
(1987) 08 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 15181 of 1983 and 9664 of 1985

Class I Officers Association, Chandra Shekhar Azad University
of Agriculture and Technology and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1988) 1 AWC 49

Hon'ble Judges : R.M. Sahai, J;D.S. Shinha, J

Bench : Division Bench

Advocate : S.N. Srivastava and S.P. Gupta, for the Appellant; S.C. and V.B. Singh, K.N. Tripathi, Dhruwa Narain and S.R. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Teachers of Chandra Shekhar Azad University, Kanpur (For brevity University), who were members of U.P. Agricultural Service, class prior to transfer of their services to the University in 1975 and absorption in 1980 have filed this petition, claiming to be unregistered association, and one of them even in individual capacity, for issuing & writ of Mandamus or direction to opposite parties to pay them salary of Rs. 1500-2500 from the date of their absorption. In the alternative they have also prayed for quashing order of State Government dated 12th August, 1983 rejecting their (sic).

2. All these petitioners prior to their transfer to the University were associate professors in U.P. Agricultural Institute. One of the conditions of their transfer and absorption was that their salary, seniority, service conditions etc. shall not be lower or disadvantageous than what was in the Institute. In 1981 some of the members of U.P. Agricultural service class II who were assistant professors in the Institute and were transferred and absorbed like petitioners were given the pay scale of associate professor provided they possessed the requisite qualifications.

At that time some of the petitioners appear to have been, to use the expression of counter affidavit looking after the work of professor and head of department as well. - Therefore, they and others made a representation to government that their juniors having been granted their pay scale they were entitled to higher grade of Rs. 1500-2500. This, as mentioned earlier, was rejected by the government in August, 1983. Apart from petitioners one Dr. R. 1. Singh, who was also a member of U.P. Agricultural Service class I, had made a separate representation for grant of higher scale as he was absorbed as professor. This was allowed in November, 1983. It appears to have furnished immediate cause of action for filing of this petition and the thrust was that grant of scale to Dr. Singh was not improper but the government acted arbitrarily and erroneously in treating petitioners differently even though they were similarly situated inasmuch as Dr. Singh and petitioners before their absorption in the University were in the same cadre. But during pendency of this petition the University issued advertisements for selection and appointments as professor and head of department of various disciplines which included even those in which petitioners were working as such. Therefore, on their initiative the selection was stayed. Later on the interim order was vacated but the interest of petitioners was protected and it was directed that selections shall be subject to decision of writ petition which fact shall be brought to the notice of appointees. Consequently, the selections went on and some of the petitioners have been selected as well. But that does not resolve the controversy as others still remain. And the claim for higher salary from the date of absorption survives. Further the petitioners by way of amendment, necessitated due to selections, claim, that they like Dr. Singh should be deemed to have become professor and head of department of their respective departments which they were looking after, therefore, there was no vacancy which could be filled. In the beginning the controversy appeared to be narrow specially because the University itself had written to the government that claim of petitioners was justified. But with impleadment of Dr. Singh and stand taken by the University and State Government justifying grant of higher scale to Dr. Singh and denial of the same to petitioners on method and manner of selection changed the complexion and widened the controversy. At the far end of hearing when rejoinder argument was about to close some of the selected teachers filed application for impleadment. Although it was vehemently opposed, and rightly, yet to give them a fair deal their application was allowed and they were permitted to file counter affidavit and they too have been heard. Another petition No. 9664 of 1985 has been filed by another teacher. Since the controversy raised by it and the relief sought is identical that petition is also being disposed of along with this petition.

3. To comprehend the issue it appears necessary to narrate in brief the background of U.P. Agricultural Service of class I to which petitioners belonged and effect of their absorption in the University. In 1906 a Government Agriculture College was established at Kanpur for imparting education in agriculture sciences. It was under control of Director of Agriculture U.P. and was originally

affiliated to Agra University. Its employees were members of U.P. Agricultural, Service class I and II. It has teaching and research wing. In 1934 rules regulating appointment and condition of service of U.P. Agricultural Service class I were framed. According to it the cadre comprised of five sections known as (a) (b) (c) (d) and (e). One more appears to have been added later. Section C consisted of teaching and research wing. The teaching side had various professors in various subjects. The research side had scientists of various subjects of agriculture science known as Economic Botanist, Plant Pathologist, Bio chemist etc. It also had officers in charge of various regional research institutions in the State and Director of Horticulture Research institute Saharanpur and Sugarcane Research Station Shahjahanpur. Recruitment to the posts in this section could be by direct recruitment or by transfer from section (b) or by promotion from class 11. The qualification for direct recruitment was B. Sc. (Ag.) or agriculture degree of a recognized University and with atleast two years post graduation training in India "*" or abroad. After independence the recruitment to post of professor, assistant professor or lecturer could be made by public service commission only. Appointment to the research wing could be made by direct recruitment or promotion. The pay scale of all the posts in section (c) was the same. But the pay scale of professor was Rs. 700-1200 whereas of others it was Rs. 600-1250. In 1972 the government in pursuance of a letter sent by the Institute in 1970 clarified that the status of latter, that is, persons in pay scale of Rs. 600-1250 was higher. It was also stated that the pay fixation was done on the principle which was the government policy as well. In 1969 the college was upgraded and it became Institute of Agricultural Sciences under control and supervision of a Director and entire teaching and research wing was transferred to the Institute with same conditions of service. In between 1969 and 1971 new post of senior research professor was created in pay scale of 750-1400. in January, 1971 the government issued an order in connection with upgrading of the college into institute which provided that existing posts mentioned in column 1 of list II shall be replaced by the posts mentioned in column II, and the new posts shall stand created from February, 1971. The most important condition was that all those temporary posts or such permanent posts on which any employee did not have lien shall stand abolished from the date of creation of new posts that is, 28th February, 1971. But if an employee held lien on any post then it shall be held in abeyance, till in its place the new post did not become permanent or till the lien did not end after which even the new post shall come to an end. The post of senior research professor was abolished and in its place post of professor and head of department was created. And the post of professor stood converted into associate professor. The pay scale for the former was fixed at Rs. 1000-1500, and latter at Rs. 600-1250. Therefore, by government order of 1971 the post of professor stood converted into assistant professor and they were given the same scale as persons of research wing. In 1972 the pay scale of all these persons that is, associate professor and those on the research side were upgraded, and they were put in a common scale of Rs. 850-1450. In June, 1974 the University was constituted. And in June, 1975 by a

government order the Institute and its units were transferred to the University. The order further provided that orders in respect of status and service conditions of employees of the Institute shall be issued later. This was done by order issued in September, 1976. Clause (1) of this order provided that all employees of institute whether permanent or temporary shall be deemed to be on deputation (Pratiniyukti) from 1st July, 1975 in the University and shall be paid same emoluments in period of deputation as they would have got in the government service from time to time. Clause (2) provided that permanent employees shall be deemed to be on deputation till the date of absorption. And the temporary employees shall be on deputation for one year during which period the University may complete the formality of appointing them and frame the rules as well. Clause 3 provided that the University shall absorb all those employees of the Institute whether they were permanent or not who desired to be absorbed in accordance with procedure provided in Clause 5. And for this purpose the University shall create necessary permanent and temporary posts. Clause 4 of the Order, which of course is the most important, protected the interest of employees of Institute by providing that the primary or fundamental condition of absorption shall be that their service conditions shall in no circumstances be lower than what it would have been before absorption. And their government service period, their interse seniority, promotion, pay fixation, leave, pension etc. shall be considered as it would have been had they remained in government service. Other clauses are not relevant for the present controversy. In December, 1977 the government issued another order accepting pay scale granted by the University Grants Commission to teachers of the University from the date they got themselves absorbed in the University, provided they satisfied certain conditions. The pay scale granted by the University Grants Commission and adopted by the University was mentioned in schedule C. It is extracted below:

Post	Present pay	U. G. C. Scale	Professor	Rs. 1100-1700	Rs. 1500-2500
Associate Professor	Rs. 800-1450	Rs. 1200-1900	Assistant Professor	Rs. 500-1200	Rs. 700-1600

Since it was a big jump nearly everyone who had come from the Institute opted for the University service. And the petitioner and others of U.P. Agriculture Service class I were absorbed in 1980 in pay scale of Rs. 1200-1900. This, in brief, is the history of U.P. Agriculture Service class I.

4. Since principal claim of petitioners namely, grant of salary of Rs. 1500-2500 from the date of absorption is founded on grant of similar scale to Dr. R. I. Singh, it is necessary to examine the circumstances in which the government granted higher scale to Dr. Singh and how far it benefits petitioner. Dr. Singh was appointed as Assistant Professor of Agriculture extension in Government Agriculture College in 1962 in U.P. Agricultural Service Class II. In 1970 the Government transferred Dr. S.I. Garg, an approved temporary officer of agricultural service, senior scale section "c" (Agricultural Economics group) working as Professor of Agricultural Economics in Public interest to the post of

Agricultural Economist, in the same group and appointed Sri Ram Iqbal Singh, Assistant Professor of Agriculture Extension in U P. Agriculture Service, Junior " scale Section C to the temporary post of professor of Agricultural Economics in U.P. Agricultural Service, Senior scale, Section C vice Dr. Garg. In 1971 when Government issued the 1971 Order replacing the post of professor with that of Associate professor, Dr. Singh also became Associate Professor. But he made representation to the State Government and claimed that since he was selected as Professor by commission his pay scale should be fixed at Rs. 1000-1500 as the post in Mathura Animal Husbandary was alike and the holder of that post had been given pay scale of 1000-1500. He also claimed that in academic circle an Associate professor was lower than professor, the claim of Dr. Singh that he should be paid higher salary as he was professor was not accepted. But the government thought that there was no harm if Dr. Singh was permitted to retain his designation as Professor. Therefore, by its letter dated 30th July 1974 it directed that the entry No. 10 in government order 1971 may be changed and it may be read as professor of Economics instead of Associate Professor. It was, however, specifically mentioned therein that Dr. Singh shall be entitled to same salary as was payable to Associate Professor from time to time. The order further sanctioned appointment of Dr. Singh on the same post from 1970-71 to 28th February 1975. Thereafter when the UGC -scale was adopted by the University Dr. Singh also opted for University service. He was absorbed. After absorption he made another representation that since he opted for the post of professor which was accepted he was entitled to pay scale of Rs. 1500-2500 which was accepted by the government in November 1983. Although not much turns on the order passed by government permitting Dr. Singh to retain his designation as Professor but it is necessary to examine if the order could in law make Dr. Singh as Professor of Economics in the institute. From government order dated 21st January 1971 it is clear that post of Professor and Head of Department in place of senior Research Professor and Associate professor in place of Professor stood created from 28th February, 1971. And from the date of creation of these posts the post mentioned that is, the post of Professor or senior Professor stood abolished except if a Professor or employee held a lien on permanent post. In paragraph 10 it is averred that Dr. Singh was not confirmed upto 1971 that is, till the 1971 G. O. became operative. In the counter-affidavit filed by Dr. Singh or the University or government it has not been stated that Dr. Singh held lien on post of Professor on the date the government order of 1971 was issued. The post of Professor of Economics, therefore, held by him stood abolished and in its place new post of Associate Professor was created. It was urged that this order was modified by State Government in 1974, when it directed that the post of Professor of Economics shall remain as it was. True, but what was its effect ? For that it is necessary to mention that the government order dated 30th July, 1974 directed that the name of Associate Professor economics at serial No. 10 in column 2 of Schedule II of government order dated 21st January, 1971 may be changed as Professor with this condition that the holder of the post of economics shall get the same salary as shall be payable to Associate Professor from time to

time. It further clarified that the government order of 1971 may be taken to be altered to this extent only. It is undisputed there was only one post of Professor in each department. For a short period that is between 1969 and 1971 four posts of senior Research Professor were created in some of the disciplines. But when 1971 order was issued the earlier pattern of one Professor in one department only was adhered to. That is why the post of senior Research Professor was converted into post of Professor and Head of Department and the remaining were made Associate Professor. In the supplementary affidavit filed by the University in May, 1987 it is stated that ten posts of Professors and Head of Department were created in different disciplines. And from paragraph 6 it appears Dr. Garg who had earlier been transferred to research side and in whose place Dr. Singh was appointed as Professor in senior scale was appointed as Professor and Head of Department of Economics in scale of Rs. 1000-1500. The only other post on which Dr. Singh could be appointed or continue was the post of Associate Professor in pay scale of Rs. 600-1250. the government order of 1971 did not contemplate two persons one as Professor and another as Professor and Head of Department. It was for this reason that the government even when it allowed the representation of Dr. Singh in 1974 and permitted him to retain the designation of Professor it made it clear that for all other purposes namely, salary etc. he shall be treated as Associate Professor. In absence of any post of Professor in any department after 1971 Dr. Singh could not have been appointed as Professor of Economics. And the government order permitting him to retain the designation could not make him professor. Nor the order altering change at serial No. 10 can be construed as an order creating additional post of Professor in Economics department. The explanation offered in the counter-affidavit is that since Dr. Singh was selected by Public Service Commission, the government treated his case differently from others. It is not necessary to comment if the government in absence of any rule or, order could pick up one person from amongst Professor of various disciplines and permit him to retain the status of Professor even though the post was abolished as in absence of any post and in view of the order of government Dr. Singh could be deemed to be Associate Professor only. In the supplementary affidavit filed by the University curious effort has been made to explain that Dr. Singh was accommodated against one of the ten posts of Professor and Head of Department created in 1971. In paragraph 5 it is stated that in 1971 ten posts of Professors and Head of Department were created. And against these seven teachers working on the post of Professor were appointed as Professor and Head of Department. These included appointment of Dr. Garg as professor and Head of Agriculture economics. In paragraph 6 it is stated that on the remaining three posts Dr. Singh was accommodated as Professor of Agricultural economics, Dr. Tewatia in Entmology and Dr. Gupta in soil conservation. In paragraph 7 it is stated Dr. Tewatia and Dr. Gupta left, therefore, the only person who remained was Dr. Singh who made a representation which was accepted. In paragraph 9 it is stated that although Dr. Singh was qualified but he could not be made professor and Head of Department because it was occupied by Dr. Garg who continued to hold the post without opting for University

service till his retirement in 1979. The averment in paragraph 6 that Dr. Singh was accommodated against one of ten posts created under 1971 Government Order of Professor and Head of Department passes all comprehension. Even Dr. Singh could not dare take this stand. Five posts of Professor and Head of Department appear to have been converted under 1971 Government Order. Five more are stated to have been created. It is however, not stated if additional posts of professor were created in same five disciplines or new posts for new departments were created. In any case it is nowhere stated that an additional post of professor was created in Agricultural Economics Department. How could Dr. Singh be accommodated on 8th post which must have been for some other department. If there would have been another post in Agricultural Economics then the government would not have permitted him to retain status only and not the emoluments. In fact the stand in supplementary affidavit cuts across the order of State Government. Really speaking the Government passed an innocuous order permitting Dr. Singh to retain his designation as Professor but treating him otherwise as Associate Professor. If the submission on behalf of Dr. Singh or the opposite parties is accepted that the government appointed him as Professor then the order shall become illegal. The only reasonable manner in which it can be construed is that even though Dr. Singh was permitted to be known as Professor but otherwise he was for all intents and purposes Associate Professor.

5. Even assuming that Dr. Singh was professor of Economics was he entitled to scale of Rs. 1500-2500 ? After absorption in 1980 Dr. Singh made another representation that since he had been absorbed as Professor he was entitled to salary in scale of Rs. 1500-2500/-. On this the Vice Chancellor made a recommendation in his favour. It was pointed out by him that in every department there was only one post of professor whether it was agriculture or Veterinary. In Economics department this was held by Dr. Garg till his retirement. Since Dr. Singh was selected by Commission and had been absorbed in the University there was no objection if salary of Rs. 1500-2500 was paid to him. The recommendation is silent as to how a teacher in scale of Rs. 800-1450 be granted the scale of Rs. 1500-2500 even though it specifically points out that although Dr. Singh was professor but he was in scale of Rs. 800-1450. What is curious in representation of Dr. Singh is that he never claimed to have been appointed as Professor and Head of Department but insisted that since he was absorbed as Professor he should be paid Rs. 1500-2500. And the Government order without disclosing any reason fixed the salary of Dr. Singh by its order dated 7th November, 1983 in scale of Rs. 1500-2500. The University Grants Commission had announced the pay scale for Professor, Associate Professor etc. The University accepted this recommendation and enforced it in 1979 subject to conditions mentioned in the order dated 17th December, 1977. The recommendation in respect of pay scale has been extracted earlier. Its requirements were two fold, one that the person concerned be Professor and second that he should have been in pay scale of Rs. 1100-1700. Therefore, even

if Dr. Singh was Professor he being in scale of Rs. 800-1450 could not have been granted scale of Rs. 1500-2500. The scale of pay of an employee is dependent on the post for which he is selected or appointed. But in case of Dr. Singh it was vice versa. He was first granted higher scale of a post of Professor and Head of Department and then as a consequence of it the advertisement issued in 1982 was cancelled and he became Professor and Head of Department. Here again the question is as to how the government order should be construed. It has already been seen that Dr. Singh could not be deemed to be Professor of Economics. And even if the word Professor is taken literally he could not be granted scale of Rs. 1500-2500 as he did not fulfil the requirement ,of being in scale of Rs. 1100-1700. The government order, therefore, cannot be understood as granting of scale of Rs. 1500-2500 to Dr. Singh under the UGC scale adopted by the University. It cannot be denied that despite acceptance of UGC scale it was open to government to grant higher scale to particular class of persons. And that is what it did when it granted scale of Rs. 1500-2500 to Dr. Singh. In the last supplementary affidavit filed by the University in April, 1987 an attempt has been made to justify the grant of scale of Rs. 1500-2500 to Dr. Singh by comparing it with grant of similar scale in Engineering College, Gorakhpur, H.B.T.I, Kanpur and Engineering College. It was urged that though the pay scale of Professor in these colleges was less than Rs. 1100-1700 even then they were given pay scale of Rs. 1500-2500. Although the comparison is not apposite but it helps the construction of the government order made above. It cannot be assumed that the government intended to pass an illegal order. It was aware that a Professor in the University could be granted scale of Rs. 1500-2500 only if he was in scale of Rs. 1100-1700. And yet it accepted the representation of Dr. Singh. It is then reasonable to infer that the government decided to treat him differently and grant him higher scale because he had been transferred and absorbed in the University from U.P. Agricultural Service Class I. If the arguments of opposite parties is accepted then the order of government was in teeth of the earlier government order adopting UGC scale under which the scale of Rs. 1500-2500 could be given to a Professor who was in scale of Rs. 1100-1700 only. Therefore, even though the two orders dated 30-7-1974 and 27-11-1983 in favour of Dr. Singh were not in accordance with government orders dated 21-1-1971 and 17-12-1977, respectively, yet they cannot be characterized as illegal if they are construed in the manner indicated above.

6. Having discussed about the orders passed in favour of Dr. Singh it may now be examined if it benefits petitioners and to what extent ? But before doing so it would not be out of place to mention that even though petitioners base their claim on grant of higher scale to Dr. Singh and pray for being treated equally the learned Counsel for Dr. Singh attempted to justify the order not only under Article 14 but went to the length of submitting that an illegal order cannot furnish foundation for petitioners to approach this Court for issuing direction to opposite parties to perpetrate illegality. Reliance for former was placed on R.N. Wadhwa v. State of Haryana AIR 1972 SC 1982 , and it was urged that it was

open to government to frame separate rules. *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, , was relied to urge that a provision dealing with different class of teachers is not violative of Articles 14 and 16. Attention was also invited to *Raj Pal Sharma and Others Vs. State of Haryana and Others*, , and it was submitted that different treatment perse was not discriminatory. Reliance was also placed on paragraph (37) of *AIR India Vs. Nergesh Meerza and Others*, , and it was urged that different treatment on mode of recruitment was not for-bidden by Article 14. The principle laid down in these decisions cannot be disputed. But how do they apply to facts of the case is not clear. Treating persons differently for historical reasons or on mode of recruitment or like may be justified in circumstances in which action is taken or rule is framed or order is issued. But no exception to the doctrine of equal treatment empowers the authorities concerned to ignore their own rules or defend their action which is contrary to law. The government order adopting University Grants Commission scale itself provided that professor concerned shall be entitled to scale of Rs/- 1500-2500 only if he was in scale of Rs. 1100-1700. And yet the government granted it. Therefore, none of the cases relied by learned Counsel are relevant for controversy in dispute. As regards next limb of argument that an illegal order is of no avail to petitioners the learned Counsel relied on *R.K. Dika v. Union of India* AIR 1984 Del 413. A very bare reading of the facts of the case demonstrates that the decision was rendered in different circumstances. This Court had occasion to consider it in *P.D. Tandon v. State* 1986 ACC 219. In any case it is a very debatable issue if such unjust submissions can be advanced either by the beneficiary or those who have passed the order. It is another matter that the court may not consider it appropriate to interfere in a particular case. But that is in realm of discretionary exercise of jurisdiction. An aggrieved person invoking equity jurisdiction of this Court should not, normally, be denied the relief once he has been able to establish arbitrariness otherwise it shall provide an excuse or handle to those who are at the helm of affairs to act arbitrarily and then defend their action on this principle. It is a dangerous proposition in a society which functions on various considerations at times even extraneous. By granting relief in such cases the court does not perpetrate illegally but attempts to maintain the balance even to enable the stream of equality social or economic flow evenly.

7. Reverting to the claim of others of U.P. Agricultural Service class I whose services were transferred to the University it is undisputed that each of them holds a doctorate degree and they became either associate professor by virtue of 1971 order or continued to be scientist in pay scale of Rs. 800-1450. For instance, Dr. Rath, Dr. Sharma, Dr. Swamp, Dr. Yadav, Dr. Kulshrestha etc. were associate professor whereas Dr. Saksena, Dr. Tripathi, Dr. Tandon were crop physiologist, bio-chemist, plant pathologist etc. Their services were transferred as such. After adoption of the U. G. C. scale and exercise of option all of them including Dr. Singh were absorbed in scale of Rs. 1200-1900. Although many of those who had been absorbed in the University were scientists but they were

absorbed as teachers. The clear and specific averment in this regard in paragraph 19 and 20 of the writ petition is admitted in the counter affidavit filed by the University. The attempt, therefore, in the supplementary affidavit filed by University in April, 1987 to distinguish between associate professor and persons absorbed as scientist appears to be of no consequence. Nor is there any merit in the averment that the job of a professor is to teach which is different from scientist. What is basic is the qualification and not the work, which an institution takes from its teachers. Moreover, instances have been cited in petition and rejoinder affidavit that at times a person working on the teaching side was transferred to work as scientist. May be rare of only few inter changes might have been made. But if a scientist holds a doctorate degree and is otherwise qualified to teach then it is difficult to agree that he cannot be treated as teacher even though he was absorbed as such because he was not teaching. That the University does not maintain any distinction between scientist and professor is further clear by the advertisement issued in 1984 inviting applications for professor and head of department and senior and chief scientist in scale of Rs. 1500-2500. From supplementary affidavit of University filed in April, 1987 it is clear that each subject against which petitioners were absorbed is independent with presumably a professor and head of department or a scientist at helm of affair. Because it is admitted that when selections were held for various posts in 1984 after the interim order was vacated by this Court some of the petitioners also applied and were selected. For instance Dr. Suraj Bhan, who was absorbed as Agronomist/Water Management (irrigation and drainage), has been selected as professor and head of department. Dr. V.P. Singh was absorbed as agricultural chemist. He too has been appointed as professor and head of department. It has been urged that those absorbed as potato breeder and wheat breeder cannot stand comparison with a professor as they are not required to undertake teaching. The argument and the stand in the counter affidavit stand demolished by the advertisement issued in 1984 inviting applications for various posts, unmistakably demonstrates the scale of Rs. 1500-2500 is meant both for professor and senior scientist or chief scientist. Therefore, if there are certain disciplines in which there is no professor then the pay scale of Rs. 1500-2500 JS payable to senior chief scientist.

8. It was very vehemently argued by the learned Counsel for opposite parties that no one could be appointed as Professor and Head of Department except as provided in the Act and Statutes framed thereunder. It is here that the orders passed in favour of Dr. Singh assumes importance. The Statutes of the University or order transferring services of Class I officers of the Institute as teacher, which under the definition clause of the Act includes Professor and Associate Professor, did not provide that they shall be made Professor or Head of the Department without selection only because any one of them was selected by Public Service Commission. No order of the University or government or Vice Chancellor appointing Dr. Singh as Professor and Head of Department has been brought on record. He was granted scale of Rs. 1500-2500 because he was qualified and

working as such after retirement of Dr. Garg. On what analogy or rationale could the University or the government deny that scale to petitioners who after their transfer and in any case after absorption had been working as Head and Professor under orders of the University. In our opinion the selection of Dr. Singh by Commission for the post in Institute could not be made a basis for distinguishing his case from others. It is erroneous to describe November, 1983 order as illegal. The government had adopted UGC scale for University. But it was not debarred from granting higher scale to persons of U.P. Agricultural Services Class I who were in scale of 850-1450. The error was in denying it to others. If working as such and being qualified was the basis for scale of Rs. 1500-2500 we do not find any justification to deny the same benefit to petitioners from the date of their absorption. In absence of any provision either in the Act or Statutes it has to be assumed that the government in keeping with the 1975 government order considered it appropriate to grant higher scale to Dr. Singh without requiring him to undergo selection as visualized by Section 28 of the Act and Statutes framed there. In our opinion it should have accepted the same procedure and granted higher scale to others as well.

9. Not only that the denial of higher scale to petitioners is teeth of Government order dated 13th September, 1976 laying down conditions of absorption. As stated earlier Clause 4 protected the interest of employees by providing that their interse "seniority" and "promotion" shall be considered in the same manner as it would have been done had they continued in Government service. It is not disputed that some of the petitioners for instance, Dr. Saksena, Dr. Tandon, Dr. Tripathi etc. were not only appointed but they were even confirmed in 1967-68. Due to grant of higher scale to Dr. Singh he obviously became senior to those persons. If he would have been appointed by University after selection no exception could be taken. But the manner in which he was granted higher scale was certainly violative of Clause (4) of the Order. It disturbed the interse seniority. Further the post of Professor and Head of Department is a post higher than the post of Professor or Associate Professor. If out of the class of teachers who were similarly situated one was picked up for promotion without selection by granting him higher scale then there could be no jurisdiction for not considering others. If both Dr. Singh and petitioners would have been in government service and vacancy for post of Professor and Head of Department would have fallen in various disciplines then could the petitioners have been deprived of their right of being appointed for similar post in their discipline because they had not been selected by Commission. In our opinion, the answer has to be in negative. Therefore, even on this score the action of opposite parties in refusing to grant them higher scale cannot be accepted.

10. Objection was raised to maintainability of petition by an unregistered association. It was also submitted that all the selected teachers having not been impleaded the petition was defective. Lack of right in petitioners and corresponding duty of opposite parties was also urged. None of the objections have any merit. A petition by an unregistered association has been held to be

maintainable. Moreover, petitioner No. 2 has filed the petition in individual capacity as well. And the controversy raised by him is equally applicable to all. Asking various persons who are teachers to pay separate court-fee or file individual petitions when legal and factual controversy is the same would be inequitable. As regards selected teachers their appointment was made subject to decision of writ petition. They cannot make any grievance. Apart from it some of them got themselves impleaded, therefore, it cannot be said that petition is defective. In Probodh Verma's case (supra) it has been held that impleadment of even some persons effected is sufficient.

11. What remains to be examined is what relief should be granted to petitioners and how equities of parties can be adjusted. Although while discussing the two orders passed in favour of Dr. Singh we had to examine both the legality and propriety of these orders and some observations have also been made which may be misunderstood, therefore, it is clarified that it was not with a purpose to disturb finality of these orders but to demonstrate that petitioners and Dr. Singh being similarly situated they were also entitled to similar treatment. The orders dated 30th July, 1974 and November, 1983, therefore shall not be reopened. Since the higher scale to Dr. Singh was granted because he was qualified from the date of absorption, the petitioners were also entitled to same scale from the date of their absorption. Because although Dr. Singh was not entitled to higher scale under the UGC scale adopted by the University but if the government on recommendation made by the University, on nature of work and duties performed by a teacher, chose to grant higher scale to him then it should have accepted the recommendation of University in favour of petitioners as well. In any case since petitioners and Dr. Singh were in same pay scale, namely Rs. 800-1450 and the government decided to grant scale of Rs. 1500-2500 to Dr. Singh it could not deny the same to petitioners.

12. Now what about those who have been appointed after selection by the University in lieu of advertisement issued in 1984. We are constrained to observe that for this anomaly it is the University which is responsible. The writ petition had been filed in 1983. The University and the government were aware that the matter was subjudice. In some of the discipline the University had already directed the petitioners to work as Professor and Head of Department although they were not to get the pay of that post. And yet it issued advertisement, got the stay order vacated and selected the teachers who are working presumably since 1984. Although the appointment letter does make their appointment subject to decision of writ petition but it would be harsh and inequitable if they have to quit after working for three years. After all they have come by way of regular selection. The fault, if any, is of opposite parties. The University and the Government therefore, cannot escape from their liability. They must share it, by retaining all those who were selected by creating additional posts, if necessary. But they shall be placed lower in seniority list than those who shall be entitled to higher scale by virtue of this order.

13. In the result these petitions succeed and are allowed. The opposite parties 1 and 2 are directed to grant scale of Rs. 1500-2500 to persons mentioned in Annexure-1 to writ petition No. 15181 of 1983 and Dr. Kalyan Singh from the date of their absorption with all consequential benefits. Parties shall bear their own costs.