

(2000) 03 DEL CK 0041
In the Delhi High Court
Case No : C.W.P. No. 2757/87

A.R. Neelayadakshni

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 5 AD 489 : (2000) 86 DLT 327

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. M.N. Krishnamani and Mr. R.K. Singh Adv, for the Appellant; Mr. S.K. Luthra Advocate, for the Respondent

Judgement

K. Ramamoorthy. J.

1. The petitioners have prayed for the following reliefs :-

"(a) Issue a writ of mandamus directing the respondents to grant the pay-scale granted to respondents 3 to 6 to the petitioners herein also who are doing the same and identical work;

(b) Issue a writ of Mandamus restraining the respondents No. 1 from re-designating respondents 3 to 6 or any other person amongst professional Assistants though all the professional Assistants including the petitioners herein and the said respondents are functioning in identical and inter changeable posts, doing identical work, merely on the basis of qualifications."

2. The petitioners and the respondents 3 to 6 on the date of the writ petition were working as Professional Assistant Juniors (Assistant Librarians). From the post of professional Assistant Junior the next avenue of promotion is Professional Assistant Senior (Dy. Librarian) and thereafter the incumbents can claim to be considered for the post of Librarian. The scale of pay then was Rs. 550-900 for the post of Professional Assistant Junior (Asstt. Librarian). BY 28.11/9.12.85 the University decided to put the Professional Assistant Juniors on the scale of Rs.

700-1600 in respect of those who had secured first or second class in B.A., B.Sc. or B.Com. or first or second class Master of Library Science Degree or those who had secured first or second in M.A. MSc., M.Com. and first or second class in Bach. of Library Science or post Graduate Diploma in Library Science.

3. The case of the petitioners is that at the time they were recruited there was no qualification prescribed that the candidates should have secured first or second class in the qualifying examination and their scale of pay was fixed reckoning the duty assigned to the post. Revision of pay scales was done in all Departments of Governments and at the instance of the employees revision was effected and while making the revision the University or the University Grants Commission cannot provide qualification with retrospective effect affecting the rights of the petitioners who are functioning in the cadre. The petitioners would state that the condition with reference to the securing first or second class could be applied only to the candidates who would be recruited and not those who are already functioning in the posts.

4. The stand of the respondents 1 and 2 is that while revising the pay scales it is open to them to prescribe a qualification having regard to the increase in scale of pay and it was done in public interest and the petitioners cannot have any grievance in law.

5. It is in the above back drop the facts of the case are to be noticed.

6. On 12.1.1983 Delhi University Professional Assistants Association wrote to the University Grants Commission the following:-

We whole heartedly welcome the recent decision of the Government regarding the revision of pay scales of librarians working in the University and college libraries and bringing them at par with the University and College teachers.

No doubt it is an appreciable step which restored the postante status quo which the academic librarians had prevailed for nearly two decades, it is a matter of regret that one category of Professional librarians i.e., Professional Assistants which too had been prevailing the parity with one category of University and college teachers nearly Assistant Lecturers had been left out of consideration. The category of Assistant Lecturer was merged with the position of lecturer in the university and college, the status quo was maintained in respect of Professional Assistants. Since the Ministry has taken the welcome decision to up grade three senior categories of librarians, justice should have been done to the Professional Assistants simultaneously.

The Library Advisory Committee of the University Grant Commission (1959), headed by Dr. S.R. Ranganathan recommended the following pattern of organisation at professional level for college and university libraries paralleled in positions in academic fields.

Academic Position	Library Position	Professor	Professional Senior (librarian)
University Librarian	Reader/Associated	Professional Senior/Deputy Librarian	

Lecturer/Assistant Professional Junior Professor Assistant Lecturer Professional Assistant

The case of Professional Assistant can also be justified on several other grounds. The nature of their responsibility fully justified it. Incidentally, the minimum qualifications for the position of professional Assistants are at par with those of Assistant Librarian.

Several Agricultural Universities, and particularly the Punjab Agricultural University, Ludhiana, have up graded the pension recently vide their letter No. CAG-B (I)/27/13 dated 20.2.1979.

It may be mentioned in this connection that a large number of College librarians who are to present placed in the pay scale of Professional Assistant (i.e. Rs. 550-900) are placed in the scale of Rs. 700-1600 with recent decision.

A favourable decision in respect of Professional Assistant shall undoubtedly improve the working atmosphere in college and University Libraries.

The following concrete suggestions are made for your kind consideration.

1. The position of Professional Assistants and equivalent positions in college and University Librarians be upgraded so as to be on par with that of Assistant Librarians by placing them in the scale of pay of Rs. 700-1600.
2. The necessary orders to implement the same with immediate effect may be issued immediately.

In view of the sympathetic view taken by you towards restoration of the principle of parity for academic librarians, this is to request you to consider the above suggestions sympathetically.

Thanking you in anticipation."

7. On 1.12.1984 the Executive Council of the Delhi University passed a resolution No. 411 regarding rationalisation of pay scales of academic/technical/scientific in Computer Centres etc. In that it was decided:-

"The Vice-Chancellor further suggested that pending receipt of revised qualifications and other details regarding the posts involved from the University Grants Commission, the revised scales now received could be made effective in respect of existing incumbents working against these posts on regular/permanent basis. The revised qualifications and other details to be received from the University Grants Commission, if any, would be applicable for future recruitment to these posts in case the Council decided to adopt such revised qualifications etc. The Council agreed with the Vice-Chancellor and resolved that the revised scales now intimated by the University Grants Commission be made effective in respect of incumbents working already against these posts on regular/permanent basis immediately.

It was further resolved that he revised qualifications if and when prescribed and

adopted consequent to the revision of the scales of pay, be made applicable to future recruitments against the posts concerned."

8. Therefore, it is clear that which reference to the scales of pay the incumbents working would be paid the same and the qualifications will be insisted for the candidates who are to be recruited in future. On 23.2.1985 (second respondent) the University Grants Commission recommended the rationalisation of pay scales of Professor Assistants. On 8.3.1985 the Executive Council of the University in its resolution 688-689 decided to implead the upgraded scales to all the incumbents. On 16/25.3.1985 the University Grants Commission (second respondent) wrote to the Vice Chancellor the following:-

"The Commission has considered the question of rationalisation of scale of pay of Professional Assistants of the Libraries in Central Universities in the scale of 550-900 subsequent to the up gradation of the pay scales of the Library staff in the Universities and colleges as per orders of the Government of India.

2. The Commission has agreed that the Professional Assistants in the Central Universities in the pay scale of Rs. 550-900 fulfilling the qualifications prescribed for the post of Assistant Librarian as indicated in the annexure in the pay scale of Rs. 700-1600 with effect from 1st April, 1985.

3. With regard to the remaining staff of this category not fulfilling the above qualifications, the matter is under the consideration of the commission.

4. The above decision of the Commission (para No. 2) will be governed by the same conditions with regard to pay fixation etc. as already been conveyed by the commission to the Universities while considering the question of rationalisation of scales of pay of library staff."

9. On 1.5.1985 the Delhi University Library System (Office of the Chairman Library Committee) University of Delhi wrote to the Pro-Vice-Chancellor the following:-

"The Library Committee at its meeting held on 17th March, 1986 decided the following:

"The Committee re-examined the question of providing new grades to such of the Professional Assistants also who do not possess required qualifications (Item No. 16 of the minutes of the meeting No. 1 held on 18.1.86). The matter was discussed in detail and the Library Committee decided that as a matter of policy it should be recommended to the University that all those who hold the position of Professional Assistant should be given the benefit of the revised salary grade immediately. In the same context it was further recommended that the same condition of revision of salary scale should be made applicable in case of Professional Juniors and Professional Seniors, who had been denied this revision because they are not fulfilling the condition of qualifications.

It was further recommended that the condition of revised qualifications should be

made applicable only in the case of recruitments to be made in future and not for the existing incumbents. While making this recommendation the Library Committee also learned that the revision of scales had already been applied in case of other categories of staff (such as those working in the Computer Centre, and the administration of the University such as Deputy Registrars and Assistant Registrars), irrespective of their qualifications."

I, Therefore, request you to kindly look into the matter and get the recommendation of the Library Committee approved so that the necessary benefits could be given to all concerned."

10. On 14.10.1985 the Executive Council passed the following resolution:-

"Considered the letter No. D.O. No. F.22-4/85(AS), dated the 25th March, 1985 from the Secretary, University Grants Commission intimating revision of scale of pay from Rs. 550-900 to Rs. 700- 1600 for those Professional Assistants who fulfilled the qualification prescribed for the post of Assistant Librarian as indicated in Appendix XI).

a. Resolved that the scale of pay in respect of all such Professional Assistants who fulfilled the following qualifications prescribed for the post of Assistant Librarian, be revised from Rs. 550-900 to Rs. 700-1600 w.e.f. 1.4.85:

"First or second class B.A./B.Sc./B.Com plus first or second class M. Lib. Sc Degree

OR

First or second class M.A./M.Sc./M.Com. degree and first or second class B. Lib. Sc. or post-graduate diploma in Library Science."

b. Noted that the University Grants Commission had stated that with regard to remaining staff of this category who did not possess the above qualification prescribed for the post of Assistant Librarian, the matter was under consideration. Resolved that the University Grants Commission be requested to expedite a final and sympathetic decision in the matter.

c. Further, resolved that the revised qualifications prescribed for recruitment to the post of Assistant Librarian be followed in future."

11. On 20/27.10.1985 the Registrar addressed a Letter to the University Librarian the following:-

"As you know the University Grants Commission vide its letter No. F.1-4/75(D.Sc/15-1, dated the 1st Feb. 1983 and communicated the upgraded pay scales in respect of the Librarian, Professional Senior, Professional Junior, Documentation Officer etc. w.e.f. 1.4.1980 in respect of those who fulfilled the qualifications as communicated by the University Grants Commission Along with the upgraded scales.

You also know that we have been correspondence with the University Grants

Commission to the effect that the present incumbents working against the above positions be given the upgraded scales of pay and they be exempted from operation of the revised qualifications and that the revised qualifications may be applicable in respect of future recruitments.

This matter has been finally considered by the Executive Council at its meeting held on 9.10.86 and I am glad to inform you that the Council has decided that upgraded pay scales in respect of above staff communicated by the commission vide its letter of 1.2.83 operative from 1.4.80 be given to all the existing incumbents as on 1.4.86 irrespective of the qualifications produced by them and that the revised qualifications communicated Along with the upgraded scales of pay be made applicable for future recruitments to these posts.

The above decision would also apply in the case of Assistant Librarians working in the College Libraries.

I am, Therefore, to request you kindly to take further action in the matter accordingly.

Thanking you"

12. This would show that whenever upgradation of pay scales was done and with reference to higher qualifications prescribed that would be made applicable only to the future recruits. On 16.12.1985 a representation was sent on behalf of the Professor Assistant Juniors. On 17.3.1986 Delhi University Library Committee recommended the revision of pay irrespective of securing of first or second class prescribed. On 1/6.5.1986 Delhi University Library System again wrote to the Pro-Vice-Chancellor the following :-

"The Library Committee at its meeting held on 17th March 1986 decided the following:

"The Committee re-examined the question of providing new grades to such of the Professional Assistants also who do not possess required qualifications (Item No. 16 of the minutes of meeting No. 1 held on 18.1.1986). The matter was discussed in detail and the Library Committee decided that as a matter of policy it should be recommended to the University that all those who hold the position of Professional Assistant should be given the benefit of the revised salary grade immediately. In the same context it was further recommended that the same condition of provision of salary scale should be made applicable in case of Professional Juniors and professional Seniors, who had been denied this revision because they are not fulfilling the condition of qualifications.

It was further recommended that the condition of revised qualifications should be made applicable only in case of recruitments to be made in future and not for the existing incumbents. While making this recommendation the Library Committee also learned that the revision of scales had already been applied in case of other categories of staff (such as those working in the Computer Centre, and the administration of the University such as Deputy Registrars and Assistant

Registrars), irrespective of their qualifications."

(Resolution No. 7)

I, Therefore, request you to kindly look into the matter and get their recommendation of the Library Committee approved so that the necessary benefits could be given to all concerned.

with regards,"

13. On 6.5.1986 the University Grants Commission wrote to the Registrar, Delhi University the following:-

The Commission has considered the recommendations made by the Joint Cadre Review Committees of the Central Universities in their meetings held recently at Delhi University, Banaras Hindu University, Aligarh Muslim University and Jawaharlal Nehru University and has taken certain decisions as indicated below on the recommendations made by the Joint Cadre Review Committee in these meetings:

1. Staffing Pattern of Cadre Review Cells.

It has been agreed that Aligarh Muslim University, Delhi University, Banaras Hindu University and Jawaharlal Nehru University may have a post of Deputy Registrar and that the University of Hyderabad, North-Eastern Hill University and Vishwa Bharati and Assistant Registrar with supporting stenographic facilities to meet the needs of the cells of cadre review committees in these universities. This is subject to the condition that the expenditure involved in this regard will be found out by the Universities from their own funds and that no additional funds will be asked either from the UGC or from the Government of India.

2. Nursing staff in the hospitals of Aligarh Muslim University, Banarash Hindu University and in the Health Centres of Central Universities:

The nursing staff in the Central Universities may be in the following rationalised scales of pay:

1. Deputy Nursing Grade-I Rs.650-1200 Superintendent (Deputy Matron)
2. Assistant Nursing Grade-II Rs.650-1200 Superintendent/ Nursing Officer (Asst. Matron)
3. Ward Sister/Master Grade-III Rs.550-900
4. Staff Nurse Grade-V Rs.425-700
5. Auxiliary Nurse/Mid- Grade VIII Rs.260-430
- Wife/Auxiliary Assistant/Untrained Nurse

This has been accepted so as to bring the Nursing Staff within fold of scales of pay as meant for Laboratory/Technical services in all the Central Universities to avoid disparities in future.

3. Library Staff

It has been agreed that till such time the question of Cadre is still we may give one upward movement to the library staff on the basis of the existing scales of

pay as indicated below:

Category of Posts	Existing pay Scale	Scale in which to be placed (One upward)
Rs.550-900	Rs.650-1200	Semi-Prof.-Assts. Rs.580-640
Rs.260-400	Rs.380-640	Sr. Lib. Attendant Rs.260-350
		Professional Asstts. Rs.550-900
		Library Clerk Rs.260-400

Acceptance of the Commission is subject to the following:

a. The rationalisation in scales of pay and removal of disparities is a measure to promote uniformity in scales of pay, designations, duties, and responsibilities etc., for the different categories of staff in the Central Universities and is not intended for the purpose of promotion.

b. The Universities in future will not take any steps which may lead to the creation of scales of pay outside the 13 core scales of pay as accepted by the Commission either with any change in designation or duties, etc.

It will be ensured that no post will be created with higher scales of pay and with lower duties with change in designations.

c. The pay fixation will be done in accordance with the fundamental rules and no adhoc increase or advance increments will be allowed.

d. The financial liability arising out of the implementation of the rationalised scales of pay will be met by the Universities from within their normal maintenance grant and that no additional funds will be provided by the University Grants Commission to the Universities in this regard.

e. All cases having scales of pay will be than the core Scales prescribed for the post of pay will be personal to the existing incumbents.

The Universities are requested to kindly ensure that further disparities are not created while implementing the above decisions of the Commission. In case, if any such issue comes to the notice of the University, the same may be brought to the notice of the Commission.

The Commission feels very much concerned to remove the disparities in scales of pay and designations, etc.

Cases still pending with the University, if any, may be brought to the notice of the Commission Along with the recommendations of the Cadre Review Committees of your University for the consideration of the Commission.

This will however be subject to the followings:

1. Proposals of the Universities in this regard will not create further disparities within the Universities or in between the Universities or between the various categories if different streams of staff in a University or different cadres/grade/structures. This is to be ensured.

2. One upward movement will be personal to the present incumbents and they will continue to hold their present designations.
3. This will be applicable to posts maximum of which will not go beyond Rs.650-1200 including one upward movement.
4. The upward movement will be counted against the time bound promotion scheme if it is implemented.
5. No additional funds be provided by the UGC OR Govt. to Universities in this regard.
6. Pay fixation will be in accordance with the fundamental Rules and no ad hoc increases or advance increments will be allowed.
7. Universities will ensure that in future no step will be taken by them, which may lead to the creation of disparities of scales of pay either within a University or between Central Universities.
8. Urgent, steps are taken by the Joint Cadre Review Committee to propose Uniform recruitment and promotional rules for all the Central Universities.

The scale of Rs.700-1600 from Rs.550-900 in respect of certain categories of Professional Assistants fulfilling qualifications in this regard is personal to the present incumbents.

The recommendations of the Cadre Review Committees to abolish the selection grade is under the consideration of the Commission and till such time a further communication is received, no fresh selection grades be given for any categories of posts in Central Universities.

The receipt of this letter may kindly be acknowledged."

14. It is stated that the Scale of Rs. 700-1600 from Rs.550-900 is personal to the present incumbents. It has not been explained as to what University Grants Commission was trying to convey. On 4.7.1986 the Delhi University Professional Assistants Association wrote to the Chairman, Library Committee, Delhi University Library the following:-

"Please refer to your letter No. CO/51 dated 1/6th May, 1986 addressed to provide Chancellor.

We are thankful to you for recommending our case regarding the implementation of upgraded scale to all existing incumbents irrespective of the newly revised qualifications.

Sir, as you are aware the Executive Council vide its resolution No. 411 dated 11.12.94 has made a policy to implement the upgraded scale to all existing incumbents irrespective of their qualifications and to impose revised qualifications for future recruitments.

Further again the executive Council vide its resolution No. 688 and 689 dated 8.3.1985 quoting the above resolutions implemented the upgraded scale to all existing incumbents irrespective of their qualifications and expenses.

Sir, we urge that you may please take personal interest to bring our case in the agenda of Executive Council can get this scale implemented at the earliest possible to all existing professional Assistants.

Thanking you."

15. On 17/21.7.1986 the Chairman, Library Committee wrote to the Pro-Vice Chancellor a detailed letter which reads as under:-

"Kindly refer to my D.O. letter No. CO/51 dated 1/6th May 1986 (Copy enclosed Flag A) Sending therein the recommendation of the Library Committee for providing new grades (Rs.700-1600/-) to such Professional Assistants also who do not possess required qualifications.

We have heard nothing from the University in this regard and there is a great deal of resentment in the cadre. I have also received a representation dated 4.7.1986 from Delhi University Professional Assistants Association (DUPAA) (Copy enclosed, Flag "B"). The DUPAA has given the following weighty arguments in support of the claim of Professional Assistants for the revised grades of Rs.700-1600.

1. E.C. Resolution No. 411 dated 1.12.84 has made it a policy to implement the upgraded scale to all existing incumbents irrespective of their qualifications and to impose revised qualifications for future recruitments.

2. Keeping in view the above E.C. Resolution the E.C. Vide its Resolution No. 688 and 689 dated 8.3.85 implemented the upgraded scale to all existing incumbents irrespective of their qualifications and experience.

(Copies of E.C. resolution No. 411 dated 1.12.84, 688 and 689 dated 8.3.85 enclosed Flag C. D & E).

The Secretary, University Grants Commission vide his letter No. F. 1-159/84 (NP-1) dated 15th Feb., 1985 (copy enclosed Flag F) conveyed the decision of the Commission with regard to the rationalisation of pay scales subject to the following:

"1. In case of staff who fulfill the qualifications as prescribed by the University Grants Commission for these posts and have been selected through properly constituted selection committee, they may be placed in the rationalised scale of pay as indicated above.

2. In case of staff who do not fulfill the qualifications as prescribed by the UGC, they may be given the rationalised scale of pay only after the prescribed qualifications have been acquired by the incumbents and till such time they may retain present scales of pay."

The above letter of the UGC was placed before the Executive Council at its meeting held on 8.3.1985 vide Appendix VIII and the E.C. decided the following vide resolution No. 689 (Copy enclosed Flag "E"):

1. "The earlier letter from the Commission dated 12.11.1984 conveying the revised scales in respect of the above staff was reported to the E.C. vide resolution No. 411 dated 1.12.1984. The E.C. had decided that pending receipt of revised qualifications and other details regarding the posts involved, from the UGC, the revised scales received be made effective in respect of existing incumbents working against these posts on regular/permanent basis and that the revised qualifications and other revised qualifications and other details to be received from the UGC, if any, be made applicable for the future recruitment to these posts, in case the council decided to adopt such revised qualifications, etc. The above decision of the Council had already been notified and implemented."

"..The Council further resolved that the UGC be informed that the revised qualifications as may be communicated by the Commission if accepted by the University would be implemented for future recruitment."

In view of the above it is very clear that there should not be any difficulty in extending the facility of the revised scale to the existing Professional Assistants irrespective of their qualifications when the same has been provided to other categories of the staff in the University."

I, Therefore, request you to kindly direct the concerned office to implement the above E.C. resolutions to extend the same facility to the Professional Assistants and other Library Staff as decided by the E.C. Resolutions quoted below again.

Resolution 411 dated 1.12.84.

"...It was further resolved that the revised qualifications if and when prescribed and adopted consequent to the revision of the scales of pay, be made applicable to future recruitments against the posts concerned."

Resolution No. 688 dated 8.3.85.

"...The Council resolved that as per the decision taken by the Executive Council on 1st December, 1984, in other cases, the revised scales in respect of the existing incumbents be implemented with immediate effect and that the revised qualifications as may be communicated in future by the UGC if accepted by the University be implemented for the future incumbents."

Resolution No. 689 dated 8.3.85.

"...The council resolved that as per the decision taken by the Executive Council on 1st December, 1984, in other cases, the revised scales in respect of the existing incumbents be implemented with immediate effect and that the revised qualifications as may be communicated in future by the UGC if accepted by the University be implemented for the future incumbents."

Resolution No. 689 dated 8.3.85.

"...The earlier letter from the Commission dated 12.11.1984 conveying the Revised scales in respect of the above staff was reported to the E.C. vide resolution No. 411 dated 1.12.1984. The E.C. had decided that pending receipt of revised qualifications and other details regarding the posts involved from the UGC THE REVISED SCALES RECEIVED BE MADE EFFECTIVE IN RESPECT OF EXISTING INCUMBENTS WORKING AGAINST THESE POSTS ON REGULAR/ PERMANENT BASIS AND THAT THE REVISED QUALIFICATIONS AND OTHER DETAILS TO BE RECEIVED FROM THE UGC, IF ANY, BE MORE APPLICABLE FOR FUTURE RECRUITMENT TO THESE POSTS, IN CASE THE COUNCIL DECIDED TO ADOPT SUCH REVISED QUALIFICATIONS, ETC. THE ABOVE DECISION OF THE COUNCIL HAD ALREADY BEEN NOTIFIED AND IMPLEMENTED."

"...The Council further resolved that the University Grants Commission be informed that the revised qualifications as may be communicated by the Commission if accepted by the University would be implemented for future recruitment."

An early action will ease the situation and will be highly appreciated

With regards"

16. On 13.8.1986 representation was made by the Association on behalf of Professor Assistants. Nothing was done by the respondents. Therefore, on 8.9.1987 the writ petition was presented in this Court.

17. The case of the petitioners is that the petitioners and respondents 3 to 6 were appointed on the basis of the qualifications prescribed and were selected by a common Selecting Body. A policy decision was taken by the Executive Council on 1.12.1984 that whenever new qualifications are prescribed that would apply only to future recruits and revised scales of pay would be given to the incumbents in the posts. The respondents are entitled to describe scales of pay would be given to the incumbents in the posts. The respondents are entitled to describe a qualification to any post but that would apply only to candidates who are to be appointed after the prescription of the qualification and with reference to the revision of scales of pay the incumbents would be entitled. The petitioners have stated that revision of scales of pay had been done by the Central and State Governments in respect of their employees and the petitioners were on the scales of pay Rs.550-900 for a long time. The petitioners have stated that applying the concept of "equal pay for equal work" there can be no discrimination in the pay scales between the petitioners and respondents 3 to 6. On 23.2.1985 the second respondent University Grants Commission while recommending rationalisation of scales of pay stated that the scales of pay Rs. 700-1600 with reference to Professional Assistants would apply to those possessing additional qualifications which is vocative of Articles 14 and 39 of the Constitution of India. When there had been common seniority of all the incumbents in the posts and when all of them are fused into one category of

clause grant them a higher scales on the basis of securing first or second class is vocative of the Fundamental Rights of the petitioners. No doubt, it would be open to the respondents to insist on qualifications for the future recruits.

18. On 2.2.1989 the university filed its reply/counter to the writ petition. The University was aware of the fact that with regard to putting the petitioners on higher scales was under the consideration of the Commission when the rationalisation of the pay scales was done. The University denied the claim of the petitioners that there has been vocative of Articles 14 and 16 of the Constitution of India. It is stated in paragraph 4(vii) of the reply that the University Grants Commission had expressed the view that those of the Professional Assistants who were working in the pay scales of Rs.550-900 who had completed 10 years of service could be put on the scales of Rs. 700-1600. It is stated in para 7:-

"Para 7 is denied. It is denied that the petitioners have been discriminated. It is denied that the petitioners have been able to make out a case for the grant of the reliefs prayed for in the writ petition on the grounds set out in paras (A) to (E). It is denied that to grant a pay scale personal to anyone is wholly discriminatory, undemocratic or unreasonable. It is incorrect that the action of respondent No. 1 in giving effect to the recommendations of respondent No. 2 is capricious or vocative of the Article 14 of the Constitution of India. The writ petition is not maintainable and the petitioners are not entitled to any of the reliefs prayed for in the writ petition."

19. On 23.4.1991 the petitioners filed an additional affidavit placing on record the communication that passed between the University Grants Commission and University the resolution of the Executive Council passed in 1984.

20. On 16.5.1991 the University Grants Commission (respondent No.2) filed reply to the writ petition. In para 5, it is stated:-

"As regards paragraph 5, the detailed facts leading to the filing of the said writ petition, peculiar to the petitioners, are not admitted for want of knowledge.

It is submitted that the following is the history of how exactly the dispute arose:

The pay scales for University teaching staff are recommended from time to time by the UGC to the Government of India, Ministry of Human Resource Development and Government of India passed appropriate orders in regard to the pay scales applicable for different level of functionaries. For central Universities, of which Delhi University is one, these pay scales become directly applicable and for the Universities set up by the State Governments the decision for applying the pay scales laid down by the Government of India is taken by each State Government concerned. The general pattern of posts in libraries in Central Universities is that there are posts of Librarian and below Deputy Librarian, Assistant Librarian, Professional Assistants and other below them. Since the basic pay scales for the teaching faculty in a University is determined in the context of the formation of Professors, Readers and Lecturers, equivalence

of other teaching functionaries has to be determined for determining their pay scales within the over all framework. Accordingly, Librarian in a Central University is equal to a Professor, Deputy Librarian is equal to a Reader and Assistant Librarian is equal to a Lecturer for purposes of pay scales. Professional Assistants have been in the pay scales of Rs.550-900 before 1980. By an order of 15.12.1982, the Government of India prescribed the pay scale of Librarians in Colleges, including Librarians in Colleges in the pay scale of 550-900 and 700-1600, which is also pay scale made applicable to the Assistant librarians in the Universities.

On the ground that Professional Assistants in Central universities should not be treated below Asstt. Librarians in Colleges in the pay scale 550-900, were given the pay scale of 700-1600, the pay scale 700-1600 was demanded for the Professional Assistants. The UGC could not accept this because this would place Professional Assistants in a pay scale equal to that of Assistant Librarian/Lecturer in the University whereas Professional Assistants are clearly lower to the assistant Librarians in the Universities.

On detailed consideration of the continued demands of the Library staff from Central Universities, the UGC decided to convey to the Universities on 16.3.1985, that those Professional Assistants of the Central Universities in the pay scale of 500-900 who fulfill the qualifications prescribed for the post of Assistant Librarians may be given the scale of 700-1600 w.e.f. 1.4.1985. While conveying this decision of the Commission, it was also conveyed that rationalisation for those who do not have such qualifications was under consideration of the Commission. This letter has already been annexed by the petitioner as Annexure I of additional documents.

The UGC considered this aspect on the basis of the recommendation made by the joint meeting of the Cadre Review Committee for all the Central Universities and communicated to the Universities on 4.6.1987 that those Professional Assistants who have put in at least 10 years of regular satisfactory service on 1.4.1985, may be given the pay scale of 700-1600 by relaxing the requirements of qualifications. The UGC further clarified to all the Central Universities in 1989 that the pay scale of 700-1600 given to Professional Assistants by relaxing the norms would be personal to the persons concerned and it was clear in the circular of 16.3.1985 that even this dispensation was a one-time exercise. The said document was filed in court on 8th April 1991.

It is submitted that very clearly the post of Professional Assistant in a Central University is lower than that of the post of Assistant Librarian. The post of Assistant Librarian is equated for the purpose of pay scale to that of Lecturer and for these posts the pre-revised scales were 700-1600 which has been revised to 2200-4000 w.e.f. 1.1.1986. The Professional Assistants as a cadre were clearly not entitled to this pay scale and the UGC or Government orders have at no stage specified the pre-revised pay scale of 700-1600 for Professional Assistants as a cadre. It is only to alleviate the demand of stagnation and to recognise

higher attainment which is the avowed aim of the University system. That benefit of 700-1600 has been extended to two categories of Professional Assistants on wholly personal basis (a) the Professional qualification as prescribed by the Government of India in the context of these pay scales (b) for those who have put in 10 years continuous, regular, satisfactory service. Also, relaxation of qualification for those who have put in 10 years continuous, regular, satisfactory service. Also, relaxation of qualification for those who have put in 10 years of continuous, regular, satisfactory service, is also not of a continuous nature but only a one-time relief given w.e.f. 1.4.1985. Thus, it is submitted that the UGC or Government of India have at no time laid down the pay scale of 700-1600 for Professional Assistants in Central Universities because this would create the impossible situation of their parity with their superior (Assistant Librarians/ Lecturers). It is also submitted that no specific or general representation regarding the demands of the petitioners has been referred to the Commission or has been under consideration of the Commission."

20. The second respondent had justified its decision.

21. On 29.7.1991 the University filed reply to the additional affidavit filed by the petitioners.

22. On 3.4.1991 the petitioners filed an additional affidavit placing on record a few documents.

23. The learned senior counsel for the petitioners Mr. M.N. Krishnamani submitted that the petitioners and respondent 3 to 6 have been discharging the same functions and they were all recruited on the basis of qualifications prescribed by the University Grants Commission. Applying the well settled Principles, the respondents are bound to give equal pay for equal work. The learned senior counsel submitted that it shall be open to the respondents 1 & 2 to prescribe any qualification for the posts with reference to recruitments to be made but whatever rule that is made that cannot affect the rights of the incumbents and it will not be open to the respondents 1 & 2 to discriminate between the employees discharging the same duty on the ground of securing first or second class in the qualification examination. That would come within the mischief of Articles 14 and 16 of the Constitution of India and Article 39 of the Constitution of India. The learned senior counsel submitted that on 13.7.1987 the University of Delhi had written a letter to the Library, Delhi University Library System conveying the decision of the second respondent University Grants Commission approving of scales of pay 700-1600 for Professional Assistants who had completed 10 years service as on 1.4.1985 despite they being not having secured first or second class, the qualifying examination. The second respondent had made further discrimination and this clearly shows that there had been no rationale behind the decision taken by the University Grants Commission in respect of the Present incumbents in the posts as on 1987. The learned senior counsel submitted that in paragraph 4(v) the petitioners have said:-

"(v) The above discriminatory treatment is meted out only in respect of poor librarians. In the administrative side, for the posts of Dy. Registrar etc., the same Commission had similarly recommended the higher qualifications viz., minimum of Pot Graduate qualifications. But there are Dy. Registrars with mere matriculation or degree qualifications. In their cases the additional qualifications prescribed were treated as prospective to be applicable only to future appointees. Further 1st respondent University gave higher pay scale prescribed as in the instant case not only to those who possessed High Qualification to be appointed to those posts when they were first appointed."

24. The learned senior counsel referred to the reply by the University wherein it is stated:-

"Para 4(v) is wholly irrelevant insofar as the question of determination of the plea of the petitioners is concerned."

25. The learned senior counsel submitted that in respect of other posts like Dy. Registrars etc., the second respondent University Grants Commission had approved of the payment of revised scales of pay but did not insist on in first and second class for the incumbents. The learned senior counsel submitted that the decision of the respondents 1 to 2 to deprive the petitioners the scale of Rs. 700-1600 is clearly discriminatory and it runs counter to the dictum laid down by the Supreme Court in various rulings dealing with the aspect of "equal pay for equal work". The learned senior counsel vehemently submitted that the University Grants Commission had completely misunderstood its decision with reference to revision of scales of pay and its power to prescribe higher qualification for the incumbents. The learned Senior counsel submitted bringing about a difference between the scales of pay for the incumbents putting them in two separate categories on the basis of first or second class secured in the qualifying examination is clearly vocative of Articles 14 and 16 of the Constitution of India.

26. The learned counsel Mr. S.K. Luthra, who appeared for the first respondent Delhi University, submitted that the decision of the respondents 1 & 2 cannot be challenged by the petitioners. The learned counsel submitted that so long as the petitioners are not deprived of the existing scale of pay and there is no reduction in rank or anything affecting their service conditions cannot have any grievance in law if higher scales is given to persons who had secured first or second class. The learned counsel for the parties relied upon the judgment of the Supreme Court reported in Sahib Ram Vs. State of Haryana and others, AIR 1995 SCW 1780 There the appellant before the Supreme Court was a Librarian in a Government College on the pay scales of Rs. 220-550. The Haryana Government on the strength of the recommendations of the Govt. of India and University Grants Commission upgraded the pay scales from 220-550 to 700-1600 if they possess minimum qualification of first or second class. The Government of India by order dated 16.1.1987 considering the representations made by several Librarians relaxed the requirements of securing first or second class. The order

passed by the Government of India reads as under:-

"It has now been decided, on the recommendation of the UGC, that the existing incumbents of the posts of Librarians in College who have been appointed to these Posts on or before 31.12.1972 may be sanctioned the upgraded scale of Rs. 700-1600 in relaxation of the qualification prescribed in Annexure-I referred to above without insisting on a first or second class in the degree, diploma or other prescribed educational qualification."

27. The appellant before the Supreme Court was appointed only on 29.7.1972. The Govt. of India had granted the scale of Rs.700-1600 to those who had been appointed before 13.12.1972. The Principal of the College, where the appellant before the Supreme Court was working, allowed him to be on the revised pay scale. The Government of Haryana directed the Principal to withdraw the revised scale of Rs.700-1600 on the ground that the appellant before the Supreme Court did not possess the required educational qualifications. The Supreme Court noticing this fact upheld the order of the Government of Haryana. The Supreme Court while deciding the issue held that Principal of the College Committed an error in granting relaxation without appreciating the scope of the orders passed by the Govt. of India. The Supreme Court made a passing reference observing "The principle of equal pay for equal work would not apply to the scales of pay prescribed by the University Grants Commission."

28. This has to be appreciated in the context of the factual position that the appellants did not possess the required qualifications. Therefore, this decision is no authority for the position that he respondent 1 and 2 could deny the revised scales of pay to the petitioners who were appointed on the basis of their satisfying the required qualification under the Rules.

29. No argument was advanced by the learned counsel of the parties with reference to the re-designation of respondents 3 to 6 as that would have only a consequential effect on the revision of scales of pay.

30. On well settled principles, the decision taken by the respondents 1 & 2 in depriving the petitioners the scales of pay of Rs.700-1600 can not at all be sustained. The petitioners were appointed when they found that they satisfied the requisite qualifications and the decision to give a higher scale of pay only to those persons who were appointed on the basis of the qualifications prescribed at the time of issuing appointment and who had secured first or second class is contrary to the principles of "equal pay for equal work". The respondents 1 & 2 had given higher scales of pay for those who are working as Dy. Registrars and in other posts in the University. Therefore, the petitioners have made out a case for issuance of mandamus and the obligations of the respondents 1 and 2 to follow the well settled principles.

31. Accordingly, the respondents are directed to grant the pay scale to the petitioners of Rs. 700-1600 w.e.f. 1.4.1985, as was given to respondents 3 to 6 and shall grant pay scales revised subsequently. The respondents 1 & 2 shall

keep the arrears in the Provident Fund Account of the petitioners and for future w.e.f. 1.5.2000 the respondents 1. & 2 shall pay the full pay on the present scale of pay applicable to the posts held by them.

32. The writ petition stands allowed to the above extent. There shall be no order as to costs.