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**(2013) 09 DEL CK 0030**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 5732 of 1998**

Dr. Shri Kant Tripathi and Others

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 24-09-2013

**Acts Referred:**

**Citation :** (2013) 09 DEL CK 0030

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Valmiki J Mehta, J.—By this writ petition, petitioners seek implementation of the Fifth Pay Commission recommendations w.e.f. 1.1.1996 and not w.e.f. 1.4.1998 as has been granted. On the aspect what should be the salary or the pay-scale of an employee of an Autonomous Organization, the Supreme Court in the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., has held that Courts should not interfere with respect to the administrative decisions as to what should be or should not be the salary of an employee. In the present case, fixing of a salary with retrospective effect, as prayed for by the petitioner, is an issue left with the administrative discretion of the autonomous organization who best knows the position of their financial resources, how are they to be utilized and the Courts would not interfere with such decisions of the administrative authorities. The relevant observations of the Supreme Court in the case of I.D.P.L. (supra) read as under:-

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In State of M.P. v. Yogesh Chandra Dubey this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion,

the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide *P.U. Joshi v. Accountant General*. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam v. Dy. Supdt. Of Police* and we fully agree with the views expressed therein.

(underlining added)

2. In view of the above, the relief, as claimed in the writ petition, cannot be granted and, therefore, the writ petition is dismissed, leaving the parties to bear their own costs.