
(2013) 11 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) 1050 of 2000

Bam Dev Chhetri and Others

APPELLANT

Vs

Jawaharlal Nehru University and Another

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 1 AD 325 : (2014) 140 DRJ 196

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Vinay Kumar Garg and Mr. Rajeev Sharma Ms. Sagri Danda, for Respondent Nos. 1 to 3, for the appearing parties; Sagri Dhanda, Advocate for Respondent No. 1, Mr. Amitesh Kumar, Advocate for Respondent No. 2 and Mr. Amitesh Kumar, Advocate, for the Respondent

Judgement

Valmiki J Mehta, J.

W.P. (C) No. 1050/2000

1. Petitioners, who are care takers in respondent no. 1/Jawaharlal Nehru University seek the relief of being granted the core scale of pay of Rs. 1350-2200/- and not Rs. 950-1500/- which has been directed to be paid to them. What is pleaded in sum and substance by the petitioners is that recommendations given for increase of the pay scales of various employees of respondent no. 1/Jawaharlal Nehru University including the care takers such as the petitioners cannot entitle respondent nos. 1 and 2 i.e. the Jawahar Lal Nehru University and University Grants Commission to reduce the core scale of pay of care takers from Rs. 1350-2200/- to Rs. 950-1500/-, although the petitioners were enjoying a higher pay scale pursuant to various earlier orders and directions issued by the respondent no. 1/University through its executive council. The facts of the case are that the petitioners were appointed as care takers with the respondent no. 1/University in the pay scale of Rs. 380-640/- (revised to Rs. 950-1500/-). Petitioners state that on account of duties and responsibilities of the post being identical to the post of care takers in the

respondent no. 2, the respondent no. 1/University placed the petitioners in the pay scale of Rs. 1350-2200/- by an order passed on 21.3.1996. Notional benefits were granted of the higher pay scale from 1.1.1986 without granting actual arrears for the past period. On account of grant of higher pay scale to the petitioners, certain anomalies arose in the pay structure of other posts, and as a result whereof, the respondent no. 1/University brought into force schemes for one upward movement and two upward movements for other employees. Then came the Fifth Pay Commission Report. As per the Fifth Pay Commission Report, core pay scale in Central Government of care takers was fixed at Rs. 950-1500/-. Petitioners were aggrieved on account of the fact that they were consequently on implementation of V Pay Commission Report put in a reduced pay scale of Rs. 950-1500/- although they were already having a pay scale of Rs. 1350-2200/-. Representations were accordingly made to the respondent no. 1/University and there took place further correspondence between the respondent no. 1/University and the UGC on one hand and the UGC and the Ministry of Human Resource Development on the other hand. Ultimately three letters were issued by the respondent no. 2/UGC dated 8.4.1998, 10.4.1998 and 5.10.1999. The sum and substance of these letters show that Ministry was unhappy with the functioning of the JNU in that it without the consent of the UGC JNU gave higher pay scales to its various employees including the care takers such as the petitioners, and which resulted in also granting first time and second time upward movement schemes for compensation to the other employees, however, the Ministry ultimately opined that since the University was competent to do so without taking sanction from UGC, earlier pay scales granted by the respondent no. 1/University to its employees including the upward movement schemes should not be touched or varied but direction was that in future the respondent no. 1/University will strictly follow the pay scales as given to the Central Government employees. So far as care takers are concerned, respondent no. 1/University was allowed to give the care takers the pay scale of Rs. 4500-7000/- in terms of the letter dated 8.4.1998 and clarification as issued by the UGC dated 10.4.1998 specifying that if core scale of pay of care takers as per Fifth Pay Commission Report was lesser than pay scale of Rs. 4500-7000/-, since earlier higher pay scales were already paid to the care takers of the respondent no. 1/University, such higher pay scales (i.e. Rs. 4500-Rs. 7000) would be considered to be retained as personal to the employees and such higher pay scales would not be reduced for existing employees but for new recruits, the core scale of pay for care takers would be only Rs. 950-1500/-. By the letter dated 5.10.1999, issued by the respondent no. 2 on the basis of the letter dated 29.7.1999 of the Ministry of Human Resource Development, entire history of pay scales in the respondent no. 1/University was commented upon and it was stated in para 4(iii) of this letter dated 5.10.1999 of the respondent No. 2/UGC, that, core pay scale of a post would be the pay scale applicable to the corresponding post in Central Government. Accordingly UGC contends that petitioners cannot be granted the higher pay scale of Rs. 4500-7000/- because petitioners were not having a core scale of pay of Rs. 1350-2200/- inasmuch as core scale of pay of care takers as

per the Fifth Pay Commission Report was Rs. 950-1500/-. That is therefore the issue which is raised by the petitioners that once the petitioners enjoyed a higher scale of pay of Rs. 1350-2200/- in terms of the order dated 21.3.1996 of the respondent no. 1/University when the Fifth Pay Commission Report came into force, then, the letters of the respondent No. 2 dated 8.4.1998, 10.4.1998 and 5.10.1999 do not bring about a lower core scale of pay of Rs. 950-1500/- so far as petitioners are concerned.

2. Let me at this stage reproduce the relevant portions of the three letters of the UGC dated 8.4.1998, 10.4.1998 and 5.10.1999. The relevant portions of the letter dated 8.4.1998 of the respondent no. 2/UGC read as under:-

No. F.31-3/97(CU)

8th April, 1998

The Registrar

Jawaharlal Nehru University

New Mehrauli Road,

New Delhi-110067.

Subject:-Pay revision of employees of Central Universities, etc. Pursuant to the Recommendations of the Fifth Central pay Commission Jawaharlal Nehru University.

Sir,

I am directed to refer to Ministry of Finance, Department of Expenditure O.M. No. F.7(34)E.III-A/97 dated 2nd December, 1997 and to convey the approval of the University Grants Commission to revision of scales of pay of non-teaching employees of the Jawaharlal Nehru University as recommended by the Group of Officers as per the details given in the Annexure.

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Name of University: Jawaharlal Nehru University

(A) Pay Scales approved by the Committee

3. The relevant portion of the letter of the respondent no. 2/UGC dated 10.4.1998 reads as under:-

Speed Post

University Grants Commission

Bahadurshah Zafar Marg

New Delhi-110 002

No. F.31-3/97(CU)

10th April, 1998

The Registrar

Jawaharlal Nehru University

New Mehrauli Road

New Delhi-110 067

Subject: Pay revision of employees of Central Universities, etc. pursuant to the recommendations of the Fifth Central Pay Commission-Jawaharlal Nehru University.

Sir,

I am directed to refer to this officer letter of even number dated 8th April, 1998 conveying the approval of the University Grants Commission to revision of scales of pay of non-teaching employees of the Jawaharlal Nehru University as recommended by the Group of Officers and to say that the matter has been further considered by the Commission with in consultation with Government of India and the Commission has decided as under:-

1. The Group of Officers constituted by UGC had identified two categories of cases in the above institutions, namely - (i) Categories where pay scales and conditions of service are similar to those in Government; and (ii) Categories where scales and conditions of services are different from those available in Government employees.

2. As regards cases falling in category (ii) above, the Commission have examined the matter in consultation with the Ministry of Human Resource Development and Ministry of Finance (Department of Expenditure) and it has been decided that the corresponding replacement pay scales given in the First Schedule, Part A, Central Civil Service (Revised Pay) Rules, 1997 to the pay scales which have been extended to the existing incumbents with prior permission to the competent authorities but are different from those approved by the Government may be given as personal to the current incumbents of those posts on the consideration that they have already been drawing benefit of the grade in the pre-revised scale. The University may ensure that once these incumbents vacate the posts, the pay scales would be reverted to the approved level which exists in Government. New recruitment would also take place at the level of scales approved by Government.

4. The relevant portions of the letter of the respondent no. 2/UGC dated 5.10.1999 read as under:-

University Grants Commission

Bahadur Shah Zafar Marg

New Delhi-110002

No. 31-10/97 (CU)

New Delhi, the 5th October, 1999

To,

The Registrar

Jawaharlal Nehru University

New Delhi-110067

Subject:-Revision of scales of pay of non-teaching staff of JNU on the recommendations of Vth Central Pay Commission.

Sir,

As per communication from Ministry of Human Resource Development, Department of Education, Government of India No. 4-78/97-U.I. dated 29.7.1999, I am directed to say that the order extending revised scales of pay on the recommendations of 5th Central Pay Commission to employees of quasi-government organizations, autonomous organizations, statutory bodies etc. set up by and funded/controlled by the Central Govt. Was issued by the Government vide Ministry of Finance, Dept. of Expenditure's O.M. No. (34)/E.III-A/97 dated the 2nd December, 1997 (copy enclosed) whose pattern of emolument structure i.e. pay scales and allowances and conditions of service are identical to those of the Central Govt. Employees. Accordingly, the revision of scales of pay of employees of all Central Universities, including the Jawaharlal Nehru University (JNU), Delhi, was considered by the Government. Since the scales of pay and conditions of service of employees of the JNU were not exactly similar to those of corresponding categories in Central Govt., a Group of Officers was constituted as provided for in para 2 of the OM ibid. Detailed scrutiny of the submissions and papers made available to the Group revealed that the University had, contrary to norms instructions etc. contained in the General Financial Rules and other instructions of Government issued from time to time, which are discussed in detail in the succeeding paras, and in violation of the JNU Act, implemented without appropriate approvals, personal promotion schemes thereby totally distorting the structure, inter-se parity, and relativity amongst posts/scales and granted undue benefits to employees which are not available to corresponding categories of employees in Government.

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3. The recommendations of Group of Officers and the proposal made by the Deptt. Of Education were considered in an Inter-Departmental meeting. It was the unanimous view that the observations of Group of Officers as at para 2.2 ibid summarised the deep-rooted malaise in JNU and it was further held that:-

i) Jawaharlal Nehru University had through its various decisions, distorted the hierarchy, structure and line of promotional channels which are essential in a

pyramidal structure and disturbed inter se parity and relativities amongst various posts in the hierarchy and some of the decisions amounted to a violation of statutory rules contained in the General Financial Rules, JNU Act and administrative/executive instructions on scales of pay, conditions of service, relativities, parity etc.:

ii) Personal promotions/in-situ promotions are granted to the employees stagnating in a post/grade; an employee is said to be stagnating in a scale/grade only after one year of reaching the maximum of the scale. There was no justification for the unilateral implementation of various personal promotion scheme in the absence of stagnation especially when the University was following Govt. of India rules, when the University was following Govt. of India rules, pattern of emoluments and conditions of service.

iii) Quasi-government organizations, autonomous organizations, statutory bodies etc. set up by/and funded/controlled by Government have to function within the overall framework of Govt. rules, instructions, norms, etc. as the financial liability is ultimately of the Government.

iv) The Government vide its D.O. letter No. F.4-78/97-U.I. dated 8th April, 1998 had communicated its approval to the revision of scales of pay and the list of approved pay scales for various categories of employees in Central Universities, Deemed Universities, Inter-University Centres and Delhi Colleges on the strict condition that Personal Promotion Schemes/Career Growth Schemes in operation in the Central Universities/Deemed Universities etc. would be discontinued forthwith. Though the cut off date for discontinuance of the Personal Promotion Schemes/Career Growth Schemes etc. was not specifically mentioned, the reference to the cut off date for denial of the benefit of various Personal Promotion Schemes/Career Growth Schemes was obviously 1.1.96 since the revised scales of pay were effective from 1.1.96. The JNU, however, sought the change of cut off date from 1.1.96 to the date of issue of the letter referred to above i.e. 8.4.98. It was clarified by Deptt. of Education that extension of revised scale of pay on the recommendations of 5th Central Pay Commission was contingent upon discontinuance of the personal promotion schemes/career growth schemes which were in operation in the Central Universities etc. and the benefit of schemes in existence before 8.4.98 could not be given to any person/organization after 8.4.98 and only in respect of such cases, where orders might have been issued before 8.4.98 with the due approval of competent authority could corresponding scales be given as approved by Government subject to the procedure laid down i.e. constitution of Group of Officers.

v) It was noted that the earlier decision of the Government that existing incumbents of such posts be given normal replacement scales as personal to them; new recruitment taking place in the rationalized pay structure corresponding to Govt. pay scales for equivalent categories cannot be applied for the reasons aforesaid.

4. After careful consideration of the situation in JNU, in the context of provisions of General Financial Rules, JNU Act and other instructions issued from time to time by the Government resulting in undue and unintended benefits flowing to the employees of JNU, and also the fact that equity extension of revised scales of pay recommended by 5th Central Pay Commission to Central Govt. employees and corresponding categories of employees in quasi-Government organizations, autonomous organization, Statutory bodies etc., it has been decided by the Government to regulate the revision of scales of pay employees belonging to categories of posts equivalent to B, C & D Groups in JNU carrying scales below Rs. 2000-3500 even after OUM under the UGC Scheme as under and subject to the conditions hereafter seen out:-

i) The pre-revised pay as on 1.1.96 in respect of those employees who have fulfilled the prescribed eligibility conditions for one upward movement as per the UGC scheme may be protected in the pre-revised one upward movement scale. The "pre-revised" pay in such cases will be the pay notionally admissible as a consequence of the benefits already allowed by the JNU prior to 8.4.98 irregularly through various promotion schemes.

ii) The benefit of protection of pay on 1.1.96 will not be available to those employees who have been irregularly given the first upward movement scale even from the date of their initial appointment and to those not fulfilling the prescribed eligibility criteria/conditions. Pay in the pre-revised one upward movement scale will also not be protected in the case of those employees who were holding posts in the pre-revised core pay scales of Rs. 2000-3500 and above. The pay in their cases as on 1.1.96 shall be the pay that would have been admissible had they been correctly placed only in the Government approved core scales of pay for the posts.

iii) The core pay scale of a post would be the pay scale applicable to the corresponding post in the Central Government.

iv) The one upward movement will be admissible only in the next pay scale in the normal hierarchy/line of promotion. Obviously, this also should correspond to the scale in the hierarchy in the Central Government. In the case of isolated posts, however, this will be the next higher scale available to the corresponding categories in the Central Government. In the event of any category of post not existing in the Central Government it would be the next higher scale in the hierarchy of standard pay scales in the Central Government.

v) If the pre-revised pay as on 1.1.96 exceeds the maximum of the pre-revised one upward movement scale, pay in those cases will be fixed at the maximum of the scale and the difference will be personal pay.

vi) Thereafter, the pay will be fixed in the revised scale corresponding to the core scale/one upward movement scale as the case may be, after allowing the fitment

benefit of 40%. The Personal pay, if any, admissible as on 1.1.96 shall not, however, be taken into account for the purpose of pay fixation in the revised scales. This will instead be authorized as a distinct and separate element over and above the pay admissible in the applicable revised scales.

vii) The Personal pay, if any, admissible after the pay has been fixed in the pre-revised scales as on 1.1.96 would be absorbed in future increases in pay. Cases where the pay in the revised scale after extending the fitment of benefits of 40% also exceeds the maximum of these pay scales, would be governed by the provisions of the CCS (Revised Pay) Rules, 1997 and the pay shall be fixed only at the maximum of the revised pay scales.

viii) No promotion or career growth scheme will be operated in JNU after 8.4.98 and in case such schemes have been introduced after 8.4.98, these will not be taken into account for determining the pay of an employee on 1.1.96. All future recruitments will take place only in the approved core scales as existing in the Central Government. The OUM scales allowed to existing incumbents will be personal to them. A statement indicating core pay scales and the corresponding one upward movement (OUM) scales is given in the Appendix to this letter.

ix) Decisions in regard to applicability of the Assured Career Progression Scheme to JNU employees would be taken separately as and when Government formulates/approves the scheme.

x) Anomalies, if any, arising as a result of implementation of these decisions shall be resolved only through administrative means and not through the mechanism of the Anomalies Committee.

xi) In case there is any difficulty/anomaly in the implementation of these orders the University will make a specific reference to the University Grants Commission.

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8. The powers to clarify doubts, or the interpretation with regard to any clause(s) contained in this order shall vest with the Government.

9. It is clarified that the present dispensation is a special one and will not be treated as precedent.

Yours faithfully

(R.K. Chauhan)

Joint Secretary

5. A reading of the aforesaid communications of the UGC brings out the following admitted facts:-

(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/-.

(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/-.

6. 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.

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 1/2% 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.