

(2022) 11 OHC CK 0149
In the Orissa High Court
Case No : Writ Appeal Nos. 186, 187 Of 2018

Priya Ranjan Dash

APPELLANT

Vs

Siba Shankar Mohanty

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Orissa Universities Act, 1989 — Section 22(1)
Orissa Revised Scales of Pay for University Teachers (UGC scale of pay) Rules, 2010 —
Rule 2, 6(3), 7, 7(1)(iii)

Citation : (2022) 11 OHC CK 0149

Hon'ble Judges : S. Muralidhar, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : Pitambar Acharya, Sudarshan Nanda, M.K. Khuntia, Dayananda Mohapatra

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ.

1. At the outset, Mr. Dayananda Mohapatra, learned counsel appearing for the Utkal University clarifies that the Utkal University is withdrawing the counter affidavit, which has been filed in W.A. No.187 of 2018 and is adopting the affidavit filed by it in W.A. No.186 of 2018 for W.A. No.187 of 2018 as well.

2. The challenge in the present writ appeals is to a judgment dated 22nd March 2018, of the learned Single Judge dismissing the Appellants' respective W.P.(C) Nos.1260 and 1261 of 2018.

3. The background facts are that the Appellants are directly recruited Readers in the Utkal University pursuant to an advertisement published on 22nd June, 2015. Both the Appellants applied pursuant to the advertisement issued on 22nd June 2015, by the Registrar, Utkal University and were directly appointed as Readers in the scale of pay of Rs.15600-39,100+ Rs.8,000 AGP. The question that arose for consideration in the writ petitions was whether the Appellants were entitled to

the scales of pay as determined by the University Grant Commission (UGC) Regulation of 2010?

4. It must be noticed at the outset that the aforementioned UGC 2010 Regulation came into force with effect from 18th September 2010, superseding the earlier Regulations of 2000. As far as Odisha is concerned, by notification dated 15th February, 2010 pursuant to Section 22 (1) of the Orissa Universities Act, 1989, the Orissa Revised Scales of Pay for University Teachers (UGC scale of pay) Rules, 2010 ['the 2010 Rules'] were framed and were deemed to have come into force on 1st January, 2006. Rule 7 of the 2010 Rules are relevant for the purposes of the present appeals and reads as under:

"7. Fixation of initial pay in the revised pay structure-

(1) The initial pay of a teacher who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006 shall, unless in any case the Governor by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien, if it had not been suspended, and in respect of his pay in the officiating post held by him in the following manner, namely:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on the 1st January 2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10;

(ii) if the minimum of the revised pay band/pay scale is more than the amount arrived as per (i) above, the pay shall be fixed at the minimum of the revised pay band/pay scale or as specified in the Tables 1 to 6 annexed to these rules.

(iii) Fixation of pay of Readers who were selected strictly in accordance with the rules and regulation framed by UGC and who were in the post of Readers and have completed 5 years of service after 1st day of January, 2006, their pay will be fixed at the minimum of Rs.37,400.

NOTE 1- Where in the existing emoluments exceed the revised emoluments in the cases of any teacher, the difference shall be allowed as personal pay to be observed in future increases in pay.

NOTE 2- Where in the fixation of pay under sub-rule (1) the pay of a teacher who in the existing scale was drawing immediately before 1st day of January 2006 more pay than another teacher junior to him in the same grade in the cadre he belongs gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.

NOTE 3- Where a teacher is in receipt of personal pay on the 1st day of January 2006, which together with his existing emoluments exceeds the revised emoluments, then, the difference representing such excess shall be allowed to

such teacher as personal pay to be absorbed in future increases in pay.

NOTE 4- In case where a senior teacher promoted to higher post before the 1st day of January 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January 2006, the pay in the pay band of the senior teacher shall be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. This stepping up shall be done with effect from the date of promotion of the junior teacher subject to fulfillment of the following conditions, namely:-

(i) Both the junior and senior teacher must belong to the same cadre and the post in which they have been promoted must be identical in the same cadre.

(ii) Pre-revised scale of pay and revised academic grade pay to the lower and higher post in which they are entitled to draw pay must be identical.

NOTE 5-Fixation of pay in the revised scale shall be made in the form appended to these rules as in Schedule III."

5. Immediately relevant for the present case is Rule 7 (1)(iii), which applies to the persons who were already in the posts of Readers and had completed five years of service after 1st January, 2006. In other words, the above Rule 7 (1)(iii) was not meant to apply to direct recruited Readers, who were going to be recruited after 2010. Even Rule 2 of the 2010 Rules, states that "these rules shall apply to the University Teachers (UGC Scale of Pay) in whole time employment of the Utkal University, Berhampur University, Sambalpur University, Shree Jagannath Sanskrit Vishwavidyalaya, North Orissa University, Fakir Mohan University and Ravenshaw University."

6. In addition to this at a meeting held by the State Government on 21st August 2014, which was presided over by the Principal Secretary to the Government, Higher Education Department, it was decided to adopt the aforementioned UGC norms of 2010.

7. However, when it came to making a resolution on the basis of the above Rules, the Department of Higher Education devised a norm as regards Readers which was inconsistent with the above Rule 7 (1)(iii). In terms of the Resolution dated 4th April 2016, it was stipulated that while Readers with less than five years of service would be re-designated as Assistant Professor Stage-III with the pay scale of Rs.15,600-39,100 + AGP Rs.8,000/-, Readers with five years of service were to be re-designated as Associate Professor and given the pay scale of Rs.37,400-67,000/- + AGP Rs.9,000/-.

8. The plea of both these Appellants is that since they were directly recruited Readers after 2010, the stipulation that they should have completed five years of service before being re-designated as Associate Professor and given the higher UGC pay scale was not applicable. In other words, since they were not already recruited Readers as on the date of the UGC 2010 Regulations, they were not required to complete five years of service before being given the higher UGC pay

scale.

9. Interestingly, before the learned Single Judge only the State Government resisted the prayer of the present Appellants and took the stand that they were not entitled to the higher pay scale because they had not completed five years of service. The learned Single Judge in the impugned judgment appears to have accepted the above plea and referred to the resolution dated 4th April 2016 in declining the relief prayed for by the Appellants.

10. As far as the present appeals are concerned, this Court noted that replies had not been filed by either the UGC or the Utkal University in the writ petitions and by an order dated 3rd November, 2021 directed Utkal University to file a separate affidavit to confirm its stand.

11. Pursuant thereto, Utkal University (Respondent Nos.5 and 6) has filed an affidavit on 13th October 2022 supporting the stand of the Appellants. Para 17 and 18 of the said affidavit reads as under:

"17. That, it is humbly submitted that Rule-7(1) (iii) of the Orissa Revised Scales of Pay for University Teachers (U.G.C. Scale of Pay) Rules, 2010, states that those Readers who are selected/directly recruited in terms of the rules and regulation framed by UGC will be entitled to Rs.37,400-Rs.67,000 + AGP Rs.9,000/- and those who were in the post of Reader and have not completed 5 years of service after 1st day of January 2006, their pay will be fixed at Rs.15,600-39,100/-. The Appellant being a direct recruit falls into the first category, therefore entitled to Pay Band 4 i.e. Rs.37,400-Rs.67,000 + AGP Rs.9,000/-.

18. That, the Registrar, Utkal University vide Advertisement dated 22.06.2015 invited eligible candidates for direct recruitment to various regular teaching positions as mentioned therein against various Post Graduate Departments/ Constituent Colleges under Utkal University including the post of Reader in the pay scale Rs.15,600-39,100/- + AGP Rs.8000/-. It would be relevant to state here that the Advertisement itself states that the qualification and experience was strictly in terms of the eligibility requirements for Associate Professor as specified in UGC Regulation 2010. While indicating the Scale of Pay for Readers, it has been stated that the State Government was being approached for the up-gradation of pay scale in conformity with UGC Regulation 2010 i.e., Associate Professor with the Pay Band 4 i.e. Rs.37,400-Rs.67,000 + AGP Rs.9,000/-. Hence, the Vice-Chancellor, Utkal University has recommended to the State Government vide Letter No.VC/09/2017, dated 24.01.2017 and subsequently vide Letter No. VC/77/2018 Dated 26.05.2018 for re-designation of the Post of Reader as Associate Professor and pay fixation in Pay Band 4 i.e. Rs.37,400-Rs.67,000 + AGP Rs.9,000/- from the date of joining of the Petitioner (Annexure-04, 05)."

12. Earlier, in a separate affidavit dated 28th December 2018 in the present writ appeal, UGC again took the stand supportive of the Appellants. Paras 6 and 7 of

the said affidavit read as under:

"06. That the issue involved in the present litigations originates from an advertisement dated 22.06.2015 issued by Utkal University, the present Respondent No.5 inviting application for the post of Readers. The eligibility criteria as stipulated in the said advertisement was the qualification meant for Associate Professor as contained in the UGC Regulation, 2010. The Appellant applied and was selected for the post and appointed as Reader in the Scale of Pay Rs.15,600-39,100/- + Rs.8000/- AGP. The grievance of the Appellant was to grant him UGC Scale of Pay in the Pay Band-IV (Rs.37,400-67,000/-) with grade pay Rs.9,000/-) since he was directly recruited in the post of Reader which had since been re-designated as "Associate Professor" as per UGC Regulations, 2010 as amended up-to-date. The prayer of the Appellant was disallowed by the State Government and thereafter by the Hon'ble Single Judge and that persuaded the Appellant to file the present Writ Appeal.

7. That it is respectfully submitted here that so far provisions of law on the present issue is concerned, it is UGC Regulations, 2010 as amended up-to-date shall govern the field which should be treated as mandatory for all appointments in the University or Institutions recognized by UGC. For better clarification, the Schedule prescribed at point 3.0 under Clause 6.8.0 of UGC Regulation, 2010 is quoted hereunder:

"SCHEDULE FOR CLAUSE 6.8.0

xx xx xx

3.0 Posts of Associate Professor shall be in the Pay Band-IV of Rs.37,400-Rs.67,000 with AGP Rs.9,000/-. Directly recruited Associate Professors under these Regulations shall be placed in the Pay Band-IV of Rs.37,400-Rs.67,000/- with an AGP of Rs.9,000, at the appropriate stage in the Pay Band in terms of the conditions of appointment"

On a plain reading of the above said schedule under Clause 6.8.0 of UGC Regulation 2010, it follows that for all direct recruits to the post of Associate Professor (erstwhile Reader), the Pay Band-IV of Rs.37,400-Rs.67,000+AGP Rs.9,000/-, at the appropriate stage in the Pay Band in terms of the condition of appointment."

13. Even before this Court, it is only the State Government which appears to be taking a contrary stand in denying the claim of the Appellants.

14. Having heard the submissions of Mr. Pitambar Acharya, learned Senior Counsel and Mr. Sudarshan Nanda, learned counsel appearing for the Appellants both in W.A. Nos.186 and 187 of 2018; Mr. Dayananda Mohapatra, learned Counsel for the Utkal University and Mr. Manoj Kumar Khuntia, learned Additional Government Advocate for the State, the Court is of the view that the resolution dated 4th April 2016 of the State Government was under a misconstruction of the UGC 2010 Rules as applicable to Odisha, which have been extracted

hereinbefore. Clearly, the stipulation that Readers should have completed five years of service was not meant to apply to Readers directly recruited subsequent to the said Regulations but to existing Readers. It was this mistake that crept into the resolution dated 4th April 2016, which is resulted in the State adopting a stand contrary to the 2010 Regulations. As pointed out by the learned counsel for the Appellants in relation to other Universities viz., Shree Jagannath Sanskrit Vishvavidyalaya and the Fakir Mohan University, the advertisement issued after the UGC Regulations had clearly mentioned that it is the UGC Regulations that would apply as far as the scales of pay for the various posts of teachers is concerned.

15. For all of the aforementioned reasons, the Court sets aside the impugned judgment dated 22nd March 2018, passed by the learned Single Judge and while allowing the prayers of these two Appellants made in their respective writ petitions i.e., W.P.(C) Nos.1260 and 1261 of 2018, directs the Utkal University to fix their respective scales in Pay Band-4 (Rs.37,400-67,000/- + AGP Rs.9,000/-) in terms of Appendix-I, Appendix-III, Table-II (c) of the Orissa Rules of 2010 with retrospective effect from their respective dates of appointment with all arrears and consequential benefits.

16. The above orders will now be issued within a period of four weeks and all the arrears will be paid within a period of eight weeks from today.

17. The writ appeals are allowed in the above terms.

18. Issue urgent certified copy of this order as per rules.

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