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

+ W.P.(C) 7571/2017 and CM APPL.54112-54113/2023
ANIL KRISHAN AGGARWAL & ORSPetitioners
Through: Mr. Prateek Dahiya, Advocate.

versus

UNION OF INDIA & ORSRespondents
Through: Mr. Ravinder Agarwal, Mr.
Manish Kumar Singh and Mr.
Vasu Agarwal, Advocates for R-2.
Mr. Abhinav Sharma, Advocate for
R-3.
Mr. Mohinder JS Rupal, Advocate
for DU.
Mr. Anurag Dayal Mathur,
Advocate for R-5/College.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
24.04.2025

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1. The petitioners were all members of the faculty of respondent No.5 - Shivaji College ["College"], which is affiliated to respondent No. 4 - Delhi University ["University"]. By way of this writ petition under Article 226 of the Constitution, the petitioners seek stepping up of their salaries to the stage of the revised pay structure of their juniors, whose salaries surpassed theirs, as a result of grant of "*in service Ph.D. increments*".
2. The case of the petitioners is that they completed their Ph.D. degrees during the currency of the Fourth and Fifth Central Pay



Commissions, and were granted increments applicable at that time. However, their juniors, who completed their PhD degrees subsequently, were granted increments prescribed in the Sixth Central Pay Commission report, with the consequence that the juniors are now drawing salaries higher than petitioners. A comparative chart has been filed [Annexure P-5 of the writ petition] to compare the emoluments of each of the petitioners with that of one of their juniors. The comparative tables have been certified by the Principal of the College. There is, thus, no dispute that the petitioners are/were, in fact, drawing salaries lower than that of their juniors.

3. I am informed that eight of the writ petitioners have retired during the pendency of the writ petition. The relief now sought is for re-fixation of the salaries of the two remaining petitioners [Petitioner Nos. 1 and 7], and pension of eight superannuated petitioners after stepping up, alongwith consequential benefits.

4. I have heard Mr. Prateek Dahiya, learned counsel for the petitioners, Mr. Mohinder JS Rupal, learned counsel for the University, Mr. Anurag Dayal Mathur, learned counsel for the College, and Mr. Ravinder Agarwal, learned counsel for the University Grants Commission [“UGC”].

5. Mr. Dahiya relies upon two judgments of other High Courts, in which a similar issue was considered. The Division Bench of the Bombay High Court in *Sudamrao Keshawrao Aher & Ors. vs. State of Maharashtra & Ors.* [W.P. (C) 10283/2012, decided on 21.11.2013] dealt with exactly the same issue. The Division Bench, with reference to the applicable Government Resolution for stepping up of salary, observed



that the situation emanating from difference in the incentive available under the Sixth Pay Commission, as compared to the earlier Pay Commissions, “*creates serious disparities*”, which requires stepping up of pay of seniors so as to be at par with the juniors. The Supreme Court, by order dated 17.11.2015 in SLP (C) No. 15053-15056/2015, declined special leave to appeal against the aforesaid judgment.

6. Mr. Dahiya also relies upon a judgment of the Kerala High Court dated 28.10.2016 in W.P.(C) No. 32933/2014, which followed the aforesaid judgment of the Bombay High Court, and held the petitioner therein to be entitled for stepping up of pay. The judgment of the learned Single Judge was affirmed by the Division Bench of the Kerala High Court *vide* judgment dated 06.06.2017 in Writ Appeal No. 488/2017. The Division Bench held as follows:

“We have given our anxious consideration to the contentions raised by the learned Government Pleader before us. Though it is true that respondents 1 to 5 are persons who have already been granted the benefits of career advancement for having acquired their Ph.D degrees, as per the earlier UGC Scheme, the implementation of the subsequent Scheme cannot justify a situation where their juniors draw higher salary than them. Though we wanted the learned Government Pleader as well as the learned counsel for the 7th respondent to enlighten us on the rationale that forms the basis of the decision to grant three additional increments to persons who have acquired their Ph.Ds after 01.09.2008, we could not get an answer. Admittedly, all the persons are Ph.D holders. The incentives are meant to be granted to persons who have acquired Ph.D Degrees. It is not in dispute that, there is no difference in the qualifications of respondents 1 to 5 and their seniors. Nature of the work discharged by each one of them is also similar. Therefore, there is no justification for classifying them into persons who have acquired Ph.D before 01.09.2008 and subsequent to the said date, for the purpose of conferring a career advancement increment. It may be true that, respondents 1 to 5 are persons who are not entitled to claim the benefit of the 6th UGC Scheme, they being persons who have already obtained the benefits of career advancement under the earlier Scheme. However, implementation of the subsequent Scheme shall not result in a situation



where their juniors are permitted to draw more salary than respondents 1 to 5. If such a situation is created, it is only appropriate that the said anomaly is corrected by having the pay of the seniors stepped up to that of their juniors. The above position has been settled by the Apex Court in the decision on which reliance is placed by the learned Single Judge. We find that the learned Single Judge has considered the issue in proper perspective and that, there are no infirmities warranting an interference with the judgment in appeal.”

7. The Supreme Court, by order dated 24.11.2017 in SLP (C) Diary No. 35516/2017, permitted the State of Kerala to withdraw the Special Leave Petition against the aforesaid Division Bench judgment of the Kerala High Court, on a statement that the State of Kerala wished to file a review petition, but expressly declined permission to challenge the impugned judgment once again if the review petition is dismissed. A review petition was thereafter filed against the aforesaid Division Bench judgment, which was dismissed on 13.06.2018, giving finality to the matter.

8. It is not disputed that the case of the present petitioners is virtually identical with the cases considered by the Bombay High Court and Kerala High Court, and that the provisions referred to in the judgment of the Bombay High Court are in *pari materia* with the UGC Regulations, which are admittedly applicable to the present petition.

9. Mr. Rupal only points out that the rules relating to stepping up of pay do not apply where a junior gets more pay due to additional increments earned on acquiring higher qualifications. For this purpose, he relies upon an Office Memorandum of the Government of India, Department of Personnel and Training, dated 04.11.1993. The said argument, in my view, is inapplicable to the facts of the present case. This is not a case where seniors with lower qualification are seeking stepping



up in parity with juniors with higher qualifications. The present petitioners and their juniors are all similarly qualified, with Ph.D. degrees. This issue has also been considered by the Division Bench of the Kerala High Court in above-quoted observations, and I am in respectful agreement with the view taken.

10. By order dated 06.02.2025, the reliance of Mr. Dahiya upon the judgments was noted and learned counsel for the respondents were directed as follows:

“4. Learned counsel for the respondents are directed to take instructions as to whether there is any distinction between the cases of the present petitioners and the cases decided by the Bombay High Court and the Kerala High Court. In the event the respondents wish to rely upon any such distinction, they may file a written note within two weeks from today, to which the petitioners may respond by way of a written note within one week thereafter.”

11. On the next date of hearing, i.e. 21.04.2025, further time was granted as Mr. Agarwal submitted that he is still awaiting instructions on the question as to whether there is any distinction between the present case and the judgments of the Bombay High Court and Kerala High Court. It was specifically stated that, if counter affidavits are not filed, it will be assumed that the case is covered by the said judgments. No further affidavits/written submissions have been filed. No argument is also raised to distinguish the case of the present petitioners.

12. Consequently, the writ petition is allowed, and the respondents are directed to step up the petitioners' salaries to the stage of the revised pay structure of their respective juniors in terms of Annexure P5 to the writ petition. In the cases of petitioner Nos. 1 and 7, who are still in service, their salaries will be refixed within a period of eight weeks from today. In



the case of the remaining petitioners, their salaries will be refixed notionally and their pension will be refixed in accordance with these directions. Arrears of salaries and pension will be paid to all the petitioners within a period of eight weeks thereafter.

PRATEEK JALAN, J

APRIL 24, 2025
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