

(2015) 08 DEL CK 0194

In the Delhi High Court

Case No : Writ Petition (C) Nos. 5096 & 5099 of 2012

Narinder Singh and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0194

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Anil Kaushik, Rajinder Singh and Rohit Singh, for the Appellant; Arun Bhardwaj, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Kameswar Rao, J—These two writ petitions involve similar issue of grant of 2nd ACP to the petitioners i.e. in the pay scale of Rs. 8000-13,500/- with effect from August 1, 1998 in respect of petitioners in W.P.(C) 5099/2012 and with effect from April 9, 2004, October 7, 2004 & August 1, 2001 respectively, with regard to the petitioners in W.P.(C) 5096/2012.

2. In W.P.(C) 5099/2012, the petitioner No. 1 had joined Agricultural Economic Research Centre (AERC, in short), Delhi University as Technical Assistant on December 31, 1977 in the pay scale of Rs. 380-560 whereas the petitioner No. 2 Santosh Kumari Maan, joined the same post on August 6, 1977 in the same pay scale of Rs. 380-560.

3. The petitioners in W.P.(C) 5096/2012 joined the post of Technical Assistant in the pay scale of Rs. 380-560 on April 9, 1984 i.e. (Narinder Singh, petitioner No. 1) October 7, 1983 (Balbir Singh, petitioner No. 2) and on May 21, 1981 (C.P. Sharma, petitioner No. 3) respectively.

4. The petitioners in W.P (C) 5099/2012 and petitioner Nos. 2 and 3 in W.P.(C) 5096/2012 have retired from service.

5. It is the case of the petitioners in both the writ petitions that at the time of their joining, there was anomaly in the pay scale of Technical Assistants (TAs) of the Delhi University and of AERC. The Technical Assistants in Delhi University were getting higher pay scale of Rs. 425-700. A Committee under the chairmanship of Dr.R.S. Gupta (Treasurer of the Delhi University) was constituted by Vice-Chancellor of the Delhi University, which in 1989, recommended, the anomaly be corrected and as a consequence thereof, w.e.f. January 1, 1986, all posts of TAs in the AERC were placed in a higher pay scale of Rs. 425-700 (revised Rs. 1400-2300) without any requirement of any additional qualification. In other words, it is the case of the petitioners that this was not a promotion/upgradation but only a rectification and en masse the pay scale of all TAs in AERC was revised. The recommendation of Dr. R.S. Gupta Committee was as under:

"Taking into consideration the comparable designations and the qualifications, the Committee recommends as follows:

1. That the Technical Assistants may be given the revised scale of pay of Rs. 1400-2300 i.e., at par with the Technical Assistant in the University w.e.f. 1.1.1986 and that they may be placed in the higher scale of pay of Rs. 1640-2900 under "One Time Upward Movement Scheme" on the basis of 8 years completed services as Technical Assistants".

6. Under the One Time Upward Movement (OTUM) Scheme of the University of Delhi, the petitioners were entitled to movement to next higher scale upon completion of 8 years service. Thus, the petitioner Nos. 1 to 3 in W.P.(C) 5096/2012 were granted higher grade of Rs. 550-900 (revise Rs. 1640-2900, further revised Rs. 5500-9000) under OTUM w.e.f. April 9, 1992, October 7, 1991 and August 1, 1989 respectively, whereas, the petitioners in W.P.(C) 5099/2012 were granted higher grade under OTUM w.e.f. January 1, 1986 initially in the pay scale of Rs. 425-700 and later after the Dr. Gupta Committee's recommendations in the pay scale of Rs. 550-900.

7. The Government of India issued Office Memorandum dated August 9, 1999, introducing Assured Career Progression Scheme, which contemplated grant of financial upgradations on completion of 12 and 24 years of regular service.

8. It is the case of the petitioners that since the first upgradation was granted upon completion of 8 years of service under OTUM Scheme on the dates referred above, the 2nd upgradation under the ACP to those, who received OTUM before April 8, 1998 was to be given on a further completion of 12 years from the first financial upgradation as mentioned in Delhi University's letter dated October 3, 2001. The petitioners also referred to a clarification issued by DoPT that for cadres with only two grades where there would be only one promotional avenue, the scale of pay for the 2nd upgradation under the ACP Scheme, would be the same as those applicable for similar posts in Ministry/Department/Cadre. The petitioners also referred to the clarification issued by DoPT on February 10, 2000

and July 18, 2000 that the financial upgradation under the ACP Scheme is to be allowed under the existing hierarchy as on August 9, 1999 or at the time of one becomes eligible, whichever is later. On December 18, 2000, the University of Delhi accepted the implementation of ACP scheme of the Govt. of India for its employees. On October 3, 2001, DoPT had issued clarification to the extent that, "where all the posts are placed in a higher scale of pay, without the requirement of any new qualification for holding the post in the higher grade and without involving any change in responsibilities and duties, such upward movement would not be treated as a promotion/upgradation". The petitioners have given a reference to a Meeting of the Governing Body dated November 10, 2004, wherein, it was recorded that Technical Assistants are not entitled to 2nd upgradation as they have already availed two financial benefits during their services. It was also decided in the meeting that the AERC may re-examine the case with reference to detailed clarifications issued by the Government of India, DoPT and take up the matter with the Delhi University, if appropriate, again. The petitioners have referred to a letter dated April 21, 2010 of the respondent No. 1 written to the respondent No. 2, clarifying that the post of Technical Assistant was the cadre post and since the issue of upgradation has been pending since January 1998, early implementation may be considered. A Sub-Committee was constituted by the Governing Body of the respondent No. 2 wherein, a view was taken that since the Technical Assistants of the AERC were granted parity with Technical Assistants of Delhi University in the pay scale of Rs. 425-700 and that thereafter, OTUM was granted to them in the pay scale of Rs. 550-900 (pre-revised) (Rs. 5500-9000 revised) and as they have already received two financial upgradations, no further benefit is available to them under Assured Career Progression Scheme. Representations were made by the petitioners for reconsideration of the decision taken. The matter was again referred to the Sub-Committee for re-consideration which rejected the request of the petitioners.

9. The stand of the respondent No. 1 is that Technical Assistants were originally appointed in the pay scale of Rs. 380-560 and on completion of 8 years of service, were granted pay scale of Rs. 425-700 prior to Gupta Committee recommendation. Thus, it is their case that the petitioners in W.P.(C) 5099/2012 were granted higher scale of Rs. 425-700 with effect from January 1, 1986 on completion of 8 years as a One Time Upward Movement. Dr. R.S. Gupta Committee's recommendations became available only in 1990, which also recommended the grant of pay scale of Rs. 425-700 with effect from January 1, 1986. The respondent No. 1 has taken a stand that Dr. R.S. Gupta Committee also recommended the pay scale of Rs. 425-700 w.e.f. January 1, 1986 and not from the date of joining the Centre. It is also their stand that the petitioners in W.P.(C) 5099/2012 were granted the pay scale of Rs. 1640-2900 w.e.f. January 1, 1986 under One Time Upward Movement Scheme on completion of eight years of service.

10. The respondent No. 2, has in its counter affidavit stated that a Committee was constituted by the Vice Chancellor under the Chairmanship of Dr.R.S. Gupta

and others to examine the pay scale of the Technical Assistants. The Committee taking into consideration the comparable designations and the qualifications recommended that the petitioners may be given the revised scale of Rs. 425-700 at par with Technical Assistants of Delhi University w.e.f. January 1, 1986 and that they may be placed in the higher pay scale of Rs. 1640-2900 under OTUM Scheme on the basis of eight years of completed service as Technical Assistant. It is also the stand of the respondent No. 2 in W.P.(C) 5099/2012 that the Centre granted pay scale of Rs. 425-700 to the petitioners in 1986 under OTUM on the basis of eight years of completed service prior to the recommendations of Dr. R.S. Gupta Committee's report, in 1990. Further, they were granted pay scale of Rs. 1640-2900 under OTUM from January 1, 1986 on the basis of the recommendations of the Dr.R.S. Gupta Committee in 1991. It is also averred that a 2nd Committee was constituted under Dr. G.S. Bhalla, which on August 19, 1998 recommended that Technical Assistants of AERC may be recognised as equivalent to Technical Assistant working in the Department of University and be governed by the same Rules in the matter of promotions and pay scale. It is their case that on the examination of the official report, they have intimated the petitioners, the Technical Assistants have already got two financial upgradations and hence, they are not entitled to get any further upgradation in terms of the ACP Scheme.

11. Learned counsel appearing for the parties have reiterated their respective stand in the pleadings filed before this Court.

12. Learned counsel for the respondents have filed a compilation of some documents on August 27, 2015, which relates to grant of One Time Upward Movement and copies of service books showing certain entries relating to the petitioners in W.P(C) 5099/2012 and also copies of service books showing entries with respect to the petitioners in W.P (C) 5096/2012. The same have been taken on record.

13. Having heard the learned counsel for the parties, the issue which would arise for consideration of this Court is whether grant of pay scale of Rs. 425-700 w.e.f. January 1, 1986 is considered as a Financial Upgradation, to be counted alongwith the OTUM granted on completion of eight years of service in the pay scale of Rs. 550-900 (Revised- Rs. 1640-2900, further revised as Rs. 5500-9000) as having got two financial upgradations to deny the benefit of 2nd ACP on completion of 24 years of service. Before I answer this question, there is no dispute on e paper book), on the point of doubt raised, which I reproduce as under:

14. Keeping in view the aforesaid clarification, it is to be seen whether there were two schemes for financial upgradation on completion of eight years in the scale of Rs. 425-700 (revised Rs. 1400-2300) and Rs. 550-900 (revised Rs. 1640-2900). No doubt, the respondent No. 1 has said so in para (2) of its reply at page 225 of W.P.(C) 5099/2012, which I reproduce as under:

"2. The Centre awarded pay scale of Rs. 425-700 (revised as Rs. 1400-2300) to petitioners in 1986 under one upward movement on the basis of eight years completed service prior to recommendations of Dr. R.S. Gupta Committee report in 1990. Further, they were granted pay scale of Rs. 1640-2900 under one time upward movement from 01/01/1986 on the basis of the recommendations of the Gupta Committee in 1991".

15. I may note here, such a stand has not been taken by the respondent No. 2, in W.P.(C) 5096/2012.

16. Be that as it may, the respondents have placed before me a chart giving the details of the pay scales as given to all the petitioners. The same is reproduced for ready reference:

17. The chart reveals that all the petitioners were given the pay scale of Rs. 425-700 (not Rs. 425-800) w.e.f January 1, 1986 in terms of recommendations of Gupta Committee and thereafter got the benefit of OTUM, in the scale of Rs. 550-900/- on completion of 8 years of service. Insofar as the petitioners in W.P (C) 5099/2012 are concerned (at Serial No. 1 & 2 above), they were given OTUM in the scale of Rs. 425-700, as that was the next higher scale to Rs. 380-560. After, the recommendations of Gupta Committee were acted upon, the scale of Technical Assistants, having been revised to Rs. 425-700, the scale on OTUM, after 8 years also underwent a change to Rs. 550-900. It was a coincidence, that the petitioners in W.P(C) 5099/2012 had completed eight years of service before January 1, 1986 and were granted OTUM in the pay scale of Rs. 550-900 w.e.f January 1, 1986.

18. I note, in its recommendations the Gupta Committee has justified the scale of Rs. 1400-2300 (pre revised Rs. 425-700) on the basis of comparable designations and qualifications held by Technical Assistants in the University. The grant of a higher scale of Rs. 425-700 (revised scale Rs. 1400-2300) cannot be construed as an upward movement on the basis of eight years service. Even, if such is the position, more particularly with regard to the two petitioners in WP(C) 5099/2012, the scale on OTUM got revised after Gupta Committee recommendations to Rs. 550-900. The stand of the respondents, that the petitioners got financial upgradation in the pay scale of Rs. 425-700 on completion of eight years of service is not substantiated as, the petitioners in the W.P(C) 5096/2012, despite not completing eight years as on January 1, 1986, had got the benefit of pay scale of Rs. 425-700. It must be conclusively held that the grant of Rs. 425-700 was not a financial upgradation but was as rationalization of pay scale in terms of the recommendations of Gupta Committee. Hence, they would be entitled to the benefit of 2nd ACP from the dates due in accordance with the instructions issued by DoPT as has been adopted by the respondents herein.

19. On implementation of this order, if further benefits under MACP, needs to be granted in a given case, the same shall be effected by the respondents under the

MACP scheme. The benefits in terms of this order shall be disbursed within a period of three months from today.

20. The writ petitions are disposed of with no orders as to costs.