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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 5022/2008****KAMAL NARAYAN ARYA & ORS** PetitionersThrough: Mr. M.K. Gaur, Mr. Anoop
Kumar and Mr. U. Srivastava,
Advocates.

versus

UOI & ORS RespondentsThrough: Mr. Ajay Digpaul, CGSC with
Mr. Kamal R. Digpaul and Ms.
Swati Kwatra, Advocates for
UOI. (M:9811157265)
Ms. Archana Gaur, Ms.
Ridhima Gaur, Advocates for
R-3**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****03.07.2023****MINI PUSHKARNA, J.**

1. The present writ petition has been filed with prayer for quashing and setting aside the order dated 18.12.2002 issued by the Ministry of Social Justice and Empowerment, Government of India. By way of the said order dated 18.12.2002, it was conveyed to the respondent no. 3 Institute, wherein the petitioners are working, that the revised pay scale shall be granted in terms of recommendations of 5th Central Pay Commission (CPC) pursuant to recommendations of the Anomalies Committee with effect from 18.12.2002 when the order was issued by the Ministry, instead of 01.01.1996, when recommendations of 5th



CPC were applicable to the employees of the Central Government.

2. By way of the present petition, it is prayed that directions be issued to the respondents to grant revised pay scale to the petitioners in terms of recommendations of the Anomalies Committee with effect from 01.01.1996, i.e. the date recommended by the Anomalies Committee, which is also the actual date of the implementation of the 5th CPC in other departments of the Government of India.

3. The petitioners are holding posts of Physiotherapists/Occupational Therapists and are working in the respondent no. 3/Institute.

4. The petitioner no. 1 was appointed with the respondent no. 3 as a Physiotherapist in the pay scale of Rs. 4500-7000/- in August, 1998. Thereafter, petitioner no. 1 was promoted in November 2000 as Demonstrator Physiotherapist in the pay scale of Rs. 5500-9000/-. Subsequently, petitioner no. 1 worked as senior Physiotherapist in the pay scale of Rs. 6500-10,500/- from March 2005.

5. Petitioner no. 2 was appointed with the respondent no. 3 as Occupational Therapist in the pay scale of Rs. 4500-7000/- in April 2000. Thereafter, petitioner no. 2 was selected to the post of Demonstrator (Occupational Therapist) by direct recruitment in the pay scale of Rs. 5500-9000/- from April 2005.

6. Petitioner no. 3 was appointed with the respondent no. 3 as a Physiotherapist in the pay scale of Rs. 4500-7000/- in June 1998. Thereafter, petitioner no. 3 was promoted on ad-hoc basis to the post of Demonstrator (Physiotherapist) in February 2002. Subsequently, petitioner no. 3 was appointed as senior Physiotherapist through direct



recruitment in the pay scale of Rs. 6500-10,500/- from April 2005.

7. It is the case on behalf of petitioners that recommendations of 5th CPC came into effect from 01.01.1996. By 5th CPC, the existing pay scale of the post of Physiotherapist and Occupational Therapist was revised from Rs. 1400-2300/- to Rs. 4500-7000/-. However, in the other Departments/Institutions of the Union of India, the existing pay scale of Rs. 1400-2300/- of Physiotherapist and Occupational Therapist were revised as Rs. 5500-9000/-.

8. The petitioners were aggrieved by the fact that the pay scale of Rs. 1400-2300/-, which was the existing scale of Physiotherapist/Occupational Therapist before the 5th CPC, was replaced by pay scale of Rs. 5500-9000/- in other departments of the Central Government. However, in the case of the petitioners, the revised pay scale of Rs. 4500-7000/- was granted. Thus, aggrieved by the same, number of representations were submitted on behalf of the petitioners to the respondents. Subsequently, the matter was placed before the Anomalies Committee, which recommended that with respect to National Institutes, the revised pay scale of Rs. 5500-9000/- be granted to Physiotherapist/Occupational Therapist, instead of the existing pay scale of Rs. 4500-7000/-. Hence, office order dated 18.12.2002 was issued by the Ministry of Social Justice and Empowerment, Government of India, which reads as under:-

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F.NO 22-20/99-NI-1

Government of India

Ministry of Social justice & Empowerment

Desk NI-1



Room No.622,'A' Wing, Shastri Bhavan,
New Delhi, dated the 18th December, 2002.

To,
Dr. Dharmender Kumar,
Director,
Institute for the Physically Handicapped,
4, Vishnu Digambar Marg,
New Delhi-110092.

Subject: Adoption of the recommendation of the Anomalies committee regarding the Scales of staff of the National Institutes.

Sir,

The recommendation of the Anomalies Committee regarding the scales of National Institute have been under consideration of the Ministry of social justice & Empowerment for some time. In consultation with Internal finance Division of the Ministry and Department of Expenditure, Ministry of, Finance, it has now been decided to revise the pay scale of the following categories of post as given under:

S.No.	Name of the post	Existing pay scale(Rs.)	Revised pay scale(Rs.)
1	Machine Man Grade 1	4000-6000	4500-7000
2	Physiotherapist/	4500-7000	5500-9000



Occupational therapist

3	Head mistress	5500-9000	6500-10500
4	Primary School teacher (senior scale)	4500-7000	5000-8000

5	Primary school teacher	4000-6000	4500-7000
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2. This section has the concurrence of Ministry of finance, Department of Expenditure Vide their U.O. No.6(14)/E III-(B)/2000 dated 2.1.2002.

3. This issue with the approval of competent authority.

4. This order comes into effect from the date of issue (sic).

Yours faithfully,

(D.K. Bhai)

Under Secretary to the govt. of India”

9. Subsequently, the petitioners submitted their representations to the respondents raising their grievance against the aforesaid order dated 18.12.2002, wherein the revised pay scale in terms of the recommendations of the Anomalies Committee were adopted with effect from 18.12.2002 instead of 01.01.1996.

10. The petitioners filed a petition, being *O.A. No. 1461/2005* before the Central Administrative Tribunal (CAT). However, the same was dismissed by learned CAT for want of jurisdiction. Thus, the present writ petition came to be filed.

11. It is contended on behalf of the petitioners that the revised pay scale of Rs. 5500-9000/- has been adopted in all other departments of



Government of India with effect from 01.01.1996. However, in the case of the petitioners, the same has been implemented only with effect from 18.12.2002. Therefore, the actions of the respondents to the extent of date of implementation is illegal, unjust, arbitrary, malafide and unconstitutional.

12. It is submitted that the petitioners are being deprived of their bonafide claim for extension of benefits of revised pay scale with effect from 01.01.1996 without any fault. If there was an anomaly while revising the pay scale of the petitioners in the 5th CPC, the petitioners cannot be penalised for no fault. The petitioners should not suffer due to the mistake of the department.

13. In support of his submissions, learned counsel appearing for the petitioners has relied upon the judgment of the Supreme Court in the case of *State of Punjab and Others Vs Bhupinder Singh and Others*¹.

14. Per contra, on behalf of the respondents, it is submitted that the revised pay scale has rightly been granted to the petitioners with effect from 18.12.2002, when the order in that regard was passed by the Ministry of Social Justice and Empowerment, Government of India. It is submitted that petitioners are employees of respondent no. 3, which is an autonomous body under the administrative and financial control of the Ministry of Social Justice and Empowerment, Government of India. Thus, it is contended that the government had the authority to fix a cut off date for the purposes of grant of the revised pay scales.

15. In support of their contentions, learned counsels appearing on



behalf of respondents have relied upon the judgment in the case of *State of Punjab and Others Vs Amar Nath Goyal and Others*².

16. I have heard learned counsels for the parties and have perused the documents on record.

17. The petitioners are employees of respondent no. 3, i.e. Pandit Deen Dayal Upadhyay Institute of Physically Handicapped, New Delhi. The said Institute is an autonomous body under the administrative and financial control of Ministry of Social Justice and Empowerment, Government of India. As regards autonomous bodies, position is very clear that recommendations of Pay Commission are not applicable automatically. The governing bodies of the respective autonomous bodies adopt the recommendations of the Pay Commissions and apply the same to such autonomous bodies as per their own resolution. The employees of autonomous bodies are not employees of the Central Government, therefore, they cannot claim entitlement to the same service benefits as that of the government employees as a matter of right. It has been held time and again by the Courts that grant of benefits of higher pay scale to the employees of Central/State Government stand on a different footing from grant of pay scales to employees of autonomous bodies or other instrumentalities of the state.

18. Supreme Court in the case of *Suryanarayan Sahu and Others Vs Council of Scientific and Industrial Research*³, dealt with the claim of employees of Council of Scientific and Industrial Research

¹ (2004) 4 SCC 213

² (2005) 6 SCC 754



(CSIR), an autonomous body. It was held in categorical terms that CSIR being an autonomous was not bound to adopt all the recommendations of the Central Pay Commission. Supreme Court upheld the decision of the CSIR to revise pay scale of its employees broadly on the pattern of 3rd CPC, but with slight deviations, and from a different date from the date adopted by the Central Government. Thus, it was held as follows:-

“8. CSIR is an autonomous body. The recommendations of the Pay Commission cannot be made applicable to CSIR suo motu. It would be up to the Governing Body of the CSIR to adopt the recommendations of such Pay Commission.....

.....

18. The situation that now emerges is that the CSIR is not bound to adopt all the recommendations of the Third Pay Commission and it is not material if the Central Government accepted the recommendations of the Third Pay Commission. The CSIR is an independent body.....”

19. Similarly, in the case of ***State of Maharashtra and Others Vs Bhagwan and Others***⁴, Supreme Court has held that employees of Autonomous bodies cannot claim, as a matter of right, same service benefits at par with the government employees merely because such Autonomous bodies might have adopted government service rules and merely because such institution is funded by State/Central Government. It was further held that Courts should refrain from interfering with policy decision which might have cascading effect having financial implications. Thus, it has been held as follows:-

³ (1998) 2 SCC 162

⁴ (2022) 4 SCC 193



“25. In T.M. Sampath v. Ministry of Water Resources , (2015) 5 SCC 333 : (2015) 2 SCC (L&S) 146] , the employees of National Water Development Agency (NWDA), an autonomous body under the aegis and control of the Ministry of Water Resources claimed the pensionary benefits on a par with the Central Government employees. Refusing to allow such pensionary benefits to the employees of NWDA on a par with the Central Government employees, in paras 16 and 17, it was observed and held as under : (SCC pp. 345-46)

“16. On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649], it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression “State” and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.

17. Even if it is presumed that NWDA is “State” under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in State (UT of Chandigarh) v. Krishan Bhandari , (1996) 11 SCC 348 : 1997 SCC (L&S) 391] , the claim to



equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be “Central Government employees” as stated in the OM for its applicability.”

26. As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on a par with the government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the autonomous Board/body cannot be put on a par.

27. In Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia , (2021) 8 SCC 784 : (2021) 2 SCC (L&S) 838] , in para 32, it is observed as under : (SCC p. 805)

“32. The Central or State Government is empowered to levy taxes to meet out the expenses of the State. It is always a conscious decision of the Government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/State Government, as the



case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State.”

28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.”

20. In another case, dealing with the case of Delhi Development Authority (DDA), it has been held by Supreme Court that DDA being an Autonomous Statutory body, any revision of pay structure or other terms and conditions of Central Government employees cannot automatically apply to DDA, but need to be adopted by it, with appropriate adaptation. Thus, in the case of ***Vice Chairman, Delhi Development Authority Vs Narender Kumar and Others***⁵, it was held as follows:-

“30. The other reason why the High Court went wrong, in holding what it did, is that DDA is an autonomous — a statutory — organisation. No doubt, it largely follows the Central Government's policies, in respect of pay and allowances, and other benefits for its employees. However, any revision of pay structure or revision in other terms and conditions, of Central Government personnel cannot and do not automatically apply to the DDA; it has to consider the new or fresh scheme formulated by the Central Government, and adopt it, if necessary, after appropriate

⁵ (2022) 11 SCC 641



adaptation, to suit its needs. Therefore, the Central Government's MACP Scheme did not apply to it automatically. The DDA decided to apply it, through an office order dated 6-10-2009. [Establishment Order, dated 6-10-2009.] The High Court has overlooked this aspect, and apparently assumed that the MACP Scheme applied automatically, upon its adoption by the Central Government, to the DDA.”

21. Further, fixation of cut-off dates for grant of benefits has been held to be not arbitrary, irrational or violative of Article 14 of the Constitution of India. It has been held that fixing of a cut off date is an executive function based on several factors. In the case of ***State of Punjab and Others Vs Amar Nath Goyal and Others***⁶, it was thus held as follows:-

“32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In State of Rajasthan v. Amrit Lal Gandhi [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782] this Court went so as far as to note that:

“Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-1986 for 1-1-1990.” [Ibid., at AIR p. 784, para 17 : SCC p. 348, para 17 (emphasis supplied).]”

22. Similarly, in the case of ***Himachal Road Transport Corporation and Another Vs Himachal Road Transport Corporation***

⁶ (2005) 6 SCC 754



Retired Employees Union⁷, it has been held as follows:-

“19. In State of A.P. v. N. Subbarayudu, (2008) 14 SCC 702 : (2009) 2 SCC (L&S) 172], by noticing that a rigid view was taken in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130], this Court has considerably watered down the same and has held that fixing the cut-off date is an executive function based on several factors like economic conditions, financial constraints, administrative and other circumstances. This Court further held that even if no reason is forthcoming from executive, for fixation of a particular date, it should not be interfered with by the Court, unless cut-off date leads to some blatantly capricious or outrageous result.”

23. Considering the detailed discussion hereinabove, the decision as taken by the respondent no. 3 Institute to implement the recommendations of the 5th CPC with effect from 18.12.2002 cannot be considered to be arbitrary or discriminatory in any manner. The respondent no. 3 being an Autonomous Body has every authority to take its independent decision for adopting and implementing the recommendations of the pay commission in respect of its employees.

24. Accordingly, the present writ petition is found without any merits and is dismissed.

(MINI PUSHKARNA)

JUDGE

JULY 03, 2023

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⁷ (2021) 4 SCC 502