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(2014) 06 MEG CK 0009

In the Meghalaya High Court

Case No : W.P. (C) No. 245/2012

Manmohan Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311
University Grants Commission Act, 1956 — Section 26

Citation : (2015) 1 GLT 143

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—By the impugned order of the North Eastern Hill University (for short ''NEHU'') Mawlai, Umshing fixed the revised pay of Professors of NEHU w.e.f. 01.01.2006 according to the fitments table for fixation of salary prescribed by the University Grants Commission (for short ''UGC'') on the recommendations of the Sixth Central Pay Commission; and none of the professors of NEHU, whose revised pay are also fixed similar with that of the present petitioner made any whisper against the impugned revised pay i.e. against the impugned revision of pay scales and they are fully satisfied with the revision of their pay scales by the NEHU according to the fitments table for fixation of salary prescribed by the UGC.

2. The Apex Court (Constitution Bench) coined the words "litigious employment" in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and held that the High Courts acting under Article 226 of the Constitution should not, therefore, ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely, because an employee had continued under cover of an order of the court, which the Apex Court has described as "litigious employment", he would not be entitled to any right to be absorbed or made

permanent in the service. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. The Apex Court is not encouraging in granting the relief to the writ petitioner which would unduly interfere with the economic arrangement of its affairs by the State or its instrumentalities. The Apex Court further held that the orders based on sentiments would result in perpetuating illegalities and in the "jettisoning" of the scheme of the public employment and approving of the orders passed by the authority in mistakes in favour of the employee would result in perpetuating illegalities. The ratio laid down by the Apex Court (Constitution Bench) in Umadevi (3) case (Supra) was also followed by the Apex Court in State of Karnataka and Others Vs. Sri G.V. Chandrashekar, .

3. It appears from the pleaded case of the petitioner in the writ petition that the writ petitioner had interpreted the scheme of revision of pay of teachers and equivalent cadres in the universities and colleges following the revision of pay scales of Central Govt. employees on the recommendations of the Sixth Central Pay Commission under the letter of the Govt. of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi dated 31.12.2008 to the Secretary, UGC and the fitments table for fixation of salary prepared by the UGC in pursuance to the scheme of revision of pay (a) teachers and equivalent cadres and (b) administrative posts in the universities and colleges following the revision of pay scales of the Central Govt. employees on the recommendations of the Sixth Central Pay Commission in such a manner that the revision of pay scales of Professors of NEHU once made by the authority of NEHU, even if it is provisional, could not be altered to the disadvantage of the petitioner and also the petitioner is trying to justify, without any rational reasons, the provisional fixation of revised pay of Professors by the University-NEHU before receiving the fitments table for fixation of salary prepared by the UGC vide Resolution No. 6 of the 23rd Emergent Meeting of the Executive Council of NEHU wherein, the Executive Council resolved to approve the recommendation of the academic council to accept the revision of pay scales etc. as per MHRD''s letter dated 31.12.2008 and the payment of arrears up to 40% of the total arrears be made latest by Wednesday 25th February, 2009 and also the petitioner by relying on the Circular dated 28.07.2011 issued by the NEHU claimed for three advance increments for holding Ph.D. degree as grant for incentives.

4. Heard Mr. K Paul, learned counsel for the petitioner and Mr. SC Shyam, learned CGC for the respondents No. 1 & 2. Also heard Mr. S Sen, learned counsel for the NEHU.

5. The petitioner possessing Ph.D. degree, which was/is the essential requirement for appointment to the post of Professor, was appointed to the post of Professor in Centre for Science Education, NEHU as a direct recruit on

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12.07.1991 and has been working since then as Professor. The Govt. of India, Ministry of Human Resource Development, Department of Higher Education in the year 2008 under the letter dated 31.12.2008 informed the scheme of revision of pay of teachers and equivalent cadres in the universities and colleges following the revision of pay scales of the Central Govt. employees on the recommendations of the Sixth Central Pay Commission to the Secretary, UGC; and the scheme provides for the revision of pay scales of teachers as per the Govt. of India''s decision to revise the pay scales of teachers and equivalent cadres on the recommendations of the Sixth Central Pay Commission. Para 1 of the said scheme dated 31.12.2008 provides the eligibility criteria for appointment as Professor, Para 2 provides the revised pay scales and career advancement scheme for teachers and equivalent positions, Para 7 provides the incentives for Ph.D./M.Phil and other higher qualification and Para 7(q) provides the applicability of the scheme and also that the implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in the said letter itself i.e. 31.12.2008 as well as regulations to be framed by the UGC in that behalf. The Universities implementing the scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of the letter. For easy reference, the relevant portions of the scheme under the said letter dated 31.12.2008 are quoted hereunder:-

No. 1-32/2006-U.II/U.I (I) Government of India Ministry of Human Resource Development, Department of Higher Education.

New Delhi, dated the 31st December, 2008

To,

The Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi-110002.

Sub: Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Govt. employees on the recommendations of the Sixth Central Pay Commission.

1. General

***

(ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D. and satisfies other academic conditions, as laid down by the University Grants Commission (UGC) from time to time. This shall, however, not affect those who are already designated as ''Professor''.

2. Revised Pay Scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:

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(xiv) The pay of a directly recruited Professor shall be fixed at a stage not below Rs. 43000 in the Pay Band of Rs. 37400-67000, with the applicable AGP of Rs. 10000.

7. Incentives for Ph.D./M.Phil and other higher qualification:

***

(q) Applicability of the Scheme:

(i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter. ...

6. After the circulation of the scheme of revision of pay scales under the said letter of the Ministry of Human Resource Development, Department of Higher Education dated 31.12.2008, the Executive Council of NEHU in its 23rd Emergent Meeting of the Executive Council held on 20.02.2009 passed a Resolution in Item No. 6, which reads as follows:-

Item No. 6 Administrative Matters:

6:6-Service condition/Financial & Other matters.

(i) Revision of pay scales etc. of the teachers and equivalent cadres in Universities and Colleges on the recommendation of the Sixth Central Pay Commission.

EEC:23:2009:6:6:(i): The Council considered the letter of Ministry of Human Resource Development vide letter No. 1-32/2006-U.II/U.I(1) of 31st December, 2008 on Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendation of the Sixth Central Pay Commission and the Draft UGC Notification on Revision of Pay Scales, minimum qualifications for appointment of teachers in Universities and Colleges & Other measures for the maintenance of standards, 2009 on the recommendations of the Sixth Central Pay Commission.

The Council RESOLVED to approve the recommendation of the Academic Council to accept the revision of pay scales etc. as per MHRD''s letter referred to above and that payment of arrear up to 40% of the total arrears be made latest by Wednesday 25th February, 2009.

Further the Council RESOLVED to approve the recommendation of the Academic

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Council to authorize the Chairman to constitute a Committee to amend the relevant Rules of the University on service conditions and pay scales etc.

(ii) Revision of pay scales etc. for the post of Vice Chancellor, Pro-Vice-Chancellor, and officers on the recommendation of the Sixth Central Pay Commission.

7. Pursuant to the said Resolution of the Executive Council of NEHU, the provisionally revised pay scales of the petitioner and other are as follows:-

Professor who joined on or before 01.01.2006 Pay Band + Academic Grade Pay Pay Band ::: Rs. 37,400 - 67,000/-+ Rs. 10,000/- (S-)

It is admitted case of the parties that the basic pay (Pre-revised) of the petitioner as on 01.01.2006 was Rs. 21,900/- pm and as per the provisionally revised pay of the petitioner, the revised pay of the petitioner as on 01.01.2006 was Rs. 51,850/- in the Pay Band + Academic Grade Pay :: Rs. 37,400-67,000+ Rs. 10,000/-.

8. The UGC, later on, prepared the fitments table of fixation of salary in pursuance to the said scheme dated 31.12.2008 vide UGC, New Delhi-110002 dated 30.06.2010, viz. "the UGC Regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education, 2010" (for short ''UGC Regulations, 2010''). Under the UGC Regulations, 2010, one of the essential qualifications for appointment of Professors is Ph.D. degree and also the fitments table of fixation of salary of Professors in universities and colleges are mentioned at Table 5 to the UGC Regulations, 2010. For easy reference, Table 5 is quoted hereunder:-

Table - 5

(i) Incumbent Professor in Colleges and Universities

(ii) Incumbent Principals of PG Colleges

(iii) Incumbent Librarian (University)

(iv) Incumbent Director of Physical Edu. (University)

9. Admittedly the pre-revised basic pay of the petitioner as on 01.01.2006 was Rs. 21,900/- pm and the fitments table quoted above clearly provides that the basic pay of the pre-revised of Rs. 21,900/- pm will be Rs. 48,870/- pm i.e. pay in the Pay Band (revised) and the revised basic pay will be Rs. 58,870/- pm. The authorities of NEHU, in compliance with Para 2(xiv) "the pay of a directly recruited Professor shall be fixed at a stage not below Rs. 43000 in the pay band of Rs. 37400-67000, with the applicable AGP of Rs. 10000" and Para 4.0 "the pay of a directly recruited Professor shall be fixed at a stage not below Rs. 43,000 in the Pay Band IV of Rs. 37,400- Rs. 67,000, with applicable AGP of Rs. 10,000" and the said fitments table 5, fixed the revised pay band of the petitioner at Rs.

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48,870/- which correspond to pre-revised basic pay of Rs. 21,900/- which the petitioner had enjoyed on 01.01.2006 as pre-revised basic pay vide order dated 04.12.2009. The basic revised pay band of the petitioner at Rs. 48,870/- pm is not below Rs. 43,000/- pm indicated in the said Para 2(xiv) and Para 4.0 of the UGC Regulations, 2010. The impugned order dated 04.12.2009 reads as follows:-

North Eastern Hill University Mawkynroh ::::Umshing Shillong :::: 793022

No. 4-2/Estt-II/2009(pt-I)-1048 Dated: 4th December, 2009.

ORDER

Consequent upon the revision of pay w.e.f. 01.01.2006, the pay of Professor Man Mohan Singh of Centre for Science Education is regulated hereunder:

Sd/-

Assistant Registrar, Establishment-II

Being aggrieved by the order dated 04.12.2009, the petitioner filed the present writ petition and as stated above, the claim of the petitioner in the present writ petition is that the revised pay scale of the petitioner should be the one provisionally fixed by the NEHU at Rs. 51,870/-+10,000/- as on 01.01.2006.

10. The further case of the petitioner in the present writ petition is that as per the Circular dated 28.07.2011 issued by the NEHU for giving incentives to the teachers for acquiring Ph.D. degree or holding Ph.D. degree, the petitioner having Ph.D. degree before his appointment as a direct recruit Professor is entitled to draw three advance increments. The said Circular dated 28.07.2011 (Annexure-11 to the writ petition) reads as follows:-

North Eastern Hill University Nehu Campus Shillong ::::: 22

No. F.4-2/Estt-II/2009-1968 28th July, 2011

CIRCULAR

The UGC Regulation 2010 inter alia provided incentives in the form of advance increments for Ph.D./M.Phil and other higher qualifications. On adoption of UGC Regulation 2010 by the University, the incentives that will be applicable may read as under:-

1. The effective date for grant of advance increment, in all cases, shall be with effect from 1.9.08.

2. Assistant Professors recruited on or after 1.1.06 with M.Phil degree shall be entitled to draw two advance increments.

3. The Assistant Professors recruited on or after 1.1.06 possessing Post graduate degree in the professional course such as LLM/M.Tech/M.Arch./M.E./M.V.Sc/MD., etc. recognized by the relevant statutory body/council shall also be entitled to two advance increments.

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4. Five advance increments shall be admissible at the level of recruitment as Asstt. Professors, possessing the degree of Ph.D. awarded in the relevant discipline by the University following the process of admission, registration, course work and external evaluation as prescribed by the UGC. In order to grant five advance increments, the concerned teachers are required to produce necessary documents in support of their claim.

5. The teachers in service who have already been awarded Ph.D. degree before adoption of the UGC Regulation 2010 by the University, shall be entitled to draw three advance increments. Similarly, the teachers in service who have enrolled for Ph.D. and undergone course work as well as evaluation, if any, shall also be entitled to draw three advance increments even if the University awarding such Ph.D. degree has not yet been notified by the UGC as having complied with the process prescribed by UGC.

6. One increment shall be admissible to a teacher who acquires an M.Phil/M.Litt. degree, while three advance increments shall be admissible to a teacher who acquires Ph.D./D.Litt/D.Sc in his/her service career. Provided further, the number of increments shall not exceed three if a teacher acquires both the degrees in his/her service career.

Sd/-

(L Roy) Registrar

11. The NEHU i.e. respondents No. 3-6 filed joint affidavit-in-opposition in the present writ petition. It is the case of the respondents No. 3-6 in their joint affidavit-in-opposition stated that as per the enabling provision of the MHRD Scheme contained in the letter dated 31st December 2008 and direction of the UGC vide its letter dated 28th February 2009, pending receipt of Fitment Tables for final fixation of revised pay scale in the pay band and Academic Grade Pay prepared by the UGC, the basic revised pay scale of the writ petitioner had been provisionally fixed at Rs. 51,850/- for the purpose of facilitating the release of 40% of the arrear, however, on receipt of the Fitment Table the Writ Petitioner had been placed in the appropriate pay fixation. The representation/appeal of the writ petitioner had been duly considered, however, the same could not be entertained as the writ petitioner had been ultimately placed in the appropriate pay fixation to the corresponding revised pay scale as per the Fitments Table. It is further stated that incentive like three advance increments is contemplated purely for additional qualification of a teacher of the University, but Ph.D. is a minimum requirement for the post of a professor which the Writ Petitioner is holding and the claim of the writ Petitioner for advance increments for his possessing Ph.D. is totally misconceived. However, it is stated that "the pay of a directly recruited professor shall be fixed at a stage not below Rs. 43,000/- in the pay band IV of Rs. 37,400-67,000, with applicable AGP of Rs. 10,000/-" in respect of Professor recruited on or after 01.01.2006, as would be evident from the gazette notifying the UGC Regulation 2010 where in the letter from Deputy

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Secretary, Ministry of Human Resource Development addressed to UGC printed along with Authenticated Fitment Tables. It is stated that the Fitment Tables are for fixation of pay of existing incumbents who were in position as on 01.01.2006.

12. The NEHU in their joint affidavit-in-opposition further stated that "the University may take action to adopt the above Government of India Scheme for University and its colleges and payment of pay scales, enhancement of retirement age and release of 40% arrears during the current financial year in accordance with these provisions. The commission was in the process of finalizing Regulations in consultation with the stakeholders. The Fitment Tables for fixation of salary was likely to be received from the Central Government shortly which would be circulated to all Universities and would also be placed on UGC Website. The provisional payment may be made after taking an Undertaking from every beneficiary under the scheme to the effect that any excess payment made on account of incorrect fixation of pay in the Pay Band or Academic Grade Pay shall be adjusted against the future payments due. Hence, it is amply clear from the spirit of the said provisional fixation of pay scale of the writ petitioner that pending receipt of Fitment Tables for final fixation of Pay in the Pay Band or Academic Grade Pay by the University, 40% of the arrears was released on provisional fixation basis to the beneficiaries on obtaining an Undertaking from such beneficiaries to the effect that in case of incorrect fixation, the same shall be adjusted against the future payments due". The factual matrix of the subject matter being so, the allegation of "downgrading" as leveled by the Petitioner holds no merit. The fixation of the Petitioner''s Salary at Rs. 51,850/- was a provisional one solely for the purposes of releasing 40% of the arrears to him pending receipt of Fitment Table from the UGC. The figure of Rs. 48,870/- was arrived at after final fixation of the Petitioner''s pay in the light of Fitment Tables received subsequently. Similar exercise was done in case of others who were/are similarly placed with the Petitioner as per terms and conditions of said UGC and Govt. of India, MHRD letters. Hence, in the light of the above, describing an appropriate fixation in a grade as "downgrading" by the Petitioner amounts to blatant misinterpretations and distortion of facts. In fact, the Petitioner has misinterpreted and misrepresented the spirit of the aforesaid letters of the UGC and Govt. of India, thereby misleading the Hon''ble Court. Further, suppression of vital fact as to the Petitioner himself executing the Undertaking dated 06.03.2009 in order to receive 40% of arrears based on provisional fixation as mentioned earlier, speaks volumes of the ulterior motive with which this Writ Petition has been filed. The question of giving Show cause notice for placing the Writ Petitioner in the appropriate revised pay scale as per the Fitment Table does not arise as the same is not a penal action and the University has merely acted as per the directives of the UGC/MHRD in so far as the fixation of pay of teachers are concerned in accordance with the approved Fitment Table in this regard and for which an Undertaking had been duly executed by the Writ Petitioner.

13. It is the further case of the NEHU in their joint affidavit-in-opposition that as per the provision of Scheme of MHRD for pay revision of Central University

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teacher contained in Letter dated 31.12.2008, recommendation of UGC the revised pay scale of the Petitioner had been fixed provisionally for the purpose of releasing 40% of the arrear, however, on receipt of Fitment Table from MHRD the Petitioner had been placed in appropriate pay fixation corresponding to the revised scale. The representation/appeal filed by the Petitioner had been duly considered, however, for reasons as stated above the same could not be entertained. The petitioner cannot claim for the advance increments inasmuch as, every Pay Commission used to give incentives in the form of advance increments especially to teachers/Assistant Professors for possessing M.Phil and Ph.D. Degrees. However, the Vth Pay Commission did not provide for any advance increment for movement into grade of Reader and above for possession of Ph.D. Degree because possession of Ph.D. has been prescribed as the minimum requirement/qualification for the aforesaid posts. In the instant case, the Petitioner was appointed as Reader in the University on 08.12.1984. Further UGC Regulation 2010 also stipulates that the Ph.D. shall be mandatory qualification for the appointment of Professor and promotion as Professor. The Petitioner was appointed as Professor in the University on 12.07.1991, thus on the date on which the writ petitioner was appointed as Reader and Professor, the minimum qualification prescribed by UGC was Ph.D. Therefore, he is not entitled to the incentives of advance increment.

14. It is clear from the joint affidavit-in-opposition filed by the NEHU that the UGC under the letter dated 28.02.2009 to the Vice Chancellor, NEHU, clearly stated that the University may take action to adopt the Govt. of India scheme for University and its colleges and its affiliated colleges and payment of pay scales, enhancement of retirement age and release of 40% of the arrears during the current financial year in accordance with these provisions and the fitments table for fixation of salary was likely to be received from the Central Govt. very shortly. While awaiting the fitments table for fixation of salary, the NEHU provisionally fixed the revised pay scale of the petitioner as on 01.01.2006 at Rs. 51,850/- +10,000/- and as per the directions of the UGC under the said letter dated 28.02.2009, the NEHU had obtained the undertaking from the petitioner that any excess payment made to him as a result of incorrect fixation of pay in the revised scale of pay or on account of any other reason which is detected subsequently will be refunded by him to the University either by way of adjustment against future payment due to him or otherwise as may be decided by the authority. The said letter of the UGC dated 28.02.2009 and the said undertaking of the petitioner are quoted hereunder:-

University Grants Commission Bahadur Shah Zafar Marg New Delhi - 110 002

Speed Post

No. F 1-6/2009/PRC

28th February, 2009

To

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The Vice-Chancellor North Eastern Hill University NEHU Campus, Shillong Meghalaya - 793 022

Sub.: Scheme of revision of pay of (a) teachers and equivalent cadres and (b) administrative posts in universities and colleges following the revision of pay scales of Central Government Employees on the recommendations of the Sixth Central Pay Commission.

Sir/Madam,

The Commission has received orders from the Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi vide letter No. 1-32/2006-U.II/U.I(i) and 1-32/2006-U.II/U.I(ii) dated 31st December, 2008 on the above subject and to say that the University may take action to adopt the above Government of India scheme for University and its affiliated Colleges and payment of pay scales, enhancement of retirement age and release of 40% of the arrears during the current financial year in accordance with these provisions. The Commission is in the process of finalizing Regulations in consultation with the stakeholders.

The fitment tables for fixation of salary is likely to be received from the Central Government shortly which will be circulated to all Universities and will also be placed on UGC website. The payment may be made taking an undertaking from every beneficiary under the scheme to the effect that any excess payment made on account of incorrect fixation of pay in the pay band or academic grade pay shall be adjusted against the future payments due.

The University may initiate immediate action with regard to the above and ensure that the action is taken in a time bound manner.

Yours faithfully, Sd/- (D.K.C. Pathak) Joint Secretary

Undertaking

I, Shri/Smt./Ms. MAN MOHAN SINGH do hereby undertake that any excess payment made to me as a result of incorrect fixation of pay in the revised scale of pay or grant of inappropriate pay band or grade pay or on account of any other reason which is detected subsequently will be refunded by me to the University either by way of adjustment against future payment due to me or otherwise as may be decided by the Authority.

Signature: Sd/-

Name: MAN Mohan Singh

Designation: Professor

Department: Centre For Science Education, NEHU

15. The UGC also filed affidavit-in-opposition in the present writ petition. The University Grants Commission (hereinafter to be referred as "the Commission")

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has been constituted under the provisions of the University Grants Commission Act, 1956 (Act No. 3 of 1956) which came into force w.e.f. 5.11.1956. The Act was enacted to make provisions for the coordination and determination of standards in universities. The Commission under the provisions of the Act has been entrusted with the duty to take such steps as it may think fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. For the said purpose, the Commission has been vested with the power to recommend to any university the measures necessary for the improvement of university education and advised the universities upon the action to be taken for the purpose of implementation of such recommendation. The Commission is also authorized to perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of its functions. Section 26 of the Act which gives power to the Commission to make regulations consistent with the Act, permits the Commission to define the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the university, having regard to the branch of education in which the applicant is expected to give instruction. The Department of Higher Education, Ministry of Human Resource Development, Government of India vide its letter dated 31.12.2008 addressed to the Secretary, UGC informed regarding the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. In the said letter, it was informed to the UGC that the Government of India has decided, after taking into consideration the recommendations made by the UGC based on the decisions taken at the meeting of the Commission held on 7-8 October, 2008, to revise the pay scales of teachers in the central universities. The revision of pay scales of teachers shall be subjected to various provisions of the scheme of revision of pay scales as contained in the letter and regulations to be framed by the UGC in this behalf in accordance with the scheme given in the letter. The revised pay scales and other provisions of the scheme was stipulated in para 1 to 12 of the said letter.

16. It is further stated that so far as the applicability of the scheme is concerned, it has been stipulated in para 8 (p) of the letter to the following effect:-

8(p)(i) This scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and colleges there-under and the institutions deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the condition mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this scheme shall be advised by the UGC to amend their relevant statutes and Ordinances in line with the UGC Regulations within three month from the date of issue of this letter.

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Further, clause 8(P)(v) deals with the applicability of the scheme to Universities, colleges and other higher educational institutions which comes under the purview of the state legislature and the following has been stipulated:-

8(P)(V): "this scheme may be extended to Universities, colleges and other higher educational institutions coming under the purview of the state legislatures, provided State Governments wish to adopt and implement the scheme subject to the following terms and conditions:-

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

(b) The state government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 1.4.2010.

(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1.01.2006.

(f) State Government taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 1.01.2006; however, in such cases the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government (s).

(g) Payment of Central assistance for implementing this scheme is also subject to the condition that the entire scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above.

17. It is also stated that after receiving the aforesaid letter dated 31.12.2008, the UGC constituted an expert committee to consider the issues and suggest follow up action as also to frame the regulation as contemplated in the said letter dated 31.12.2008. Subsequently, in exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section 26 of University Grants

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Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M. No. F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2008-IC dated 30th August, 2008, and in terms of the MHRD Notification No. 1-32/2006-U.II/U.I(1) issued on 31st December, 2008 and in supersession of the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000, issued by University Grants Commission vide Regulation No. F.3-1/2000 (PS) dated 4th April, 2000, together with all amendments made therein from time to time, the University Grants Commission framed the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010.

18. The NEHU and UGC clearly stated in their respective affidavits-in-opposition that incentives like three increments are contemplated purely for additional qualification of a teacher of the University but Ph.D. degree is a minimum qualification for the post of Professor, which the petitioner is holding and the claim of the petitioner for advance increments of his possessing Ph.D. is totally misconceived. There cannot be incentives in the form of advance increments for possessing minimum qualification of Ph.D. degree for the post of Professor. The incentives according to the normal service parlance which the ordinary employee or layman understood is that the incentives are given to the employee for acquiring additional qualification. Holding of Ph.D. degree is an additional qualification of a teacher holding the post of teacher for which Ph.D. degree is not an essential qualification and there cannot be incentives in the form of advance increments for holding minimum essential/basic qualification i.e. Ph.D. degree for the post of Professor. The UGC under the letter dated 24.07.2002 to all the Registrars of the Universities clarified that these two increments shall not be admissible to teachers, who were recruited/promoted to a post for which Ph.D. was an essential qualification. The said letter dated 24.07.2002 of the UGC reads as follows:-

University Grants Commission Bahadur Shah Zafar Marg New Delhi-110 002.

F.5-3/2001(PS)

24 July, 2002

The Registrar (All Universities & State Governments) (As per list attached)

Sir, Madam,

The UGC vide its letter of even number dated 31.8.2001, had extended the benefit of two advance increments to teachers who acquired Ph.D. during service prior to 1.1.96 and who did not get the benefit of any advance increments as per earlier Career Advancement Scheme. These advance increments were payable with effect from 27.7.98.

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It is clarified that these two advance increments shall not be admissible to teachers, who were recruited/promoted to a post for which Ph.D. was an essential qualification.

Yours faithfully, Sd/- (K.P. Singh) Deputy Secretary

19. There is no room for interpretation of the incentives in the manner the petitioner pleaded in the present writ petition that he would be entitled to receive the advance increments in the form of incentives for having Ph.D. degree. The said letter dated 24.07.2002 clearly speaks that the advance increments shall not be admissible to teachers, who were recruited/promoted to a post for which Ph.D. degree was an essential qualification. It is fairly well settled law that when the legislature has spoken, the judges cannot afford to be wiser. (Reference may be made to the decision of the Apex Court in Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, . The petitioner, it appears, had misunderstood the basic principle of construction of statue while interpreting the scheme of revision of pay of teachers and equivalent cadres in the universities following the revision of pay scales of Central Govt. employees on the recommendations of the Sixth Central Pay Commission i.e. the said scheme dated 31.12.2008 and the said Regulations on minimum qualifications for appointment of teachers and other academic staff in the universities and colleges and measures for the maintenance of standards in higher education 2010 and the said fitments table for fixation of salary i.e. Table 5 to the said UGC Regulations 2010.

20. It is, no doubt, well settled that it is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or in-consistency therein and not otherwise. An effort should be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered superfluous or redundant. True meaning of a provision of law is to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law (Reference may be made to Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, .It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute or rule (Ref: Dinesh Chandra Sangma Vs. State of Assam and Others,). The Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, held that it is too well known principle of construction of statute that the legislature engrafted every part of the statue for a purpose. The legislative intention is that every part of the statute should be given effect. Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is

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plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

21. The Apex Court in State of Gujarat and Another Vs. Hon''ble Mr. Justice R.A. Mehta (Retd.) and Others, held that:

96. In the process of statutory construction, the court must construe the Act before it, bearing in mind the legal maxim ut res magis valeat quam pereat which means it is better for a thing to have effect than for it to be made void, i.e., a statute must be construed in such a manner, so as to make it workable. Viscount Simon, L.C. in Nokes v. Doncaster Amalgamated Collieries Ltd.: 1940 AC 1014 : (1940) 3 All ER 549 (HL) stated as follows: (AC p. 1022)

....if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

97. Similarly in Whitney v. IRC: 1926 AC 37 (HL), it was observed as under: (AC p. 52)

.... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.

98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction, which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred, looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed so as to make it effective and operative." The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted, as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus, legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter, and the obvious intention of the legislature does not stand defeated, unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add

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force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico". The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide: M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , S.P. Jain Vs. Krishna Mohan Gupta and Others, , Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, , UCO Bank and Another Vs. Rajinder Lal Capoor, and Grid Corporation of Orissa Ltd. and Others Vs. Eastern Metals and Ferro Alloys and Others,).

22. The Apex Court in Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, held that:

40. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB and Another Vs. Securities and Exchange Board, India and Another, . As held in Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, , the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, . Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of A.P. and Another Vs. Road Rollers Owners Welfare Association and Others, and the Court should not seek to amend the law in the garb of interpretation.

46. The rules of interpretation other than the literal rule would come into play it there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, .

47. It is only where the provisions of a statue are ambiguous that the court can depart from a literal or strict construction vide Nasiruddin and Others Vs. Sita Ram Agarwal, . Where the words of a statue are plain and unambiguous effect must be given to them vide Bhaiji Vs. Sub Divisional Officer, Thandla and Others, .

23. Wisdom and advisability of economic policies are ordinarily not amendable to judicial review unless it can be demonstrated that the policy is contrary to any

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statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001. (Ref: BALCO Employees Union (Regd.) Vs. Union of India and Others,).

24. The policy decision/or decision of the UGC for revision of pay scales of teachers on the recommendations of the Sixth Central Pay Commission is not amendable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the constitution. The Apex Court in State of U.P. and Others Vs. U.P. Sales Tax Officers Grade II Association, held that the decision of expert body like the pay commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring to go into various aspects of the posts held in various services and nature of duties of the employees. The Apex Court in K.T. Veerappa and Others Vs. State of Karnataka and Others, held that Court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. Para 13 of the SCC in K.T. Verrappa''s case (Supra) reads as follows:-

13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Govt. and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. and Union of India v. S.B. Vohra. There is no dispute nor can there be any to the principles as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

25. It is the further case of the petitioner that the petitioner was not given an opportunity of being heard before taking decision of the NEHU for revision of pay scale of the petitioner by the impugned order dated 04.12.2009. The petitioner clearly misunderstood that in the present case, there is no question of reducing pay scale of the petitioner vide impugned order dated 04.12.2009 as a punishment and in such case, there is no question of giving show cause notice to the petitioner before passing the impugned order dated 04.12.2009. Over and

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above, there is no requirement of giving prior notice to the employees in the case of taking policy decision or the decision in general for the employees by the State Govt. or its instrumentalities. The Apex Court in Balco Employees'' Union case (Supra) held that employees of such PSUs have no right of pre-decisional notice in taking the policy decision involving the pay scales of the employees. Any consequential effect of the policy decision the general decision of the authority to the conditions of service shall be taken as an incidence of service. Paras 48 & 49 of the SCC in Balco Employees'' Union case (Supra) read as follows:-

48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana vs. Des Raj Sangar: (1976) 2 SSC 844 : 1976 SCC (L & S) 336 on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government''s right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.

49. The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the Directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell their shares.

26. It is well settled that when there is a conflict between law and equity, it is the law which has to prevail. The Apex Court in Raghunath Rai Bareja''s case (Supra) held that:

29. .... that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "dura lex sed lex" which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant or override it.

27. The Apex Court in Videsh Sanchar Nigam Ltd. and Another Vs. Ajit Kumar

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Kar and Others, held that a bona fide mistake does not confer any right on any party and bona fide mistake can be corrected. In that case, the respondents are allowed to enjoy wrong payment of D.A. on account of some errors or bona fide mistakes; and the said bona fide mistakes had been corrected. Paras 46 & 47 of the SCC in Videsh Sanchar Nigam Ltd. case (Supra) read as follows:-

46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected. VSNL vide subsequent Office Order bearing Ref. No. HQ-A/01-04/91-PE1 dated 18-10-1995 had rectified its mistake appearing in earlier order dated 3-9-1993 and the said office order was again modified by another Office Order bearing No. HQ-8A/01-04/91-PE1 dated 19-12-1995 by which Para 2(A) of the Office Order dated 18-10-1995 was modified to the extent as stated in the earlier part of this judgment. The modified order was a one-time exercise for choosing the alternatives of settlement of pension and the pensioners were required to submit their consent to the regional heads in a prescribed format by 15-1-1996. The Government of India, Ministry of Personnel, Public Grievances and Pension (DP & PW), New Delhi, issued OM dated 22-11-1996 (Annexure P-14) which is the nodal department of the Government of India for taking policy decisions on pensionary matters sent clarificatory order, a copy thereof was sent to the Ministry of Telecommunications, Department of Communications, dealing with the subject of payment of pension to the employees of erstwhile OCS who were absorbed in VSNL.

47. In view of the above, we are of the opinion that the benefit of DR of the CDA scales, which had been given to the respondent retirees by mistake at the time of their retirement, is not to be given again as clarified by the Government of India from time to time in their various office memoranda referred to above and the respondent retirees are entitled to pension to be calculated on emoluments in the IDA pay scales.

28. The Apex Court in Union of India (UOI) and Another Vs. Narendra Singh, held that mistakes are mistakes and they can always be corrected by following due process of law. Para 32 of the SCC in Narendra Singh''s case (Supra) reads as follows:-

32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K. Suryanarayan: : (1997) 6 SCC 766 it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules.

29. For the foregoing reasons, this Court is of the considered view that the petitioner had utterly failed to make out a case that the revision of pay scale of the petitioner under the decision of NEHU in compliance with the UGC

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Regulations, 2010 was in ignorance of material and relevant factors and also that the NEHU cannot be prevented from correcting the mistake in the provisional fixation of the revised pay scale of the writ petitioner.

30. The writ petition is devoid of merit; and accordingly dismissed.

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