employees in terms of para

(2) of the communication of UGC dated 10.4.1998. Retrospectively, the monetary benefits granted to employees, are never ordinarily taken away by the government.

8. In view of the above, writ petition is allowed. It is directed that petitioners/care takers of the respondent no. 1/University who have been enjoying higher pay scales in terms of the notification of the respondent no. 1/University dated 21.3.1996 would be put in the core scale of pay of Rs. 1350-2200 being the existing scale to be revised as per the Fifth Pay Commission Report, and which Fifth Pay Commission Report revised the pay scales of Rs. 1350-2200/- to Rs. 4500-7000/-. Petitioners will be entitled to all consequential monetary benefits as to be calculated in terms of this judgment and the respondent no. 1 now will pay the appropriate monetary benefits and consequential monetary benefits to the petitioners within a period of six months from today. If the appropriate monetary benefits are not paid within six months from today, then, petitioners so far as future period after six months is concerned, will be entitled to interest @ 7 ½% per annum simple on all arrears which are to be paid in terms of this judgment and not paid within a period of six months from today. Parties are left to bear their own costs.

W.P.(C) Nos. 1364/2000, 2735/2000 and 6231/2001

In these writ petitions, petitioners are also category (ii) employees in terms of the communication of the UGC dated 10.4.1998 and therefore they will get the same benefits as per the ratio in the judgment in W.P.(C) No. 1050/2000. These writ petitions are also therefore allowed and same directions are also issued against the respondent no. 1/University as issued in W.P.(C) No. 1050/2000. Parties are left to bear their own costs."

16. From a reading of the judgment, it is crystal clear that the Court took note of the UGC letter dated 08.04.1998, wherein it was clearly directed that while the core pay scale of the Caretakers was Rs.950-1500, however, employees who were already getting a different higher pay scale will be protected and the higher scale would be treated as a personal scale for them, with the condition that core scale of pay for new recruits will continue to be the lower scale of Rs.950-1500 and not Rs.1350-2200. Further, the subsequent communication of UGC dated 05.10.1999 did not override this direction/decision and all that was specified was that the core scale of the posts in question will remain equivalent to corresponding posts in Central Government for future recruitments.

17. Premised on these communications of the UGC, Court held that once the higher pay scale was granted to the employees including the Petitioners, it could not be reduced from Rs.1350-2200 to Rs.950-1500 and Petitioners would be entitled to pay revisions under the subsequent Pay Commissions, taking Rs.1350-2200 as the core pay scale. Court also observed that in any case under the law, pay scales cannot be reduced retrospectively.

18. Based on this judgment, the Petitioner along with few other employees also filed a writ petition in this Court being W.P.(C) 2882/2016. By a consent order, the writ petition was disposed of on 23.11.2016 directing that the benefits accruing under the judgment dated 22.11.2013 be granted to the Petitioners. No riders or conditions were attached by the Court to the grant of the benefits to the Petitioners. Relevant part of the order dated 23.11.2016 is as follows:-

> *"1. This writ petition is disposed of with the consent order that the judgment passed by this Court on 22.11.2013 in connected writ petitions with lead petition being W.P.(C) 1050/2000 titled as* ***Bam Dev Chhetri & Ors. Vs. Jawaharlal Nehru University & Anr.*** *will also govern the case of the present petitioners and the respondent after giving appropriate hearing to the petitioners will act in accordance with the judgment dated 22.11.2013 passed in* ***Bam Dev Chettri's case (supra)****.*
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> *2. The writ petition is accordingly disposed of in view of the ratio of the judgment in* ***Bam Dev Chhetri's case (supra)****."*

19. The judgment was implemented and an Office Order No.429/2017 was passed by the Respondent on 09.10.2017, re-fixing the salary of the Petitioner in terms of the judgment, from 21.04.1995, taking the core pay scale as Rs.1350-2200. Pay revisions were also granted under the 5th and 6th CPC on this pay scale, which is evident from the order itself. The order is extracted hereunder for ready reference:-

> *"In compliance of Hon'ble High Court of Delhi's order dated 23.11.2016 (W.P. No.2882/2016), the pay of* ***Sh. Anil Kumar,*** *the*

then Jr. Assistant-cum-Typist (Now Semi Professional Assistant w.e.f. 04.02.2013*) has been re-fixed as under:*

Pay as on 21.04.1995: Rs. 1350/-

Pay fixed as per 5th CPC w.e.f. 01.01.1996

01.01.1996	Rs.4500.00 p.m.
01.04.1996	Rs.4625.00 p.m.
01.04.1997	Rs.4750.00 p.m.
01.04.1998	Rs.4875.00 p.m.
01.04.1999	Rs.5000.00 p.m.
01.04.2000	Rs.5125.00 p.m.
01.04.2001	Rs.5250.00 p.m.
01.04.2002	Rs.5375.00 p.m.
01.04.2003	Rs.5500.00 p.m.
01.04.2004	Rs.5625.00 p.m.
01.04.2005	Rs.5750.00 p.m.

Pay fixed as per 6th CPC w.e.f. 01.01.1996

01.01.2006	Rs. 10700.00 + Rs. 2800.00 = Rs. 13500.00
01.07.2006	Rs. 11110.00 + Rs. 2800.00 = Rs. 13910.00
01.07.2007	Rs. 11530.00 + Rs. 2800.00 = Rs. 14330.00
01.07.2008	Rs. 11960.00 + Rs. 2800.00 = Rs. 14760.00
01.07.2009	Rs. 12410.00 + Rs. 2800.00 = Rs. 15210.00
01.07.2010	Rs. 12870.00 + Rs. 2800.00 = Rs. 15670.00
01.07.2011	Rs. 13340.00 + Rs. 2800.00 = Rs. 16140.00
01.07.2012	Rs. 13830.00 + Rs. 2800.00 = Rs. 16630.00
01.07.2013	Rs. 14330.00 + Rs. 2800.00 = Rs. 17130.00
01.07.2014	Rs. 14850.00 + Rs. 2800.00 = Rs. 17650.00
01.07.2015	Rs. 15380.00 + Rs. 2800.00 = Rs. 18180.00
01.07.2016	Rs. 15930.00 + Rs. 2800.00 = Rs. 18730.00
01.07.2017	Rs. 16500.00 + Rs. 2800.00 = Rs. 19330.00
DNI on 01.07.2018, due if any	

This issues with the approval of Competent Authority. *"*

19. From a conjoint reading of the judgment dated 22.11.2013 and order dated 23.11.2016 along with Office Order dated 09.10.2017, it is clear beyond a scintilla of doubt that Petitioner has been placed in the core pay scale of Rs.1350-2200 from 21.04.1995, when he was appointed as Junior Assistant-cum-Typist. The revised pay scale of Rs.1350-2200 under the 5th CPC is Rs.4500-7000, which was further revised to PB-1, Rs.5200-20200 with Grade Pay of Rs.2800/- and placed in Pay Level-5 under 7th CPC. Therefore, for the purpose of considering his case for computing the eligibility period under the MACP Scheme, he has to be treated in Grade Pay of Rs.2800/- and not Rs.1900/-.

20. Before proceeding to examine the correctness of impugned order in backdrop of the above facts, it would be important to extract the same hereunder, for ready reference:-

> *"This has reference to your letter dated 20.12.2018 requesting to inform you the reasons for not granting you the financial benefit under MACP Scheme.*
>
> *In this regard, the undersigned is directed to inform you that the Screening Committee at its Meeting held on 03.12.2018 while considering the case, observed as under:-*
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> > *"The Committee observed that the employee appointed as Semi Professional Assistant on 04.02.2013 and as per MACP rule his first benefit to be granted on 03.02.2023. Prior to his appointment as SPA he was holding the post of Junior Assistant-cum-Typist with the Grade Pay of Rs.2800/- awarded by the University and the Hon'ble Court. However, the Grade Pay for the Core Pay Scale of the post of Junior Assistant-cum-Typist is 1900/- which is different from Grade Pay of SPA i.e.. 2800/-. Accordingly, the Committee found that counting of past service in this case is not in order; thereby the employee is not eligible for MACP benefit".*
>
> *This is for your information please."*

21. Government of India introduced the MACP Scheme on 19.05.2009 and made it operational w.e.f. 01.09.2008. As per Annexure-I to the Scheme, an employee is entitled to three financial

upgradations under the MACP, counted from the direct entry grade on completion of 10, 20 and 30 years' service, respectively. Financial upgradation under the Scheme is admissible only when the employee spends 10 years continuously in the same Grade Pay. MACP Scheme envisages merely placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised Pay Bands and Grade Pay as given in Section 1, Part-A of the First Schedule of Pay Rules, 2008. After the MACP Scheme was introduced, doubts arose on various issues regarding its implementation and based on a number of 'Frequently Asked Questions' (FAQs), DOPT has been clarifying the points of doubts. In the context of the present case, it is relevant to refer to Point No.13 of one of the FAQs, extracted hereunder:-

	Point of doubt	*Clarification*
13.	***Whether the past continuous regular service in another Govt. Deptt. in a post carrying same grade pay prior to regular appointment in a new Deptt. without a break shall be counted towards qualifying regular service for the purpose of MACPS.***	***Yes. (Para 9, MACPS)***

(Emphasis supplied)

22. From a reading of Point 13 of the FAQs, there can be no doubt that the past continuous regular service in another Government Department in a post carrying same Grade Pay prior to regular appointment in a new Department, without a break, shall be counted towards qualifying regular service for purpose of MACP. This position, clarified by the DOPT, has its genesis in para 9 of Annexure-I to the MACP Scheme which is as follows:-

"9. 'Regular service' for the purpose of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on ad hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post

> *carrying same Grade Pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purpose of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post."*

23. Therefore, it is luminously clear that if the past service of an employee is in the same Grade Pay as in the new Department and the service is without a break, that service will be counted towards computing the eligibility period of 10, 20 and 30 years for grant of three financial upgradations under the MACP, counted from the direct entry grade and thus, all that is required to be examined in the present case is: (a) whether there is a break in the service of the Petitioner between his service in the post of Junior Assistant-cum-Typist and his appointment as Semi Professional Assistant; and (b) whether the Grade Pay of the Petitioner in the two posts, aforementioned, was the same and/or whether the fact that the post of Junior Assistant-cum-Typist carries a Grade Pay of Rs.1900/- can be a ground to deny the benefit of counting the past service of the Petitioner.

24. Insofar as the continuity of service is concerned, there is no dispute that the Petitioner was appointed as Junior Assistant-cum-Typist on 15.05.1995 and worked in the said post continuously till he was appointed as Semi Professional Assistant on direct recruitment basis on 01.02.2013 and there was no break in service. This factual position is not disputed even by the Respondent. The only other issue that arises for consideration is whether the Grade Pay in the two posts was the same or not.

25. Both parties have diametrically opposite stand on this issue. While the Petitioner submits that in both the posts, he is in the Grade Pay of Rs.2800/-, stand of the Respondent is that since the post of Junior Assistant-cum-Typist is in the Grade Pay of Rs.1900/- and the

present post of the Petitioner i.e. Semi Professional Assistant has a Grade Pay of Rs.2800/-, benefit of counting past service cannot be granted to the Petitioner. Having perused the documents on record as well as the two earlier judgments, as aforementioned, this Court finds that the stand of the Petitioner is correct.

26. Admittedly, the pay of the Petitioner was re-fixed under the 6th CPC in Pay Band Rs.5200-20200 with Grade Pay of Rs.2800/- in the post of Junior Assistant-cum-Typist by an order issued with the approval of 'Competent Authority'. With the coming of the 7th CPC, Petitioner has been placed in Level-5 in the Pay Matrix which corresponds to pre-revised pay scale of Rs.1350-2200 under the 4th Pay Commission and not Rs.950-1500. Neither the Court nor the Respondent had imposed any rider or caveat while granting the benefit as far as the Petitioner is concerned, save and except, that the pay scale of Rs.950-1500 would continue to be the scale of new entrants/recruits. If the Respondent is permitted to go by the Grade Pay of the 'post' i.e Rs.1900/- at this stage for the purpose of counting his past service, it would amount to nullifying the relief granted to him by the Court and the pay fixation order, passed by the Respondent, pursuant thereto as also UGC's decision that for employees who were granted the higher core scale of Rs.1350-2200, no reduction will be made and their scale will be protected by treating the scale as personal to the employee. If the Respondent felt that the Petitioner was not entitled to the Grade Pay of Rs.2800/-, it was open to them to contest the case when he had filed the writ petition. On the contrary, Respondent conceded before the Court that the Petitioner's case was covered by the earlier judgment in ***Bam Dev Chhetri (supra)*** and went on to implement the judgment and fix his pay in the Grade Pay of Rs.2800/-. Therefore, insofar as the Petitioner is concerned,

Respondent cannot at this stage approbate and reprobate and treat his Grade Pay in the post of Junior Assistant-cum-Typist as Rs.1900/- *albeit* this is the Grade Pay attached to the post in question. Since the Petitioner has to be treated as drawing Grade Pay of Rs.2800/- in the post of Junior Assistant-cum-Typist which is the same as the Grade Pay of his new post Semi Professional Assistant, he is entitled to the benefit of counting the past service.

27. Under the MACP Scheme, 2nd financial upgradation is granted on completion of 20 years of regular service and thus for computation of the said eligibility period, this Court holds that the service of the Petitioner from 01.01.1996 to 03.02.2013 shall be counted. Accordingly, the writ petition is allowed. Petitioner will be entitled to be considered for the grant of 2nd financial upgradation under the MACP Scheme on completion of 20 years commencing from 01.01.1996, in accordance with the conditions and parameters laid down in the Scheme. Needless to state that if the Petitioner is granted the 2nd financial upgradation, he shall be entitled to all consequential benefits including arrears with interest @ 6% per annum calculated till the date of actual payment.

28. Writ petition stands disposed of.

JYOTI SINGH, J

MARCH 21 , 2023/kks/shivam