

W.P. No. 2640/17

28.04.2017

Shri Shashank Patwari, learned counsel for the petitioner.

Shri M.S.Dwivedi, learned counsel with Shri Govind Purohit, learned counsel for the respondents.

This court has already decided Writ Petition No. 2351/2010 on 29-09-2016 (Kumari Poornima Yadav Vs. Vice Chancellor and others) and the present petitioner is an identically placed person. The judgment delivered in the case of Kumari Poornima Yadav reads as under :-

"Heard on I.A. No.5734/16, an application for grant of further time.

Prayer for grant of further time is rejected.

Petitioner before this Court, who is working as UDT in University Innovative School (Centre of Excellence), which is under Davi Ahilya Vishwavidhyalaya, has filed the present petition. He is claiming dearness allowance and other allowances as per the recommendation of 5th pay commission w.e.f. 01.07.1998. The petitioner has also approached this Court earlier by filing a writ petition and as many as 13 persons have filed petitions claiming benefit of 5th pay commission. Same was registered as W.P. No.643/1999. At the time of hearing, this Court was informed that University shall be paying benefit of 5th pay commission to the petitioners (employees) working at University Innovative School w.e.f. 01.07.1998 debarring petitioner No.2- Purnima Yadav and petitioner No.8 Mrs. Mohini Gupta.

This Court after hearing learned counsel for the parties at length has allowed the writ petition holding that respondent/University cannot be permitted to discriminate between the identically placed employees. Respondent/ University was directed to grant the benefit of pay revision of payscale to the petitioners w.e.f. 01.07.1998.

Another aspect of the matter is that a prayer was made by the employees for grant of benefit of revision of pay-scale w.e.f. 01.01.1996, however, prayer for grant of benefit w.e.f. 01.01.1996 was rejected, meaning thereby, this Court has directed for grant of benefit of revision of pay-scale keeping in view the recommendation of 5th pay commission w.e.f. 01.07. 1998 to the petitioners therein. Respondent/University has not honored its commitment and the petitioners were left with no other choice except to file subsequent writ petitions.

Non grant of higher pay-scale is a recurring cause of action and in those circumstances, second writ petition has been filed.

Notices were issued to the respondents on 19.03.2010. University has opted not to file reply in the matter for the reasons best known to the University. Time was also granted to the University to sort out the matter, however, University has not taken steps in the matter right from 2010 and the facts remain that there is a judgment on record in respect of the employees working at University in University Innovative School (Centre of Excellence) for granting them pay revision based upon 5th pay commission w.e.f. 01.07.1998. The judgment delivered by this Court in W.P. No.643/1999 reads as under:-

W.P. No.649/1999

26.07.2000

“Smt. R. Pandit, counsel for the petitioners.

Shri S.C. Bagadia, senior counsel with Shri Chhabra for respondents.

With consent arguments heard on merits.

ORDER

Petitioners, 13 in numbers, are Teachers working in respondent No.1 Institution. Their grievance in this petition is threefold â (i) that the petitioners be granted benefit of 5th Pay Commission with effect from 1-1-1996, (ii) that they be also given payment of full D.A. and increment as per Rules since 21-2-94 and (iii) that final gradation list of the Teachers be directed to be published by respondents.

02. Show cause notice against admission was issued to the respondents. Respondents have submitted their reply. In the reply they have mentioned that with regard to extending the benefit of pay commission, the matter was under active consideration of the Governing Body of respondent No.1. They have also mentioned that the provisional seniority list has already been circulated amongst the staff. Against the provisional seniority list objections have been invited which are to be considered by respondents and only thereafter final seniority list shall be published. During the pendency of the petition, respondents have filed copy of the minute of the Governing Body of the respondents. In the said minute it has been mentioned that respondent No.1 Institute has decided to grant benefit of 5th pay commission to all of its employees except petitioner No.2 Punima Yadav and petitioner No.8 Mrs. Mohini gupta of this petition and some other employees, who are not before this Court with effect from 1-7-99. As far as petitioner Nos.2 and 8 are concerned it has further been mentioned that decision to grant them the benefit of 5th pay commission would be considered after six months during which their performance would be evaluated.

In the light of the submission as made by the respective parties I have heard them at length and perused the record. The contention of the respondents that the cases of petitioner No.2 Purnima Yadav and Smt. Mohini Gupta respondent No.8 would be considered after six months is neither appealing nor convincing. While granting the benefit of 5th pay commission, effective from 1-7-98, no such embargo or bar can be created with regard to class of

employees. If the respondent No.1 is not satisfied with the performance or working of any of its employees, it has a remedy available to it to act in accordance with law. The action of the respondents as far as it deprives the two petitioners would be contrary to law, more so when the reasons assigned by the respondents are not just and proper. It is not only arbitrary but is also discriminator. Thus, as far as this relief is concerned I give a direction to respondent No.1 to grant these two petitioners also the same reliefs which have been granted to other petitioners from 1-7-98.

The Institute of respondent No.1 is self financing Institute and on account of this, after due consideration of the matter, it has been decided by the Governing Body to grant this benefit to its employees only with effect from 1-7-98. I find no illegality or arbitrariness in this action. After all, money is not coming from any other source. Money is being generated by respondent No.1 and only thereafter whatever benefit was to be given and was best possible, looking to the financial condition of respondent No.1 has been given to them. Thus, petitioners can have no objection in this regard. The applicability of C.B.S.C. Rules would not create any extra benefit for the petitioners. It is not the case of the petitioners that respondent No.1 has the funds available for grant of benefit of 5th pay commission to its employees from 1-1-96, yet they are being deprived. I find no averments also in the petition in this regard. Thus, the prayer of the petitioners that they should be directed to be granted benefit of 5th pay commission from 1-1-98, is hereby rejected.

As regards finalisation of the seniority list is concerned it has been mentioned by the respondents that against provisional list, so published objections are pending, which are yet to be considered. Only after objections are decided final list can be prepared. It is, therefore, expected on the part of the respondents to decide the objections at an early date preferably within a period of 3 months from to-day and then to publish the final list.

Thus, the petition is allowed to the extent mentioned above and stands hereby disposed of. Parties to bear their own costs. I.A. No.3380 of 99 filed by Intervener is hereby dismissed as not pressed. CC in 2 days.”

The judgment delivered by this Court was not challenged by the University before any forum, meaning thereby, the order has attained finality. This Court is of the considered opinion that the petitioners are entitled for the benefit of 5th pay commission w.e.f. 01.07.1998. Respondents/University are directed to grant the benefit of 5th pay commission to the petitioners within a period of 90 days from today.

Petitioners were entitled for grant of benefit of revised pay-scale under the 5th pay commission w.e.f. 01.07.1998 as the judgment in the case of Surya Prakash Tripathi Vs. Principal, University Innovative School of Education and another, was delivered on 26.07.2000. Respondents have not granted the benefit

to the petitioners till date and, therefore, petitioners shall be entitled for interest @ 12.5% p.a. from 26.07.2000 till the amount is actually paid to the petitioners. Exercise of paying interest as well as the actually benefits be concluded within 3 months from today. Not only this, conduct of the university in not paying revised pay-scale in spite of there being a judgment passed by this Court way back in the year 2000 deserves to be deprecated.

In the present case, the undisputed fact is that the petitioner is an employee of Devi Ahilya Vishwavidyalaya and he is working under the School of Excellence of respondent No.5 â International Institute of Professional Studies. In this regard, a notification is on record dated 08.03.1998 and as per the definition of the notification, an employee who is working in the university or is working in the innovative school and anywhere in the university will be treated to be an employee.

Learned counsel for the petitioner have vehemently argued before this Court that other employees have been granted revisional pay on the basis of 6th pay commission, therefore, petitioners are also entitled for revision of pay under the 6th pay commission. This Court is of the considered opinion that the University being a model employer cannot be permitted to discriminate between the employees posted at various departments whether the departments are running by receiving grant-in-aid or the departments are being run by the University on the basis of self finance scheme. As per the notification brought on record, it is not in dispute that the employee is working in the University Innovative School. There is a categorical statement that petitioners are employees of the University and the aforesaid fact has not been denied and for the reasons best known to the respondents, in fact, no reply has been filed.

This Court is of the considered opinion that the employees are certainly entitled for revision of pay as done from time to time based upon 6th pay commission by the respondent/University. Petitioners shall also be entitled for higher pay scale based upon 6th pay commission. The University has already issued a notification dated 16.03.2009 for granting higher pay-scale to its employees and, therefore, petitioners shall also be entitled for grant of higher pay-scale as per the notification dated 16.03.2009 in the same manner and method it has been granted to other employees. The exercise of granting benefit of 6th pay commission to the employees shall be concluded within a period of 3 months from the date of receipt of certified copy of this order. However, in respect of the revision under the 6th pay commission, if the amount is paid within 3 months to the petitioners, no interest shall be payable to the petitioners, however, if the amount is not paid by the University within 3 months, the University shall be paying interest @ 12.5% to the petitioners till the amount is paid to the employees.

Petitioners are also the members of central provident fund and the university is not depositing the fund in the account of the petitioner for the reasons best known to them after 2009. The respondent/University is also directed to deposit the amount of provident fund in the account of petitioners also within 3 months

from today.

This Court hopes and trust that University shall be implementing the judgment delivered by this Court. The writ petition is allowed with cost of Rs.2500/-.'

The judgment delivered by this court in the case of Kumari Poornima Yadav Vs. Vice Chancellor and others as facts are similar and the lis involved is similar shall be applicable mutatis-mutandis in the present case also.

The another important aspect of the case is that as Writ Appeal preferred by the University has been dismissed by order dated 15-12-2016 passed in Writ Appeal No.501/2016 and, therefore, the respondent University is directed to confer the benefits flowing out of the judgment delivered in the case of Kumari Poornima Yadav, within a period of three months, from today.

No order as to costs.

Certified copy as per rules.

(S.C.SHARMA)
J U D G E

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