

(2018) 05 GAU CK 0001

Gauhati High Court (Aizawl Bench)

Case No: WP(C) No. 203 of 2016

Dr.Lalrammawii, Associate
Professor

APPELLANT

Vs

The Mizoram University

RESPONDENT

Date of Decision: May 23, 2018

Hon'ble Judges: PRASANTA KUMAR DEKA

Bench: Single Bench

Final Decision: Dismissed

Judgement

1.Heard Mr C.Lalramzauva, learned Senior Counsel assisted by Mr Johny L Tochhawng learned counsel appearing for the petitioners. Also heard

Mr.A.R.Malhotra, learned Standing Counsel, Mizoram University.

2. The petitioners were initially appointed as Lecturers in various departments such as Political Science, English and Economics of Pachhunga

University College, a constituent college under Mizoram University. They were placed in the Senior Scale and subsequently as Lecturer(Selection

Grade) on different dates in accordance with Career Advancement Scheme (CAS) implemented by the respondents as per the notification issued

by the University Grant Commission(UGC). The petitioners while serving as Lecturers(Selection Grade) were redesignated as Associate Professor in

accordance with the scheme of revision of pay of teachers after the sixth Central Pay Commission vide memo dated 31.12.2008 issued by the

Ministry of Human Resources Development, Department of Higher Education. Thereafter, on acquisition of degree of Ph.D., the petitioner

Nos.1,2 and 3 were given the benefit of three non-compounded increments as provided under Clause 9.4(i) as per UGC Regulation of

Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the

Maintenance of Standard in Higher Education 2010 No. F.33-1/2009 dated 28.6.2010 and as per the resolution of 33rd Executive Council Meeting

vide Resolution No. EC:33:5(29) and 35th Executive Council Meeting held on 26.7.2013 of respondent University w.e.f. the date of acquisition of their

respective Ph.D. degrees. However the petitioner No. 4 has not been granted the said benefit inspite of her acquisition of Ph.D. degree on

19.1.2015 till date inspite of her application for the same. The said benefits to the petitioner Nos. 1,2 and 3 were illegally withdrawn vide order

No. 43/Estt.i/13/2679-81 dated 28.1.2016, order No. F No. 4- 3/Estt.i/13/3913-15 dated 10.6.2016 and order No. 4-3 Estt. i/13/268284 dated 28.1.2016

respectively of the petitioner Nos. 1,2 and 3. It is the contention of the petitioners that the said benefits granted to the petitioner Nos. 1 to 3 were

illegally withdrawn vide aforesaid impugned orders due to misconception/misreading of resolution No. EC:42:5(14) of the 42nd Executive Council

Meeting held on 31.7.2015. Accordingly being aggrieved the petitioners have come up with this writ petition for setting aside the said orders

dated 28.1.2016 and 10.6.2016 and for a direction to continue with the of the non-compounded increments including that of petitioner No. 4.

3. Mr.Lalramzauva, learned Senior Counsel submits that the petitioners after working as Lecturers were placed as Lecturer(Senior Scale) as per the

UGC guidelines/schemes in force. They were promoted to Lecturer (Selection Grade) on completion of the required length of service and other

requirements. The UGC notification on Revision of Pay Scale, Minimum Qualification for Appointment of teachers in Universities etc and for the

Maintenance of Standards 1998 which was communicated by the UGC to the Vice Chancellor of all the Universities and Education Secretaries

vide letter No. F.3-1/94(PS) dated 24.12.1998 Clause 7 for Career Advancement stipulated as follows:

7.1.1. Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five

years for those with M.Phil and six years for others at the level of Lecturer, and for eligibility to move in to the Grade of Lecturer(Selection

Grade)/Reader, the Minimum length of service as Lecturer(Senior Grade) shall be uniformly five years. 7.3.0 Lecturer in the Senior Scale who do not

have a Ph.D. degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfill the other criteria given

above for the post of Reader, and have a good record in teaching and preferably, have contributed in various way such as to the corporate life of the

institution, examination work, or through extension activities, will be placed in the Selection Grade, subject to the recommendation of the Selection

Committee which is the same as the post of Reader. They will be designated as Lecturers in the Selection Grade. They could offer themselves for

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

designation of Reader

4. Thereafter the petitioners were given the benefits of placement to Lecturer (Selection Grade) as and when they fulfill the required criteria for such

placement. The petitioner No. 1 was placed as Lecturer(Selection Grade) under Career Advancement Scheme in the scale of pay of Rs. 12,000/--

420-18,300/- plus usual allowances under the Rules of the Central Government employees w.e.f. 1.6.1997 on the recommendation of Selection

Committee and in pursuance of the Executive Council resolution No. EC/ 104/99/6/1/(i) dated 26.10.1999 vide order No. F.15-63/Estt-ii/86 2907 dated

29.11.1999. The petitioner No. 2 was also placed as Lecturer (Selection Grade) while she was serving as Lecturer(Senior Scale) in the Department

of English in the said college against the same post she was occupying under the Career Advancement Scheme w.e.f. 11.7.1997 in the same

scale of pay plus other allowances as admissible from time to time for employees of Mizoram University on the recommendation of the

selection committee with the approval of Executive Council vide Resolution No. EC:9:4(I) in its 9th Meeting held on 30.11.2005 to 1.12.2005 vide

order dated 15.2.2006. The petitioner No.3 who was also working as the Lecturer(Senior Scale) in the department of Economics in the same

College was placed as Lecturer(Selection Grade) against the same post she was occupying under Career Advancement Scheme w.e.f. 28.7.2003 in

the pay scale of Rs. 12,000-420-18,300/- plus other allowances as admissible on the recommendation of the selection committee and with the

approval of the Executive Council vide its resolution No. EC:9:4(I) in its 9th meeting held on 30.11.2005, 1.12.2005 vide order dated 15.2.2006.

Similarly the petitioner No. 4 who is presently working in the same college as Lecturer in the Department of English under NEHU was placed as

Lecturer(Selection Grade) against the same post she was occupying under Career Advancement Scheme in the pay of Rs. 12,000-420-18300/-

plus other allowances as admissible w.e.f. 6.8.1997 in pursuance of Executive Council resolution No. EC/104/99/6/1(i) dated 26.10.1999

vide order dated 3.12.1999.

5. Vide letter No. 1-32/2006-U.II/U.I(i) dated 31.12.2008 the Government of India, Ministry Human Resources

Development(Department of Higher Education) had communicated to the Secretary, UGC of the subject of Scheme of Revision of Pay of Teachers

and Equivalent Cadre in University and College following the Revision of Pay Scale of Central Government on the recommendation 6th

Central Pay Commission under Para 2 (a)(ix) had provided for redesignation of Readers and Lecturers (Selection Grade) as follows:

“(ix) Incumbent Readers and Lecturers (Selection Grade) who have completed three years in the current pay scale of Rupees 12,000-

18,300/- on 1st January, 2006 shall be placed in pay band of Rs. 37,400-67,000/- with AGP pay of Rs.9,000 and shall be re-designated as Associate

Professor. Accordingly the petitioners having completed three years in the said pay scale of Rs 12,000-18,300 as on 1.1.2006 they were given the

designation of Associate Professors.

6. The University Grant Commission in the year 2010 and in pursuance of the MHRD. O.M No. F 23-7/2008-IFD dated 23.10.2008 read with

Ministry of Finance(Department of Expenditure) OM No. F.11/2008-IC dated 30.8.2008 and in terms of the MHRD notification No. 1-32/2006-

U.II/U.1(1) issued on 31.12.2008 and in supersession of UGC(Minimum Qualification Required for the Appointment and Career Advancement

of Teachers in Universities and InstitutionsÂ affiliatedÂ to it) Regulation,Â 2000Â together with all amendmentsÂ made therein from time to time

the UGC had framed a newÂ RegulationÂ known as UGC (Minimum Qualification for the Appointment of the Teachers and other Academic Staff

in Universities and Colleges and other Measures for the Maintenance of Standard in Higher Education)Regulation 2010 (in short 2010 Regulation)

which wasÂ notifiedÂ vide No. F 3-1/2009 dated 28.6.2010 with immediate effect. Clause 9 of the said 2010 Regulation is with respect to the

incentives for Ph.D./M.Phil and other Higher qualification which are to be given effect from 1.9.2008. Clause 9.4 of said Regulation is reproduced

below:

â€œ9.4 (i) Teachers who complete their Ph.D. Degree while in service shall be entitled to 3 non-compoundableÂ increments if such Ph.D. is in a

relevant discipline of the discipline of employment and hasÂ been awarded by a University complying with the process prescribed by the UGC for

enrolment, course work, evaluation, etc.

(ii) However, teachers in service who have already been awarded Ph.D. by the time of coming into force of these Regulations or having been enrolled

for Ph.D. have already undergone course work as well as evaluation, if any and only Notification in regard to the award of Ph.D. is awaited , shall

alsoÂ be entitledÂ to the award of 3 non-compounded increments even if theÂ university awarding such Ph.D. has not yet been notified by the

UGCÂ as having complied with the process prescribed by the Commission.â€

7. The petitioners Nos.1,2,3 and 4 were awarded Ph.D. degree respectively on 9.4.2012, 21.11.2012, 21.11.2012 and 19.1.2015. The respondent No. 1

through its resolution in 33rd Executive Council Meeting held on 20.11.2012 allowed granting of three non-compounded increments for receiving Ph.D.

degree while in serviceÂ as provided under Clause 9.4 (ii) of 2010 Regulation to the petitioner No.1. Similarly petitioners No. 2 and 3 were also

granted the said non-compounded increments as per resolution taken in the 35th Executive Council Meeting of the respondent No. 1 with effect from

their respective dates of acquiring Ph.D. degree vide order dated 16.9.2013 and 21.10.2013 respectively. The petitioner No. 4 though submitted her

application after she was awarded the Ph.D. degree on 19.1.2015, but for reasons best known to them, the respondents are yet to grant the said

noncompounded three increments, though similarly placed persons were given the benefit. The respondent No. 1 in its 42nd Executive Council

Meeting held on 31.7.2015 took the resolution under resolution No. EC42:5(14) as follows:

“The Council considered the matter and reiterated its earlier decision that as per UGC norms, those teaching posts where Ph.D. Degree is

considered essential requirement, no increment will be admissible even if the Degree is awarded in service. However, Ph.D. related increments are

admissible for only those teaching posts, where holding Ph.D. Degree is not considered as the minimum essential qualification. In the light of this, if

any increments were granted by the University to those teachers for whom Ph.D. Degree is an essential requirements, it must be stopped forthwith,

though the amount already paid as increments, if any, may not be recoverable.”

8. On the basis of the said resolution the respondent No.1 withdrew the benefits of three non-compounded increments granted to the petitioners No.

1,2 and 3. Contending that the said action is owing to misinterpretation of the said resolution adopted in 42nd Executive Council Meeting held

on 31.7.2015, the learned senior counsel for the petitioners submits that as per table appended to 2010 Regulation pertaining to Minimum Academic

Performance and Service Requirements for Promotion of Teachers in the Universities and Colleges through CAS(Career Advancement Scheme)

an Assistant Professor/equivalent cadre from stage 1 may be promoted to stage 2 after completing four years of service with Ph.D. or 5 years service

with M.Phil/PG degree in professional courses such as LL.M, M.Tech, MVSC, M.D. or 6 years of service for those Ph.D./M.Phil/P.G.Degree

in professional courses. An Assistant Professor/ equivalent cadre in stage 2 may be promoted to stage 3 after completion of service of 5 years in

stage 2. The Assistant Professor in stage 3 may be promoted to Associate Professor i.e. stage 4 after 3 years of completed service in stage 3.

Accordingly the learned Senior counsel submits that from the table appended to the said 2010 Regulation it is evident that obtaining a Ph.D. degree is

not considered as a minimum essential requirements for being promoted from the different stages such as stage 1, stage 2 and stage 3 to stage 4 i.e.

the entry level to the post of Assistant Professor to the grade of Associate Professor in respect of teachers in University and Colleges. Such being

the position the learned Senior Counsel further contends that action of the respondents are illegal.

9. Mr.Malhotra, learned Standing counsel, Mizoram University submits that if three non-compounded increments for acquiring Ph.D. in service is

given to CAS/re-designated Associate Professors but not to directly recruited Associate Professors wherein Ph.D. is a mandatory qualification then

there will be difference of pay in the same pay band. He submitted that the word "teacher" mentioned in clauses 9.4(i)/9.5 of the 2010

Regulation does not specify clearly the category/class of teaching faculty to whom Ph.D. increments is admissible. For the said reasons the

respondent University vide its letter dated 10.5.2010 sought for its clarification from the UGC. In response to the said letter the UGC vide letter No.

F.1-122/2016(VIP/P.S/Ref) dated 28.3.2017 informed as follows:

"With reference to your letter No. F.4-3/Estt.I/13/2045 dated 10.5.2016 on the subject mentioned above, I am directed to inform you that the

matter was referred to UGC internal Audit Section and the observation of Internal Audit Section is as under:- "Incentive in the form of advance

increment should be allowed only in those cases where the Ph.D. is not an essential qualification prescribed for the post, either acquired at the time of

entry level or while on service"

10. It is further submitted that though Ph.D. is not an essential qualification under CAS but as per Clause 3.8.0 of the UGC Regulation, Ph.D. degree

is a mandatory qualification for all the candidates to be appointed as Associate Professor through direct recruitment. Now as the petitioners are

holding the post of Associate Professors, the initial entry for direct recruitment requires Ph.D. degree, as such the resolution of the respondent No. 1,

University, in the 42nd Executive Council Meeting held on 31.7.2015 under resolution No. EC:42: 5(14) is valid and proper and the action flowing

out of the said resolution carried out by the respondents are proper. Mr.Malhotra also submits that even if the impugned orders are sought to be set

aside by the petitioners, until and unless the aforesaid resolution is challenged and set aside by this Court, the impugned orders cannot be interfered

by this Court. The petitioners failed to challenge the said resolution dated 31.7.2015 and as such they are not entitled for the limited relief.

11. In support of the said submission Mr. Malhotra relies (2010) 1 SCC 417 (Amarjeet Singh and others Vs Devi Ratan and others) and (2010) 1 SCC

756 (Edukanti Kistamma(dead) through LRS and others Vs S.Venkatareddy(DEAD) through LRS and others). Accordingly Mr Malhotra submits that

writ petition is to be dismissed both on the ground of its maintainability and also on its merit.

12. Considered the submissions of the learned counsels. It is seen that the petitioners No. 1, 2, 3 and 4 were placed respectively in the Selection Grade

under Career Advancement Scheme (CAS) in the Scale of Pay of Rs. 12,000 â€" 420 â€" 18,300/- plus usual allowances admissible under the Rules

to the Central Government employees w.e.f. 01.06.1997, 11.07.1997, 28.07.2003 and 06.08.1997 respectively on the recommendation of the Selection

Committee and the respective Executive Council resolution. Thereafter, under the Scheme of Revision of Pay of Teachers and Equivalent Cadre in

University and colleges following revision of pay scale of Central Government on the recommendation of the 6th Central Government Pay

Commission vide No. 1-32/2006-U.II/U.I(ii) dated 31.12.2008 they were placed in the Pay Band of Rs. 37,400 â€" 67,000/- with AGP of Rs. 9000/-

w.e.f. 01.01.2006 and they were re-designated as Associate Professors inasmuch as they were placed as Lecturers (Selection Grade) in the Pay

Scale of Rs. 12,000 â€" 18,300/- and completed 3 years in the said Pay Scale as on 01.01.2006. On the strength of the Appendix-I dated 31.12.2008

of the 2010 Regulation vide Clause I(iii), the pay of Teachers and equivalent positions in Universities and Colleges were fixed according to their

designations in two Pay Bands of Rs. 15,600 â€" 39,100/- and Rs. 37,400 â€" 67,000/- with appropriate Academic Grade Pay (AGP). Each Pay

Band shall have different stages of AGP which shall ensure the teachers and other equivalent cadres covered under the scheme subject to other

conditions of eligibility being satisfied to have multiple opportunities for upward movement during their career. Thus, the present petitioners were

holding Pay Band of Associate Professor w.e.f. 01.01.2006 by virtue of the recommendation of the 6th Central Pay Commission. The petitioner No. 1

was awarded with the Ph.D. degree on 06.12.2012, the petitioner No. 2 on 21.11.2012, the petitioner No. 3 on 21.11.2012 and the petitioner No. 4 on

10.04.2015. On the said dates, the petitioners were holding post of Associate Professors.

13. In 2010 Regulation, Clause 9.4 (i) stipulates that teachers who completed their Ph.D. degree while in service shall be entitled to three non-

compounded increments. The petitioners No. 1, 2 and 3 were granted three non-compounded increments respectively on 22.04.2013, 16.09.2013 and

21.11.2013. The petitioner No. 4 applied for the grant of three non-compounded increments on acquiring Ph.D. degree since 28.1.2015 and the same

was not granted to her. Thereafter, the respondent University was faced with a doubt with regard to the recommendation of a Core Committee which

was subsequently approved by the 35th Executive Council Meeting .The Core Committee recommended that a teacher who is enrolled for Ph.D. and

is awarded Doctorate degree in course of work shall affect the benefit of three non-compounded increments on the face of the resolution No.

EC:16:4(II) (III) of the 16th Executive Council Meeting held on 23.7.2007 resolving that Ph.D. increments are not allowed for Reader/Professor

where Ph.D. degree is an essential qualification. Accordingly, a clarification was sought for and in the 42nd Executive Council Meeting of the

respondent No. 1 held on 31.7.2015 vide resolution No. EC:42:5(14) resolved as follows:

“The Council considered the matter and reiterated its earlier decision that as per UGC norms, those teaching posts where Ph.D. Degree is

considered essential requirement, no increment will be admissible even if the Degree is awarded in service.Â However, Ph.D.. related increments

are admissible for only those teaching posts, where holding Ph.D. Degree is not considered as the minimum essential qualification. In the light of this,

if any increments were granted by the University to those teachers for whom Ph.D. Degree is an essential requirement, it must be stopped forthwith,

though the amount already paid as increments, if any may not be recoverable.â€ On the basis of said resolution the respondent No.1 withdrew the

three non-compounded increments granted for acquiring Ph.D. degree to the said petitioners No. 1, 2 and 3.

14. The submission of Mr. Lalramzauva, learned Senior Counsel that the respondent authority misinterpreted/misconstrued the said resolution of the

42nd Executive Council Meeting held on 31.7.2015 and the action against the present petitioner Nos. 1, 2 and 3 are illegal cannot be accepted even if

their entry to the post of Associate Professor are from the post of Lecturer (Selection Grade). Appendix-I of the scheme of revision of pay of

teachers and equivalentÂ cadres of Universities and Colleges following the revision of pay scales of Central Government employees on the

recommendation of 6th Central Pay CommissionÂ issued by the Human Resources Development Department of Higher Education dated 31.12.2008

in Clause 2(a)(ix) clearly shows that the incumbentÂ in the post of Readers and Lecturers(Selection Grade) were given common pay band who have

completed three years in the pay scale of Rs.12,000/--18,300/- on 1.1.2006 and re-designated as Associate Professor. The petitioners have been

holding the post of Associate Professor w.e.f. 01.01.2006 as mentioned hereinabove and the resolution of the 42nd Executive Council Meeting is

specific to the effect that "as per UGC normsÂ those teaching posts where Ph.D. Degree is considered essential requirement" and as per

Clause 3.8.0 of UGC RegulationÂ mandatesÂ that Ph.D. degree is mandatory for the post of Associate Professor for direct recruits.

15. The 2010 Regulation in its Appendix III Table- III hereinabove specifically stipulates that the entry to the stage of Associate Professor of an

incumbent must complete the stages 1,2 and 3 out of which stage 1 is mandatory that an Assistant Professor shall have to render four years of service

with Ph.D. degree leaving aside the criteria applicable to the professional courses. This clearly indicates that any person serving as Assistant

Professor to become eligible to the post of Associate Professor under the Career Advancement Schemes (CAS) must possess the Ph.D. degree. The

petitioners were rightly or wrongly given the benefits under the CAS that too while holding the posts of Associate Professor the post which requires a

Ph.D. degree as one of the criteria. When the criteria itself signifies that Ph.D. degreeÂ is mandatory for an incumbent to hold the post of Associate

Professor, which is stipulated in Clause 3:8:0 of UGC Regulation, the decision of the respondent University withdrawing the benefits cannot be termed to be illegal. On the other hand for the above reasoning the petitioner No. 4 is also not entitled for the benefit of three non-compounded increments for completion of her Ph. D Degree in service. In addition to that if the petitioners are permitted to enjoy the said benefits then it would amount to creation of another pay band for the post of Associate Professor for direct entry and for persons like petitioners. This will be against the intent and purpose of 2010 Regulation spelling out that pay of teachers and equivalent positions in Universities and Colleges shall be fixed according to their designations in two pay bands only. For the said reasons, I find that there is no illegality in withdrawing the benefits of the petitioners No. 1, 2 and 3 and the petitioner No. 4 is also not entitled for the benefit of non-compounded increments.

16. The other limb of the submission of Mr.Malhotra that without challenging the Resolution No.EC:42:5(4) of the 42nd Executive Council Meeting held on 31.7.2015, this writ petition along with relief sought for is not maintainable, has its force. It is very much clear and apparent that the consequent action of withdrawing three non-compounded increments of the petitioners No.1, 2 and 3 flows out of the resolution of the 42nd Executive Council Meeting of the respondents held on 31.7.2015. Until and unless the said resolution is set aside the consequential action will always remain flowing out of the resolution. The impugned orders are also specific to show that the same are consequential orders flowing out from the resolution.

17. In (2010) 1 SCC 756 (supra) the Hon^{ble} Apex Court while examining the maintainability of an appeal held as follows:

“22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P Chitharanja Menon Vs.A Balakrishnan, H.V.Pardasani V.Union of India and Govt of Maharastra v Deokar^s Distillery)“

18. Similarly in (2020) 1 SCC 417 the Honâ€™ble Apex Court while deciding the promotion made by two different DPCs by way of which promotions were made with retrospective effect on different dates notionally, without challenging the said decision of the DPC the aggrieved persons challenged the seniority on the basis of the said promotion, held that the seniority which is a consequential to the promotion could not be challenged without challenging the promotion and further held that challenging the consequential order without challenging the basic order is not permissible. Herein also though Mr. Lalramzauva learned Senior Counsel wanted to project his case with respect to misconstruction of the resolution but the action initiated by the respondent University is arising out of as the consequences of the said resolution. From that point of view also the writ petition is also not maintainable.

19. Be that as it may the petitioners are not entitled to the reliefs inasmuch as there is no misconstruction by the respondent University of the Resolution No. EC:42:5(14) of the 42nd Executive Council Meeting held on 31.7.2015. Accordingly this writ petition is dismissed.