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**(2014) 11 CHH CK 0010**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition No. 4786 of 2004**

Ajay Nand Bahadur

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

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**Date of Decision :** 11-11-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) LabIC 923

**Hon'ble Judges :** Sanjay K. Agrawal, J

**Bench :** Single Bench

**Advocate :** Abhishek Sinha and Ghanshyam Patel, Counsels, Advocate for the Appellant; R.K. Gupta, Deputy Advocate General, Ashish Shrivastava, Somya Rai, A.S. Gaharwar, Mazid Ali, Counsels and N.K. Vyas, Asstt. Solicitor General, Advocate for the Respondent

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## Judgement

Sanjay K. Agrawal, J.

1. The petitioner was appointed on the post of Assistant Professor, Botany, by the State of Madhya Pradesh on 04.03.1987 and he was awarded with Degree of Doctor of Philosophy (Ph.D) in the subject of Botany on 04.01.1997 for which he was granted two advance increments in terms of clause 6.4.0 of UGC notification and Regulation On Revision Of Pay Scales, Minimum Qualification For Appointment of Teachers in Universities and Colleges and other Measures for Maintenance of Standards, 1998, duly accepted by the State of Madhya Pradesh vide Annexure P/5 dated 11.10.1999. Thereafter, the petitioner was granted selection grade w.e.f. 05.01.1999. He claimed that he is entitled for two advance increments from the date of being placed in selection grade i.e. 05.01.1999 in accordance with clause 6.3.0 and 6.4.0 of the Govt. order (Annexure P/5), but the same was not granted to him in the light of order dated 03.09.2003 (Annexure P/8) passed by the respondent No. 2/Director, Higher Education.

2. The petitioner, invoking extra-ordinary jurisdiction of this court under Article 226 of the Constitution of India, has filed this petition questioning the legality

and validity of order dated 03.09.2003 (Annexure P/8), consequential order dated 15.09.2003 (Annexure P/9) and order dated 21.02.2014 (Annexure P/16) passed by respondent No. 1 rejecting petitioner's representation, pleading inter alia that he being placed in selection grade, became eligible for grant of two advance increments as per regulations issued by the UGC vide order dated 27.07.1998 (Annexure P/3) and having been adopted the same by the State of Madhya Pradesh on 11.10.1999 (Annexure P/5) and therefore entitled for grant of two advance increments from the date he being placed in the selection grade i.e. 05.01.1999.

3. On rule being issued, counter affidavit has been filed on behalf of State pleading inter alia that screening committee did not found the petitioner competent to be awarded selection grade w.e.f. 27.07.1998, but the committee found the petitioner entitled w.e.f. 05.01.1999 and accordingly it was granted by order dated 03.09.2003 (Annexure P/8). It has also been averred that since the petitioner has already been granted two advance increments at the time of revision of pay w.e.f. 04.01.1997, the date on which he was awarded Ph.D, petitioner is not entitled for two further increments on being placed in selection grade and as such writ petition deserves to be dismissed.

4. The UGC in its counter affidavit has clearly stated that petitioner is entitled for two advance increments on moving into selection grade as per clause 6.3.0 of UGC notification 1998 and the benefit conferred under clause 6.3.0 and 6.4.0 of the UGC notification are distinct and same can be conferred as and when a person eligible for the same.

5. Shri Abhishek Sinha, learned counsel appearing for the petitioner would submit that Govt. of India vide letter dated 27.07.1998 calling upon the State Govt. for accepting the recommendations of the 5th Central Pay Commission and the scheme of the UGC including the incentive for the Ph.D and the UGC regulation (Annexure P/4) having been accepted and adopted by the State of MP in its entirety (Annexure P/5) binds and prohibits the successor State of Chhattisgarh from withholding the benefit of two advance increments on being placed in selection grade as envisaged under Govt. of India letter dated 27.07.1998 Clause 1(ii)(c), Clause 6.3.0 and Clause 9(c) and would further submit that order issued in the name of Governor by the State cannot be superseded or varied by any authority subordinate to the State Govt. and as such appropriate writ be issued commanding the State to consider the case of the petitioner for grant of two advance increments on being placed in selection grade w.e.f. 05.01.1999 by making absolute the rule issued.

6. Shri RK Gupta, learned counsel appearing for the State would submit that screening committee did not found the petitioner entitled to be awarded selection grade w.e.f. 27.07.1998, but found him entitled for selection grade w.e.f. 05.01.1999 which was granted to him vide order dated 03.09.2003 (Annexure P/8) but was not found entitled for further two advance increments as he was already granted two advance increments in the year 1999 w.e.f. 04.01.1997 i.e.

a date on which he was awarded Ph.D degree, and therefore, petitioner's prayer for grant of two advance increments on being placed in selection grade deserves to be dismissed as the same can be given once in service career.

7. Shri A.S. Gaharwar, learned counsel appearing for the respondent-UGC supported the case of the petitioner and would submit that petitioner is further entitled for two advance increments on being placed in selection grade.

8. I have heard the counsel appearing for the parties, considered their rival submissions and also perused the orders impugned with utmost circumspection.

9. The Govt. of India, Ministry of Human Resources Department has issued a memo on 27.07.1998 providing for revision of pay scales of teachers in Central Universities following the revision of pay scales of central government employees on the recommendations of the 5th Central Pay Commission, clause-ii of which provides for incentives for the Ph.D and M.phil sub-clause-c of which also provides that a Lecturer with Ph.D degree will be eligible for two advance increments when he moves into selection grade/Reader. Thereafter, UGC notification on Revision of Pay Scales, Minimum Qualification For Appointment of Teachers in Universities and Colleges and other Measures for the Maintenance of Standards, 1998 came into existence. Clause-6 of said notification provides for incentives for Ph.D/M.Phil. Clause 6.3.0 and 6.4.0 provides as under:

"6.3.0. A Lecturer with Ph.D. Will be eligible for two advance increments when she/he moves into selection grade/Reader.

6.4.0. A teacher will be eligible for two advance increments as and when she/he acquires a Ph.D. Degree in her/his service career."

10. Thereafter, the then State of Madhya Pradesh, Department of Higher Education, accepting the circular of notification of Central Govt. issued the order dated 11.10.1999 (Annexure P/5) which reads as under:

11. A close and clear perusal of Govt. of India memo dated 27.07.1998 and order dated 11.10.1999 would show that State of MP has accepted the notification of the UGC holding that Assistant Professors holding Ph.D. Degree on being placed in the selection grade would be entitled for two further increments.

12. On such a scheme laid down by the UGC, the State of MP has taken a decision to adopt the scheme as it is. Once such a notification issued by the UGC has been accepted by the State of MP, the same is binding on the successor state of Chhattisgarh also and consequences would automatically follow.

13. The Supreme Court in case of Jagdish Prasad Sharma Vs. State of Bihar and Others, has held as under:

"However, within this class of institutions there is a separate group where the State Governments themselves have taken a decision to adopt the scheme. In such cases, the consequences envisaged in the scheme itself would automatically follow."

14. Thus, in accordance with UGC notification entitling the Ph.D. Degree holder to have benefit of two increments on moving the selection grade having been accepted by the State of MP on 11.10.1999, the petitioner is also entitled for the said benefit w.e.f. 05.01.1999 as on the said date he was given selection grade.

15. The question is whether such benefit be taken back from the petitioner on the basis of order dated 03.09.2003 (Annexure P/8) passed by the Director, Higher Education, Chhattisgarh.

16. By the aforesaid order, the Director, Higher Education, has held that clause 9(a), 9(b) and 9(c) will be read with as one i.e. clause 9(d) and Ph.D holder will be entitled for the benefit of two advance increments only once during the lifetime.

17. The State of MP has accepted the Govt. of India notification dated 27.07.1998 and has held that Ph.D. holder is entitled for two advance increments on being placed in the selection grade. The Director, Higher Education, has held that clause 9(a), 9(b) and 9(c) will be read as one and he would not be entitled for further two advance increments.

18. In the considered opinion of this court, the State of Chhattisgarh has not taken any decision to modify the order of the State of MP taking different decision, and therefore, the said order of the then State of MP dated 11.10.1999 is binding on the successor State of Chhattisgarh. Section 2(41) of the Chhattisgarh General Clauses Act, 1957 defines as under:

"41. State Government or Government means the Governor of the State of Chhattisgarh."

19. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, their Lordships of Supreme Court observed as under:

"A State Government means the Governor. The executive power of State vests in the Governor; it is exercised by him directly or by officers & sub-ordinate to him in accordance with the provisions of the Constitution. The ministers headed by the Chief Minister advise him in exercise of his functions...."

20. In the light of the definition of State Government and in view of the principles of law laid down by their Lordships of Supreme Court in above-stated case, it is quite vivid that Director, Higher Education, at his own, cannot modify the order of State Govt. as it has not shown that State Govt. has taken any decision to modify its earlier order and it has also not been shown that State Govt. has authorized the Director, Higher Education in that behalf, and therefore, Director, Higher Education/respondent No. 2 herein was not competent to modify the order of State Govt. dated 11.10.1999.

21. In addition to that, clause 9(c) and 9(d), both are different and separate clauses as clause 9(c) of circular clearly provides that Ph.D. holder Assistant

Professor is entitled for two advance increments on being placed in to selection grade and clause 9(d) provides that Teacher would be entitled for two advance increments on obtaining Ph.D degree. Both cannot be read together by the authority subordinate to the State Government overreaching the order of State Government. This court in WPS No. 1776 of 2011 (Dr. Sadhana Shome v. State of Chhattisgarh & Others, decided on 09.11.2011) has taken a similar view.

22. As an upshot and analysis of the above-stated discussion, the petition is allowed and sequitur to that, order dated 03.09.2003(Annexure P/8) passed by the respondent No. 2 so far as it relates to petitioner is hereby quashed. Consequential orders dated 15.09.2003 (Annexure P/9) passed by the respondent No. 3 and 21.02.2014 (Annexure P/16) passed by respondent No. 1 rejecting petitioner's representation also stand quashed and the respondent No. 1 & 2 are directed to consider the petitioner's case for granting two advance increments in accordance with clause 9(c) of notification dated 11.10.1999 within three months from today. No order as to cost.