

(2017) 04 GUJ CK 0125
In the Gujarat High Court
Case No : 3210 of 2016

HASMUKHBHAI JIVABHAI PATEL

APPELLANT

Vs

STATE OF GUJARAT & Ors.

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Dissolution of a District or a Regional Council
University Grants Commission Act, 1956, Section 26(1) - Power to make regulations

Citation : (2017) 04 GUJ CK 0125

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : SN SHELAT, SHALIN MEHTA, MS VIDHI J BHATT, P.P. JUNEJA, ?
SANGITA VISHEN, MJ MEHTA

Judgement

1. This analogous cluster of 130 matters involves similar questions of facts and law, and therefore all the matters were heard together finally at the admission stage with the consent of the learned Advocates for the parties.

2. Special Civil Application No.3210 of 2016 being the lead matter, the facts of the said petition shall be considered for the sake of convenience. The petitioner in the said petition has prayed for the following reliefs in paragraph 24:- "24. (A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction declaring the apathy shown by the respondent authorities in removing the anomaly in pay of the petitioner resulting from the office order dated 10.8.2015 placing the 85 Lecturers in Senior Scale and Selection Grade on retrospective basis as contrary to rules, unreasonable, arbitrary, irrational and violative of Articles 14, 16 and 21 of the Constitution;

(B) Your Lordships may be pleased to issue a writ of mandamus or any other

appropriate writ, order or direction directing the respondent authorities to remove the anomaly in pay of the petitioner by stepping up his pay to the figure equal to the pay as fixed for his junior with effect from the date when his junior started getting more pay with all the consequential benefits, including arrears of pay and allowances;

(C) Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondent authorities to process the case of the petitioner for stepping up his pay in terms of rule 21 of the Gujarat Civil Services (General Conditions of Services) Rules, 2002"

3. The petitioners in Special Civil Application No.16061 of 2016 and others have additionally prayed to direct the respondents to grant the benefits of senior scale/selection grade, which have already become due and to place the petitioners to the same stage in the pay-scale of Rs.37,400-67,000 in which the juniors to the petitioners have been placed as on today.

4. As such the service details of each of the petitioners in all these petitions have been furnished by the learned Advocates for the petitioners, which have remained undisputed at the instance of the respondents. A few relevant facts taken from the Special Civil Application No.3210 of 2016 are that the petitioner of the said petition was selected by the Gujarat Public Service Commission (for short "GPSC") in the year 2000 and appointed to the post of lecturer in English vide the Government Resolution dated 27.8.2001 issued by the Education Department. By the office order dated 5.11.2001 issued by the Commissioner of Higher Education, the petitioner was appointed as the lecturer in English in the Government Arts and Science College, Ahava. The petitioner was placed in the Lecturer (Senior Scale) with effect from 9.11.2007. According to him, he was due for placement in Lecturer (Selection Grade) w.e.f. 9.11.2012 and despite the Departmental Promotion Committee having recommended the grant of the same, the petitioner has not been put in the Selection Grade.

5. It is further case of the petitioner that after the appointment of the petitioner and others through the selection by GPSC, some 111 lecturers, who were rendering services on adhoc basis also got appointed on regular basis through the selection by GPSC and they have been shown as juniors to the petitioners in the seniority list. As alleged in the petition, the Government in Education Department vide the Government Resolution dated 3.8.2011 (Annexure-B) allowed the adhoc services rendered by the said 111 adhoc lecturers prior to their regular appointment on the post (hereinafter referred to as "the subsequent appointees") to be counted for the purpose of pay, leave, and pension, subject to the conditions mentioned therein. It appears that subsequently considering the various judgements of the Supreme Court, the Government in Education Department clarified to the Commissioner of Higher Education vide the letter dated 24.12.2012 that the adhoc services were to be counted for the purpose of leave, pay, and pension only and not for the purpose of seniority (Annexure-C). Despite the said position, the Government in Education Department again issued

a Government Resolution dated 22.12.2014 (Annexure- D) resolving to count adhoc services for the purpose of granting Senior Scale/Selection Grade to those subsequent appointees, subject to the conditions stipulated in the Government Resolution dated 17.6.1999. The Commissioner for Higher Education thereafter issued the Office Order dated 10.8.2015 (Annexure-E) approving the placement of 85 out of 111 subsequent appointees in the Senior Scale of Rs.3000 ? 5000/10,000-325- 15200 and the selection grade of Rs.12,000-420- 18300 with retrospective effect counting their adhoc services.

6. As per the case of the petitioners, by virtue o the said Office Order dated 10.8.2015, the said 85 subsequent appointees came to be granted the Senior Scale/Selection Grade with retrospective effect from the dates when they were not even born in the cadre. As a result thereof the said subsequent appointees though juniors to the petitioners are getting much higher pay than the petitioners. The petitioners have placed on record the statements showing the dates from which the said subsequent appointees were granted Senior Scale/ Selection Grade. The petitioners invoking the principle of "equal pay for equal work" and pressing into service Rule 21 of the Gujarat Civil Services (Pay) Rules 2002 (hereinafter referred to as the "GCSR") have claimed that the petitioners" pay is required to be stepped up to the figure equal to the pay fixed for the subsequent appointees. According to the petitioners, they had made representations through their Association to the respondents for removing the anomalies created as a result of the Government Resolution dated 3.8.2011 and Office Order dated 10.8.2015, however, the respondents having failed to pay any heed to it, the petitions have been filed.

7. The respondent State has resisted the petitions by filing a common reply in SCA No.3210 of 2016, contending inter alia that the petitions suffer from the vice of non-joinder of necessary parties, inasmuch as the petitioners have not joined the said subsequent appointees - lecturers to whom the benefits of Government Resolution dated 3.8.2011 read with the Government Resolution dated 22.12.2014 and the Office Order dated 10.8.2015 have been granted. It is further contended that neither the provisions contained in Rule 21 of the GCSR, nor the analogy of stepping up of pay would be applicable to the case of the petitioners. According to these respondents, the said Government Resolutions were issued in consonance with the guidelines formulated by the University Grant Commission as well as the policies framed by the State Government governing the regularization of the past services rendered by the adhoc employees, upon such employees being selected through regular selection by the GPSC. The petitioners have filed the rejoinder reiterating their stand for stepping up their pay applying the analogy of Rule 21 of the GCSR.

8. The learned Sr. Advocate Mr.S.N. Shelat with learned Sr. Advocate Mr.Shalin Mehta with the learned Advocate Mr.P.P. Juneja for the petitioners, taking the Court to the various provisions of the UGC Regulations of 2000 and of 2010 submitted that the Senior Scale and Selection Grade are being granted to the

teachers under the Career Advancement Scheme (for short "CAS") as per the said regulations. They further submitted that the posts of promotion being few in number, in order to give the lecturers promotional avenues, the said CAS right from the beginning has been treated as promotion by the UGC as well as by the respondent authorities, and therefore, the principle analogous to the Rule 21 of the GCSR would be applicable to the cases of the petitioners. According to them equals are being treated as unequals, and therefore, the anomaly created by the respondents by issuing the Government Resolutions is required to be set right by putting the petitioners at par with their juniors in the matter of granting Senior Scale and Selection Grade. It is also submitted that as on today the petitioners have not been paid even the selection grade, though recommended by the Departmental Promotion Committee (DPC), whereas their juniors have been granted the said benefits of selection grade with retrospective effect, as a result of which the petitioners are getting the pay-scale of Rs.15,600-39,100, whereas the said juniors, who are the beneficiaries of the Government Resolution dated 22.12.2014, are getting the pay-scale of Rs.37,400-67000.

9. Mr.Mehta while severely criticizing the action of the respondent State in issuing the Government Resolutions for counting the past services of the adhoc employees on their appointment on regular basis through GPSC, for the purpose of CAS, submitted that the petitioners having not challenged those Government Resolutions, the said subsequent appointees, who have been granted the benefits of the said Government Resolutions, were not required to be joined as the party respondents. Mr.Mehta vehemently submitted that when common seniority list is prepared for the petitioners and the subsequent appointees, and when all are discharging the same duties and functions, it is unconceivable that the juniors would get more pay than their seniors. According to him, the petitioners are required to be paid the same pay as is being paid to the subsequent appointees, on the basis of the principle "equal pay for equal work." According to him, the classification has to be founded on intelligible differentia and on rational grounds. In the instant case, the sole differentia pressed into service by the respondents is the past adhoc services of the concerned 85 lecturers, which differentia can not be said as intelligible or reasonable. He has relied upon the decision of the Supreme Court in case of Gurcharan Singh Grewal and Anr. Vs. Punjab State Electricity Board and Ors., reported in 2009(3)SCC 94 and submitted that the respondent authorities are required to be directed to remove the anomaly.

10. However, the learned AGP Ms.Sangita Vishen for the respondent State submitted that the petitioners having not joined the 85 subsequent appointees, who have been granted the benefit of the Senior Scale and Selection Grade on the basis of the Government Resolutions, the petitions are bad for non-joinder of necessary parties. Ms.Vishen referring to the earlier Government Resolutions and UGC Regulations submitted that the Government Resolutions dated 3.8.2011 and 22.12.2014 were in consonance with the UGC Regulations and the Government policies. She further submitted that the adhoc services of the said 85 lecturers

have not been counted for the purpose of Seniority, and therefore, it could not be said that the State had meted out any discriminatory treatment to the petitioners. According to her, the said 85 lecturers were treated as a separate class considering their past adhoc services, which could not be said to be unreasonable or violative of Article 14 and/or 16 of the Constitution of India. She further submitted that the reliance placed by the petitioners on Rule 21 of GCSR was misplaced, inasmuch as the condition precedent for invoking the said provision is that there has to be a promotion given to the junior employee to the higher post in the hierarchy, whereas in the instant case, no such promotion has been given to the said subsequent appointees. According to her, Rule 21 refers to the actual promotion and not grant of pay in lieu of stagnation in promotion or by way of career advancement scheme.

11. In the light of submissions made by the learned Advocates for the parties, it is required to be noted that interestingly, though the petitioners have severely criticized the action of the respondent State in issuing the Government Resolutions dated 3.8.2011, 22.12.2014 and Office Order dated 10.8.2015, whereby the lecturers/assistant professors junior to the petitioners have been granted all the benefits of their past services rendered on adhoc basis, the petitioners have not challenged the said Government Resolutions or the action taken pursuant to the said Government Resolutions. On the contrary, they have claimed parity with them and prayed for the grant of Senior Scale and Selection Grade from the date the said subsequent appointees have been granted. It clearly emerges that the petitioners have chosen not to challenge the legality and validity of the said Government Resolutions, as indirectly they also want the benefit of the said Government Resolutions, though according to the petitioners the said Government Resolutions, being not in conformity with the legal position propounded by the Supreme Court and also not in conformity with the UGC Regulations, were illegal and could not have been issued. However, since they have not challenged the said Government Resolutions or the action of the respondent State in extending the benefit of the said Government Resolutions to the subsequent appointees, it could not be said that the petitions are bad for nonjoinder of the said 85 lecturers. The petitioners have not sought any relief against them, and therefore also, they could not be said to be necessary parties.

12. Under the circumstances, let us examine the issue as to whether the petitioners are entitled to claim parity with the said subsequent appointees in the matter of Senior Scale and Selection Grade, either on invocation of the principle of "equal pay for equal work", or on application of the Rule 21 of the GCSR?

13. In order to appreciate the contentions raised in the petitions, it would be beneficial to refer to some of the relevant provisions of UGC Regulations. The UGC in exercise of the powers conferred under Clause (e) and (g) of Subsection (1) of Section 26 of the UGC Act, 1956, and in super-session of the earlier Regulations of 2000 as amended from time to time, has framed the Regulations called UGC (minimum qualifications for the appointment of the teachers and

academic staff in the Universities and Colleges and other measures for the maintenance of standards in higher education) Regulations 2010 (hereinafter referred to as "the UGC Regulations 2010"). The said Regulations are applicable to every University established or incorporated by or under the Central Act, Provincial Act or State Act as also to every institution, including the Institution deemed to be a University under Section 3 of the said Act. However, it has been further provided that any candidate, who became eligible for promotion under the career advancement scheme (CAS) on or after 31.12.2008, the promotion of such a candidate shall be governed by the UGC Regulations 2010. Since the petitioners are claiming the Senior Scale as granted to their juniors with effect from the date prior to 31.12.2008, and Selection Grade with effect from the date after 31.12.2008, both the Regulations of 2000 and of 2010 as amended from time to time would be relevant, which as such by and large are similar, so far as CAS and grant of Senior Scale/Selection Grade to the lecturers/Assistant Professors are concerned.

14. The Regulation No.2.0.0 of the Regulations of 2000 deals with the career advancement. The Regulation No.2.1.0 thereof reads as under:- "2.0.0 Career Advancement.

2.1.0 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M.Phil, and six years for others at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years."

15. The Regulation No.2.2.0 deals with the eligibility criteria of the lecturer for his placement in Senior Scale and the Regulation No.2.3.0 deals with the eligibility of the lecturer for his placement in selection grade, which read as under:- "2.2.0 Lecturer (Senior Scale).

A Lecturer will be eligible for placement in a senior scale through a procedure of selection, if she/he has:

(i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil., and Ph.D.

(iii) Consistently satisfactory performance appraisal reports.

2.3.0 Lecturer (Selection Grade).

Lecturers in the Senior Scale who do not have a Ph.D. degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfill the other criteria given above for the post of Reader, and have a good record in teaching and, preferably, have contributed in various ways such as to the corporate life of the institution, examination work, or through extension activities, will be placed in the Selection Grade, subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade. They could

offer themselves for fresh assessment after obtaining Ph.D., and/or fulfilling other requirements for promotion as Reader and, if found suitable, could be given the designation of Reader."

16. So far as counting of the past services is concerned, it has been provided in Regulation 8.0.0 inter alia as under:-

"8.0.0 Counting Past Service.

Previous service, without any break as a Lecturer or equivalent, in a university, college, national laboratory, or other scientific organisations, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturer in Senior Scale/Selection Grade provided that

8.1.0 xxx

8.2.0 xxx

8.3.0 xxx

8.4.0 xxx

8.5.0 xxx

8.6.0 The appointment was not adhoc or in a leave vacancy of less than one year duration. Adhoc service of more than one year duration can be counted provided

(a) the adhoc service was of more than one year duration;

(b) the incumbent was appointed on the recommendation of duly constituted Selection Committee, and

(c) the incumbent was selected to the permanent post in continuation to the adhoc service, without any break."

17. From the bare reading of the afore-stated provisions contained in the UGC Regulations it clearly transpires that the career advancement by way of Senior Scale could be granted to the lecturer having minimum length of four years for those with Ph.D and of five years for those with M.Phil and six years for others at the level of lecturer and the Selection Grade could be granted to the lecturer (Senior Scale) having minimum length of service of five years. For the eligibility of Senior Scale, it has been further provided that the lecturer will be eligible for placement in the Senior Scale through a procedure of selection, if she/he has completed requisite years of service after regular appointment, and subject to the other conditions. The Selection Grade could be granted to the lecturers only if they fulfill the criteria of eligibility as contained in the afore-stated regulation No.2.3.0. The picture that emerges from the said Regulations is that the lecturer will be eligible for placement in Senior Scale only after the completion of requisite years of service after regular appointment, and as such his adhoc service could not be taken into consideration for his placement in Senior Scale/ Selection Grade, except as provided in the relevant Regulation 8.6.0 for counting

past services. As per Regulation 8.0.0 read with 8.6.0, the adhoc service as lecturer could be counted for Senior Scale/Selection Grade, only if the adhoc service was for more than one year duration, the incumbent was appointed on the recommendation of the duly constituted Selection Committee and he was selected to the permanent post in continuation to the adhoc services without any break.

18. Though it is sought to be criticized by the learned Sr. Counsels for the petitioners that the subsequent appointees should not have been granted Senior Scale and Selection Grade as per the Government Resolution dated 22.12.2014 and Office Order dated 10.8.2015, the same being in utter disregard of the UGC Regulations and also of the legal position set out by the Supreme Court in case of *State of Haryana Vs. Haryana Veterinary & Ahts Association and Anr.* (supra) and in case of *State of Punjab and Ors. Vs. Ishar Singh and Ors.* (supra), the petitioners have not chosen either to challenge the said Government Resolutions and the Office Order, or to challenge the action of the respondents in granting the Senior Scale and Selection Grade to the said junior lecturers. That is the reason why they have not even chosen to implead them as party respondents in the present petitions. Hence, in absence of any challenge to the said Government Resolutions and without joining the concerned subsequent appointees, who are the beneficiaries of the said Government Resolutions, as the party respondents, the Court refrains itself from expressing any opinion on the validity of the said Government Resolutions on the touchstone of Articles 14 and 16 of the Constitution of India and on the propriety of action of the respondents in granting the Senior Scale and Selection Grade to the subsequent appointees pursuant to the said Government Resolutions.

19. However, since the learned Counsels for the petitioners have invoked the principle of "equal pay for equal work", the Court shall have to examine as to whether the petitioners and the subsequent appointees stand on equal footings or not, or whether classification of the subsequent appointees made by counting their past services is based on intelligible differentia or not. It is true that the Supreme Court in case of *State of Haryana Vs. Haryana Veterinary & Ahts Association and Anr.* (supra) has held that the services rendered on the basis of the adhoc appointment made dehors the recruitment rules, although without interruption followed by regular appointment on selection by PSC is not includible. It is also true that in case of *State of Punjab and Ors. Vs. Ishar Singh and Ors.* (supra) it is held that adhoc services rendered by the employees could not be included for the purpose of giving higher scale of pay under the proficiency set-up scheme for seniority etc. However, so far as the facts of present cases are concerned, as stated herein above, the UGC Regulations, more particularly Regulation No.8.0.0 provides for counting of past services for placement of lecturers in Senior Scale/Selection Grade, subject to the conditions mentioned therein. It is pertinent to note that it is not the case of the petitioners that the said subsequent appointees i.e. the lecturers junior to the petitioners, whose past services on adhoc basis have been counted for the purpose of

granting Senior Scale/Selection Grade as per the said Government Resolution were not fulfilling the conditions as contained in the said Resolutions. The said subsequent appointees, therefore, appear to have been treated as a separate class by the respondents for the purpose of considering their past adhoc services, as permissible under the UGC Regulations. Hence, it could not be said that such classification is discriminatory or is not based on intelligible differentia. Even otherwise, as stated earlier, in absence of any challenge to the said Government Resolution or the action of the respondents in treating them as a separate class, it could not be said that such classification is arbitrary, illegal or unreasonable. The petitioners could not be permitted only to criticize such action of the respondent authorities, and not to seek any further relief in this regard.

20. So far as the principle "equal pay for equal work" is concerned, it is settled legal position that the said principle is not a fundamental right, but is a constitutional goal. It is dependent on various factors. Parity can not be claimed merely on the basis of category of posts or nature of duties and functions attached to the posts. As held by the Supreme Court in case of *Supreme Court Employees' Welfare Association Vs. Union of India and Anr.*, reported in (1989) 4 SCC 187, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of "equal pay for equal work", as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. The relevant paragraph 38 may be reproduced as under:- "38. It follows from the above decisions that although the doctrine of "equal pay for equal work" does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the payscales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of "equal pay for equal work", as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of "equal pay for equal work" will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of "equal pay for equal work", as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. ..."

21. The said ratio has been followed in number of subsequent cases. In case of *State of West Bengal and Anr. Vs. West Bengal Minimum Wages Inspectors Association and Ors.*, reported in (2010) 5 SCC 225, the Supreme Court reiterated as under:- "19. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment etc.

Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees.

20. The burden to prove disparity is on the employees claiming parity vide *State of U.P. Vs. Ministerial Karamchari Sangh*, (1998) 1 SCC 422; *Associate Bank Officers' Association Vs State Bank of India*, (1998) 1 SCC 428; *State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association*, (2002) 6 SCC 72; *State of Haryana Vs. Tilak Raj* (2003) 6 SCC 123; *S.S. Chandra v. State of Jharkhand* [2007 (8) SCC 299]; *Uttar Pradesh State Electricity Board v. Aziz Ahmad* [2009 (2) SCC 606]."

21. At this juncture, it would be also relevant to reproduce the ratio of decision in case of *State of U. P. & Ors. Vs. J. P. Chaurasia & Ors.*, reported in (1989) 1 SCC 121, in which it has been held inter alia in paragraph 29 as under:- "29. ... Article 14 permits reasonable classification founded on different basis. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers. Even in *Randhir Singh's* case, this principle has been recognised. O. Chinnappa Reddy, J. observed that the classification of officers into two grades with different scales of pay based either on academic qualification or experience on length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. There is super time scale in other like services. The entitlement to these higher pay scales depends upon seniority cum merit or merit cum seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

1. In the light of afore-stated legal position, if the facts of the present case are appreciated, it clearly emerges that the petitioners have neither prayed to set aside the action of the respondents on the ground that the petitioners are being discriminated against the persons similarly situated, nor have they alleged that the classification of the subsequent appointees made on the basis of the Government Resolution dated 27.8.2001 is unreasonable, irrational, or illegal. Their only prayer in the petition is to direct the respondents to remove the anomaly created by the said Government Resolution, and grant them the same

pay as being paid to their juniors. Therefore, if the respondent authorities have treated the said concerned lecturers as a separate class considering their past adhoc services for the purpose of granting them Senior Scale and Selection Grade by issuing the Government Resolution and if the same has remained unchallenged, the petitioners could not be permitted to invoke the abstract doctrine of "equal pay for equal work" and claim the Senior Scale or Selection Grade as granted to their juniors. The said principle would apply to the cases of unequal scales of pay, based on no classification or irrational classification, which is not the case in the instant petitions.

2. Lastly, pressing into service Rule 21 of the GCSR, the petitioners have claimed that their pay should be stepped up to the figure equal to the pay as fixed for their junior lecturers. The learned Sr. Advocate Mr. Shelat for the petitioners, while dispelling the submission of the learned AGP Ms. Vishen that the said Rule is applicable only in case of the promotion to the higher post, has drawn the attention of the Court to various provisions contained in the UGC Regulations and the Government Resolutions issued by the State Government to submit that the Career Advancement Scheme was being treated as the promotion, and therefore, the principle imbibed in Rule 21 with regard to stepping up of pay would be applicable to the case of the petitioners also.

3. It may be noted that the Gujarat Civil Services (Pay) Rules 2002 are applicable to all the members of services and holders of posts whose conditions of service, the Government of Gujarat is competent to prescribe. In order to appreciate the rival contentions raised by the learned Advocates for the parties, it would be beneficial to reproduce Rule 21 of the GCSR for ready reference:-

"21. Stepping up of a pay of a Government employee on the basis of the pay of his junior:

(1) Where on regulating initial pay of a Government employee under above rules 11, 13, 15 to 17 & 19 or on his appointment to a higher post if his pay is fixed at a lower rate of pay in that cadre than another Government employee junior to him in the lower grade but promoted or appointed subsequently in such another identical cadre; the pay of the senior Government employee on the higher post shall be stepped up to the figure equal to the pay as fixed for the junior Government employee in that higher post with effect from the date of promotion of the junior Government employee and it shall be subject to the following conditions viz:

(i) both, the junior and the senior Government employees belong to one and the same cadre and the posts to which they have been promoted or appointed, shall be identical and in the same cadre and in the same line of promotion;

(ii) the timescales of pay of the lower posts held by the senior and the junior Government employees shall be identical;

(iii) the time scales of the higher posts to which the Government employees are

promoted or appointed shall be identical;

(iv) the senior Government employee had he not been appointed to the higher post earlier than his junior, he would have been eligible to draw pay at a stage not lower than that admissible to his junior in the lower post than that admissible to his junior in the lower post immediately prior to the appointment of the junior Government employee to the higher post;

(v) the anomaly so caused must be the direct result of the application of this rule. For example, if even in the lower post the junior Government employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules or by grant of advance increment(s) for any reason, these provisions shall not be applicable to step up the pay of the senior Government employee.

(vi) the pay of the senior Government employee so increased due to stepping up of pay shall not be reduced on reversion of the junior Government employee nor shall it be increased again with reference to the pay of the same officer.

(2) After the refixation of pay of the senior Government employee with reference to the pay of his junior, the next increment shall occur to him only after he has rendered the qualifying service which is necessary for drawing such increment from the stage at which his pay had been refixed."

4. From the bare reading of the said Rule 21 it appears that the said Rule is applicable where on regulating the initial pay of a Government employee under the Rules mentioned therein, or on his appointment to a higher post, if his pay is fixed at a lower rate of pay in that cadre than another Government employee junior to him in the lower grade but promoted or appointed subsequently in such another identical cadre. In this regard, though it is sought to be submitted by Ms.Vishen that the promotion aspect being absent in the instant cases, the said Rule could not be made applicable, the said submission can not be accepted.

5. It is true that in the Regulations of 2000 as amended from time to time, the grant of Senior Scale and Selection Grade under the CAS has not been specifically stated to be a promotional channel for the post of lecturer (which post now appears to have been re-designated as the post of Assistant Professor in the Regulations of 2010), however, as per Regulation No.7.0.0 of the Regulations of 2000, also a lecturer was eligible for placement in a Senior Scale and Selection Grade after going through a procedure of selection and subject to the conditions of achieving academic performance indicators, based on performance based appraisal system. The procedure for selection for the entitlement to the higher grade was akin to the procedure for promotion to the post of Reader or Professor. It is needless to say that the promotional posts being few in number, the UGC has provided promotional avenue by way of Career Advancement Scheme. The said object has been made very clear in the Regulations of 2010.

6. From the various provisions contained in the UGC Regulations 2010, it clearly emerges that the CAS has been treated as an avenue for promotion only. Regulation No.1.3 states inter alia that in the event any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these Regulations on or after 31st December 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations. Regulation No.6.3.0 states inter alia that in order to remedy the difficulties of collecting retrospective information and to facilitate the implementation of these regulations from 31.12.2008 in the CAS promotion, the API based PBAS will be progressively and prospectively rolled out. Regulation No.6.3.1 states inter alia that a teacher who wishes to be considered for promotion under CAS may submit in writing to the university/college, with three months in advance of the due date, that he/she fulfills all qualifications under CAS. Regulation No.6.3.4 states that CAS promotions from a lower grade to a higher grade of Assistant Professor shall be conducted by a "Screening cum Evaluation Committee" adhering to the criteria laid out as API score in PBAS in the Tables of Appendix-iii. In Regulation No.6.4.0 the stages of promotion under the CAS of the incumbent have been stated. Regulation No.10.0 provides for counting of past services for direct recruitment and promotion under CAS. Even in the latest Government Resolution dated 6.3.2017 (corrected as per the order dated 27.4.2017), the State Government has instructed to delete the word "promotion" from CAS, meaning thereby the State Government itself had treated the CAS as promotion.

7. Hence, in view of the afore-stated provisions contained in the Regulations of 2010 and in the Government Resolutions, it does not lie in the mouth of the respondent authorities to say that the CAS is not a promotion. The CAS having been treated as promotion by the respondent authorities, the submission of Ms. Vishen that Rule 21 is not applicable to the cases where higher pay is granted in lieu of stagnation in promotion, can not be accepted. The principle of stepping up of pay as imbibed in Rule 21 of the GCSR is required to be made applicable to the cases of the petitioners. It is not disputed that the petitioners and the subsequent appointees belong to the one and the same cadre and they have been granted the benefit of CAS in the same cadre. Their time scales of pay as lecturers were identical, and their time scales of Senior Scale and Selection Grade are also identical. It is pertinent to note that CAS is granted in lieu of promotions. If the juniors get higher pay than the seniors, and the seniors have no promotional avenue, their seniority becomes insignificant. In that case, the very purpose of making regular appointment through GPSC after following the due recruitment process would be frustrated. This could have adverse demoralizing effect on the working of seniors, who are seniors only on paper. To avoid such a situation also their pay deserves to be stepped up to the pay equal to their juniors. The anomaly, therefore, created on the issuance of the Government Resolution dated 22.12.2014 deserves to be removed by the respondents by granting the petitioners Senior Scale and Selection Grade from the date their juniors were granted. It is submitted by the learned Sr. Advocate

Mr.Shelat that though all the petitioners have been found eligible and though their names have been recommended by the Selection Committee for granting them the Selection, the petitioners have not been granted the benefit of Selection Grade till this date, whereas the subsequent appointees have been granted all benefits with retrospective effect. Such a discriminatory treatment meted out to the petitioners at the instance of the respondents deserves to be strongly deprecated.

8. In the aforesaid premises, the respondents are directed to remove the anomaly in the pay of the petitioners qua their juniors, by stepping up their pay to the figure equal to the pay as fixed for their respective juniors, and grant the petitioners the benefits of Senior Scale and Selection Grade with effect from the dates when their juniors were granted the said benefits. The respondents shall comply with the directions forthwith and not later than four weeks from today. The petitions stand allowed accordingly.