

Gopal Krishna Sharma and Others

Vs

State of Rajasthan and Others

Writ Petns. Nos. 16309-16376 of 1984 with 563 of 1989

(A. M. Ahmadi, M. M. Punchhi, K. Ramaswamy JJ)

16.09.1992

JUDGEMENT

AHMADI, J.:-

1. This batch of Writ Petitions brought under Art. 32 of the Constitution arises on account of the respondent University's refusal to grant Research Assistants/ Associates the scale of Rs. 700-1600 recommended by the University Grants Commission (UGC) with effect from 1st January, 1973, even though the University, namely, the Sukhadia University, Rajasthan, (earlier known as University of Udaipur) has implemented the UGC recommendations and granted the UGC scales in the case of other members of the teaching staff. It may be noticed that the UGC in its report (1975-76) recommended upward revision of pay scales of University and College teachers, which recommendation came to be approved by the Government of India. According to the said recommendation three pay scales were approved for University and College teachers, these being Rs. 700-1600 for Lecturers and Assistant Professors, Rs. 1200-1900 for Readers and Rs. 1500-2500 for Professors replacing the then prevailing pay scales of Rs. 400-950, Rs. 700-1250 and Rs. 1100-1600, respectively, with effect from 1-1-73. Research Assistants who claim to belong to the teaching faculty claimed the lowest pay scale of Rs. 700-1600 which the University had refused to grant notwithstanding a host of representations. They further contended that the benefit of the revised UGC scale of Rs. 700-1600 was also extended to Junior Lecturers who were then in the scale of Rs. 300-600. The Indian Council of Agriculture Research (ICAR) had also clarified in its communication dated June 26/July 1, 1977, that it makes no distinction between academic, research and extension work in Agricultural Universities and had extended the benefit of the revised UGC scales to Extension/ Research Assistants also if they possessed the qualifications of Lecturer and were recognised as teachers under the University Statutes. The Vice-Chancellor of the respondent University had also written a letter dated 14-15th December, 1976 to the Education Commissioner of the State Government to extend the benefit of the revised UGC scales to Junior Lecturers/ Research Assistants/ Extension Assistants as they belonged to the teachers' category. While the claim was approved in the case of Junior Lecturers, it came to be spurned in the case of Research Assistants even though Research Assistants of Agricultural Universities in the States of Haryana (Hissar), Punjab (Ludhiana) and Himachal Pradesh were placed in the scale of Rs. 700-1600. The petitioners also relied on a letter dated 17-12-77 of the Under-secretary (Education), ICAR addressed to the Deputy Secretary to the Government of Rajasthan, Agriculture (Gr. II) Department, Jaipur, wherein it is stated that Research and Extension staff declared Teachers' under the University Statute would be eligible for the UGC revised pay scale. The petitioners further point out that the post of Research Assistant in the University was equivalent to that of Junior Lecturer, being in the

same scale of Rs. 300-600 and when by Notification dated 2-7-74, Statute 47(1) came to be amended and the expression 'Junior Lecturer' in clause (v) thereof came to be substituted by the expression 'Lecturer', persons holding equivalent posts in the same pay scale were given the same nomenclature by the Registrar's subsequent notification dated 7-9-77. This was so because, contend the petitioners, they fell within the definition of 'Teacher' in section 2(j) of the Udaipur University Act, 1962 which runs as under :

"(j) 'Teacher' means a person appointed or recognised by the University for the purpose of instruction or conducting and guiding research or extension programmes and includes a person who may be declared by the statute to be a teacher."

The petitioners, therefore, contend that a person who is appointed by the University for conducting and guiding research falls within the scope and ambit of the above definition and hence there is no room for any doubt that a Research Assistant employed for conducting and guiding research has to be regarded as belonging to the teaching faculty and would, therefore, be entitled to be placed in the UGC scale of Rs. 700-1600 with effect from 1-1-73. Despite this clear position the petitioners contend that the University acted in an arbitrary, unreasonable and unfair manner in denying to the Research Assistants their legitimate due of being placed in the revised UGC scale of Rs. 700-1600 from 1-1-73.

2. The petitioners point out that this stand of the University was questioned by one Dr. Nihal Singh in a Writ Petition No. 39 of 1979 under Art. 226 of the Constitution in the Rajasthan High Court. It was heard and disposed of on 22-4-81 by a learned single Judge of the High Court, who, on a consideration of the material placed before him, ruled that Research Assistants fell within the extended meaning of 'Lecturers' in clause (v) of Statute 47 and since that term was inclusive of 'equivalent posts in Research and Extensions', they were entitled to be placed in the scale of Rs. 700-1600, more so because they were 'teachers' as defined in section 2(j) extracted earlier. The learned Judge held that the petitioner before him should be notionally placed in that scale with effect from 2-7-74, the date from which the term 'Lecturer' was substituted for the words 'Junior Lecturer'. He was given monetary benefits from 1-9-76 from which date other Lecturers were given this benefit. The State of Rajasthan carried the matter in appeal before a Division Bench of the High Court. The Division Bench by its judgment and order dated 26-10-81 affirmed the view expressed by the learned single Judge but modified the notional date from 2-7-74 to the date of actual appointment of the petitioner. The Special Leave Petition filed against the said decision of the Division Bench was summarily dismissed by this Court on 6-9-82. Thus ended the litigation commenced by Dr. Nihal Singh. It also appears that 56 other Writ Petitions were similarly disposed of by a learned single Judge on 16-8-82 and appeals taken to the Division Bench were dismissed on the ratio of Nihal Singh's case.

3. The grievance of the petitioners is that even after this cycle of litigation in which it was finally decided that Research Assistants were entitled to be placed in the scale of Rs. 700-1600, the respondents continued to vex them by refusing to apply the ratio of that judgment to their case which had forced them to move this court for redress. In these petitions some others claiming to be similarly placed have sought impleadment by separate interim applications which we hereby allow.

4. On behalf of the University a counter has been filed contending that the decision in the case of Nihal Singh cannot operate as res judicata for the reason that this Court had dismissed the State's Special Leave Petition in limine, which does not preclude the University from contending that the view taken by the Rajasthan High Court is erroneous. It is pointed out that on 1-1-73 under Statute

47 teachers were classified as (i) Professor (ii) Reader (iii) Lecturer and (iv) Junior Lecturer. Statute 47 was amended with effect from 2-7-74 by merging Junior Lecturers into the category of Lecturers. Thereafter, with effect from 18-4-78, Statutes 47 and 49 were amended and Research Assistants, Extension Assistants, Junior Training Officers and Junior Specialists were included in the definition of ' Teachers' within the meaning of that expression in section 2(j). The pay scales of the teaching staff was thus : (i) Professor 1100-1600, (ii) Associate Professor Rs. 700-1250 (iii) Assistant Professor Rs. 400-950 and (iv) Lecturer -Rs. 300-600. It is further clarified that teachers who were designated as Lecturers on 2-7-74 were re-designed as Assistant Professors and those who were formerly Junior Lecturers were re-designed as Lecturers. After the changes brought about from 18-4-78 the pay scales were altered as : (i) Professor - Rs. 1500-2500 (ii) Associate Professor - Rs. 1200-1900 (iii) Assistant Professor - Rs. 700-1600 and (iv) Lecturer - Rs. 650-960. These pay scales were brought into effect from 1-9-76. It is, therefore, contended that Research Assistants who were equated with Lecturers under the University Statutes were entitled to be placed in the scale of Rs. 650-960 and. not Rs. 700-1600. Under the UGC recommendations only those Lecturers who were in the scale of Rs. 400-950 were placed in the scale of Rs. 700-1600 and not those who were in the old scale of Rs. 300-600 and earlier belonged to the category of Junior Lecturers. It is, therefore, submitted that this important aspect was totally overlooked by the Court in Nihal Singh's case.

5. It is further averred on behalf of the University that the essential qualification under UGC for the post of Assistant Professor (Rs. 700-1600) is a Doctor's degree whereas for Research Assistant/ Lecturer (Rs. 650-960) it is only a Bachelor's degree (second class) followed by a good second class Master's degree. Secondly the manner of recruitment is not identical. In the case of Assistant Professors, their recruitment is governed by the provisions of the Rajasthan Universities' Teachers and officers (Special Conditions of Service) Act, 1974 (Act 18 of 1974) whereas recruitment in the cadre of Research Assistants is Governed by Statute 49 through selection by a committee, subject to approval by the Vice-Chancellor. Thirdly for Assistant professors a teaching load of 21 hours is prescribed whereas no such teaching load is prescribed for Research Assistants. That is because the essential work of Research Assistants comprises compilation of data of field experiments, laboratory work to be conducted under the directions of Assistant Professors. and such other work as may be assigned by the in-charge of the laboratory. Thus there is hardly any teaching work to be done by Research Assistants. Lastly, it is pointed out that an Assistant Professor is qualified to be appointed a guide for a Ph. D. student whereas a Research Assistant is not so qualified. From these distinguishing features it is contended that Research Assistants can never be equated with Assistant Professors who are in the scale of Rs. 700-1600. Since these vital distinguishing features were not placed before the Court in Nihal Singh's case, it erroneously accepted the untenable claim of Nihal Singh which the University was compelled to implement as a court directive.

6. In the supplementary affidavit it is pointed out that after Writ Petitions Nos. 9555/ 83 and 9621-62/ 83 were admitted on 2-2-1984, Writ Petitioners of Writ Petitions Nos.485-576/84 who are Research Associates employed on a consolidated salary and not Research Assistants moved the Court on the plea that they were performing the same duties as Research Assistants and were entitled to similar treatment. It is pointed out that while the Writ Petitioners of Writ Petitions Nos.9555/83 and 9621-62/83 did not choose to file a rejoinder to the University's counter-affidavit, the Writ Petitioners of Writ Petitions Nos. 485-576 / 84 have filed a rejoinder as if Research Associates and Research Assistants were interchangeable terms. It is pointed out that Research Associates were introduced under Resolution No. 153 of 3-12-81 on a consolidated salary of Rs. 950 plus allowance of Rs. 150/- making a total of Rs. 1,100/ - on the guidelines supplied by ICAR. These projects sponsored by ICAR are of fixed duration. It is further contended that many of the Research Associates had applied for selection to the post of Assistant Professors but they were not

found suitable. Having failed to secure entry through selection they are now seeking entry through a Court order by equating themselves with Research Assistants with a view to taking advantage of the Court's order in Nihal Singh's case. They are neither 'Teachers' under Section 2(j) nor are they Research Assistants and, therefore, they cannot by any stretch of imagination be entitled to a scale of Rs.700-1600.

7. In the Rejoinder to the counter-affidavit it is contended that Research Associates are basically teachers as they impart instructions, and/ or conduct and guide research/ extension work, (a fact denied in the counter-affidavit) and hence they do the same work as is done by Research Assistants who are placed in the UGC scale of Rs. 700-1600 by virtue of the decision in Nihal's Singh's case and, therefore, under the equality clause of Art. 14 and they too are entitled to the same pay scale of Rs. 700-1600. The designation of Research Associates was brought into existence under the Executive Committee's Resolution No. 153 dated 3-12-81. They, contend that the respondent University is perhaps the only University in the country which continued with the four-tier system notwithstanding the three-tier system recommended by the UGC and in order to avoid granting the UGC pay scale a new nomenclature of Research Associates was invented to deprive the teachers of their legitimate dues. They contend that the ICAR releases funds for lecturers, since it does not recognise Research Associates, but the University utilises the funds on Research Associates by paying a consolidated salary of Rs. 1,100 per month. It is, therefore, contended that the University was not justified in denying to the Research Associates, who are doing work akin to Research Assistants, the UGC pay scale of lecturer, i.e. Rs. 700-1600.

8. We have set out the pleadings in to highlight the rival view points, more particularly because it has been the grievance of the respondents that certain vital facts were not placed before the Rajasthan High Court when it decided the case of Nihal Singh and certain other Writ Petitions against which a two-Judge Bench of this Court refused to grant leave to appeal. A similar order also came to be passed by a three-Judge Bench of this Court on 25-4-85 in a group of Writ Petitions (Bindeshwari Prasad Singh and others v. State of Rajasthan and others) allowing Research Assistant's a scale of Rs. 700-1600. This was followed by a decision of a two-Judge Bench in Writ Petition No. 132 of 1987 (Smt. Gita Bali and others v. State of Rajasthan and others) dated 29-7-87 granting the pay scale of Rs. 700-1600 to Research Assistants. It may here be mentioned that before the three-Judge Bench it was submitted that the decision of the Rajasthan High Court was likely to create difficulties since Lecturers and Research Assistants who form distinct cadres would have to be amalgamated as they were placed in the same scale of Rs. 700-1600. This Court made the position clear to avoid future complications in the following words:

".....the earlier judgment had nothing to do with amalgamation of cadres, common seniority list or a feeder source for further promotions. Research Assistants and Lecturers are separate and distinct cadres. The only thing common is the scale. However in order to obviate any future difficulty in this behalf, we direct that Research Assistants and Lecturers will form separate cadres and they need not be brought on a common seniority list only on the ground that both enjoy the same pay scale as recommended by the University Grants Commission. This would protect the University in respect of any of its apprehensions."

The rule was made absolute limited to pay scale only leaving the other prayers open to be dealt with in appropriate proceedings. It was specifically stated that 'the case of Research Associates will be taken after vacation'.

9. What emerges from the above resume is clear. Since the introduction of the three tier pay scales by the UGC, Research Assistants of the respondent University were clamouring for being equated with Lecturers in the matter of pay scale. The University was resisting their effort as it was of the opinion that they were not entitled to be placed in that category. Nihal Singh, therefore, carried the matter to Court followed by others. We have adverted to the decisions rendered in this behalf and the two speaking judgments of this Court have clearly laid down that Research Assistants are entitled to be placed in the scale of Rs. 700-1600. The three-Judge Bench of this Court did realise that equation in the matter of pay scale between Research Assistants and Lecturers was likely to lead to certain complications and, therefore, while giving the scale of Rs. 700-1600 to Research Assistants it clarified that merely because Research Assistants are placed in the same pay scale as Lecturers, they will not by that fact alone be entitled to common seniority and promotional benefits in the hierarchy since both will be separate and distinct cadres and the only thing common amongst them would be the pay scale. It is thus clear that after an elaborate hearing this Court placed Research Assistants in the pay scale of Rs.700-1600.

10. The Executive Committee of the University at its meeting held on 3-12-81 resolved that since the work in the ICAR Research Projects was suffering, Research Associates be appointed as per ICAR guidelines on a fixed salary of Rs. 1100 (salary Rs. 950 + Rs. 150 allowance) against the posts of Lecturers. The advertisement dated 6-3-84 inviting applications for Assistant Professors and Senior Research Associates shows that in the case of the former the pay stated was Rs. 700 per month + D.A. as per UGC whereas in the case of the latter the pay scale mentioned was Rs. 860-1550 plus allowances as per rules, which is indicative of the distinction between UGC scales and scales according to State or University rules. It is also clear that apart from the educational requirement the incumbent seeking appointment as Senior Research Associate must have at least experience of one year as Research Associate. From this it was submitted that the post of Senior Research Associate was above the Research Associate and the pay of both was not governed under the UGC recommendations.. Besides, it was pointed out that Research Associates were supposed to assist Assistant Professors who were in the scale of Rs. 700-1600 and hence by no stretch of imagination can they be justified in claiming the same scale. In the Revised General Guidelines for the implementation of ICAR sponsored Research Schemes, para 13 provides that Research Associates shall draw a consolidated salary ranging between Rs. 700 and Rs. 1100 per month to be decided by the authority on the basis of qualification and experience of the candidate and nature of work involved. Therefore, even according to the revised ICAR guidelines Research Associates were not to be placed in the UGC pay scale. The learned counsel for the petitioners pointed out that Research Associates fell within the meaning of 'Teachers' and since they also imparted instructions they belonged to the teaching faculty like Research Assistants and were, therefore, entitled to the same salary. The definition of 'Teacher' in Section 2(viii) of the Rajasthan Universities Teachers & Officers (Special Conditions of Service) Amendment Act, 1976 (Act 24 of 1976) cannot be of much assistance for placement in UGC scale. So far as Research Assistants are concerned, it is clear that they were in a regular pay scale, albeit of Rs. 300-600, before they came to be awarded the revised scale of Rs. 700-1600. On the other hand Research Associates employed on ICAR projects have always been on a consolidated pay of Rs. 1100 per month inclusive of allowance. Feeling apprehensive of Research Associates being awarded the higher pay of Rs. 700-1600 on the footing that they were discharging similar functions, counsel for the respondents made bold to contend, not with standing the decisions rendered in the case of Research Assistants, that the Courts had committed an error in placing them in the scale of Rs. 700-1600. Such a proposition may at first blush sound to be unusual but it is not entirely so. Even the three-Judge Bench had realised that the parity was likely to create complications and thought it wise to clarify that the equation is limited to

pay scale and nothing more. It is another matter that we do not propose to reopen the same on merits since the issue regarding the pay scale of Research Assistants has crystallised. But at the same time we do not see any justification for treating Research Associates on par with Research Assistants in the matter of grant of pay scale merely on the ground that the educational qualification for appointment is identical. As we have pointed out earlier that Research Assistants belonged to a regular cadre and were fixed in a time scale unlike Research Associates who were appointed to ICAR projects on ad hoc basis on a consolidated pay of Rs. 1100/- per month. The ICAR guidelines also clarify that their appointments will not be in the nature of regular employment but will be restricted for the duration of the project/scheme. While that may be true, we cannot lose sight of the fact that the University created the designation of Research Associate since it was contesting the action initiated by Dr. Nihal Singh claiming parity in pay scale for Research Assistants with Lecturers-Assistant Professors. The educational qualifications and method of recruitment of Research Associates is the same as for Research Assistants as is evident from Resolution No. 153. Their job-charts are identical, Like Research Assistants, Research Associates also conduct and guide research work. Their work is essentially in the fields but they also impart instructions in classes as is clear from Annexure CC to Harendra Singh Cheema's affidavit in Writ Petitions Nos. 16301-16376 of 1984. Their other conditions of service are also almost identical to those of Research Assistants. The difference is in two respects: (i) Research Assistants were on a pay scale of Rs. 300-600 whereas Research Associates were placed on a consolidated pay of Rs. 1100/- per month and (ii) while Research Assistants were in a regular cadre the same cannot be said about Research Associates whose appointments were ad hoc and on a project/scheme. Except for these two broad distinctions we find on job evaluation that the work done by Research Associates is more or less identical to the work done by Research Assistants. On the principle of equal pay for equal work, counsel for the Research Associates rightly contends, that the University cannot be permitted to exploit the market condition of large scale unemployment of educated youth and availability of surplus qualified persons by offering them a paltry consolidated pay of Rs. 1100/- per month. We think, the circumstances in which the University created the posts of Research Associates by Resolution No. 153 dated 3-1-1981 with the same educational qualifications, selection process, job-chart, etc., as in the case of Research Assistants., lends support to the submission that this was done to avoid equation claims that may arise if the contention of Dr. Nihar Singh were to be upheld by this Court also in the Special Leave Petition pending before it. We are, therefore, of the view that it was not fair on the part of the University to place them on a consolidated salary of Rs. 1100/- per month on the aforementioned two distinguishing features. At the same time we are clear that they cannot claim to be placed on a scale of pay since they were never on a time scale like their colleagues i.e. Research Assistants.

11. In view of the above discussion we think the ends of justice would be met if we order that Research Associates be allowed a consolidated salary to be worked out by placing them on a basic salary of Rs. 700 (which is the minimum of the scale of Rs. 700-1600 allowed to Research Assistants) and allowing monetary benefits thereon in the form of such allowances allowed to a regular employee drawing a basic pay of Rs. 700 per month. Their appointment will however continue to be what it is and they will not belong to the cadre of Research Assistants merely because their consolidated salary is ordered to be worked out on the minimum of the time scale allowed to Research Assistants i.e. Rs. 700-1600. Similarly they will not be equated with Lecturers/ Assistant Professors in status and salary. They will continue to carry out the same duties and functions which they are carrying out today including assisting Assistant Professors. Their demand for placement in the scale of Rs. 700-1600 is rejected. The benefit of this revised consolidated salary will be available to them from the date of their appointment as Research Associates. So far as Research

Assistants are concerned, their case will be governed, by the earlier order of this Court dated 25-4-85. We need hardly clarify that the benefit of this Court's order will be available to all Research Assistants/ Associates even if not joined as parties hereto.

12. It was contended by the learned counsel for the University that such an order will throw a heavy financial burden on the University. That may be so but that -is no ground to deny to the employees what is due to them in law. In fact the employees can make a grievance that what was due to them had been illegally withheld and hence the University should be directed to pay the difference with interest. However, we would leave it to the authorities to work out a scheme with sufficient incentives e.g. depositing the arrears (difference) in Provident Fund or the like and giving an option to the employees to avail of that benefit if they so desire. That should however be done not later than three months. We also direct the authorities to calculate the difference payable to the employees within four months from today and pay the same to the employees, under a scheme, if any, as per employees' option, or if no scheme is prepared, in cash. The amount to be paid by way of difference in salary will be spread over yearwise for income-tax purposes.

13. Having regard to the facts and circumstances of these cases we make no order as to costs. Rule is made absolute accordingly in each Writ Petition.

14. Before we part we must mention that counsel for the petitioners had urged that even though the petitioners have put in long years as Research Associates they are still treated as ad hoc employees with no security of tenure. We would leave it to the authorities to consider the feasibility of preparing a scheme where under such Research Associates can be absorbed in the regular cadre of Research Assistants as and when vacancies arise. Since the educational requirements, process of selection and job-charts are almost identical such a scheme can be of mutual benefit to the employees as well as the University, the employees getting security of tenure and University getting experienced hands. We would expect the University to examine the feasibility of preparing such a scheme at an early date. Order accordingly.

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