

**Court No. - 9****Case :-** WRIT - A No. - 64068 of 2011**Petitioner :-** Dr. Hridaya Nath Tripathi**Respondent :-** The State Of U.P. And Others**Petitioner Counsel :-** Durga Tiwari**Respondent Counsel :-** C.S.C.,B.D.Pandey**Hon'ble Rajiv Sharma,J.****Hon'ble Satyendra Singh Chauhan,J.**

Heard learned counsel for the petitioner and learned Standing Counsel as well as learned counsel for the Union of India.

The petitioner, who is a Coordinator of the Association, known as U.P. University College Professors Association and Ex-Reader in Agriculture Engineering Department at National P.G. College, Barhalganj, District Gorakhpur, has filed the instant writ petition on account of non-payment of arrears of salary to the members of Association w.e.f. 1.1.2006 to 30.11.2008 pursuant to the recommendations 6<sup>th</sup> Pay Commission.

According to the petitioner, the University Grants Commission has been established under the provisions of University Grants Commission Act, 1956, which is a Central Act. The recommendations of the University Grants Commission are binding on all the State Universities. The University Grants Commission has made a recommendation for the pay scales of Teachers throughout the Country which was accepted and implemented by the Ministry of Human Resource Department vide Circular dated 31.12.2008. The State Government, vide order dated 28.2.2009, has also accepted/adopted the pay scale of Teachers as recommended by the University Grants Commission and implemented by the Ministry of Human Resource Department with certain conditions. A plain reading of the Government Order dated 28.2.2009 makes it clear that the pay scale of Teachers, Principals and Librarians has been allowed under the said Government Order in terms of the recommendations of the University Grants Commission and the Central Government to the Teachers, Principals and Librarians of the State Universities and Colleges (Government as well as aided non-Government).

According to the petitioner, the Scheme of revision of pay-scale and other service conditions of teacher, which were made applicable for the teachers of Central Universities, was adopted by the State Government. Thereafter, the Director of Higher Education, U.P., Allahabad issued a letter dated 25.11.2010 to all the Regional Higher Education Officers for submitting the report with regard to the

payment of arrears of salary for the period of 1.1.2006 to 30.3.2010. On receipt of the said letter dated 25.11.2010, the Principal of National Post Graduate College, Barhalganj, Gorakhpur has sent a letter on 1.2.2011 to the Regional Higher Education Officer, Gorakhpur, demanding the fund for the payment of arrears from the State Government for the period 1.1.2006 to 3.10.2008 but no decision in respect thereof was made by the State Government and as such, the petitioner preferred representation, which too was not decided. In these backdrop of the aforesaid facts, the petitioner approached this Court by filing a writ petition No. 20375 of 2011. A Co-ordinate Bench of this Court, vide order dated 7.4.2011, disposed of the writ petition with a direction to the respondent No.1 to decide the representation of the petitioner with regard to the payment of arrears of salary.

As the aforesaid order dated 7.4.2011 passed by this Court was not complied in its letter and spirit and as such, the petitioner preferred a contempt petition, bearing No. 3226 of 2011, in which, notice was issued.

According to the petitioner, after issuing notice by the Contempt Court, the respondent No.1 decided the petitioner's representation in compliance of the order dated 7.4.2011, whereby the respondent No.1 rejected the petitioner's representation.

Hence the instant writ petition.

Learned Counsel for the petitioner has submitted that though the State Government had accepted the revision of pay-scale in pursuant to the Scheme dated 31.12.2008 and also issued a Government Order dated 28.2.2009 to this effect but the respondent No.1, without considering the Government Orders, rejected the petitioner's representation in a cursory manner.

Elaborating his submission, learned Counsel for the petitioner submits that the Scheme of the Central Government for the payment of revision of pay scale, which was accepted by the State Government vide order dated 28.2.2009, is reimbursive in nature and the purpose of reimbursement is that the State Government will pay first and thereafter the State Government will get the money from the Central Government. He submits that the sole ground for non-payment of the revision of pay-scale to the petitioner is that the Central Government has not provided 80% budget. He submits that

while rejecting the petitioner's representation, the respondent No.1 has not stated a whisper of word about the reimbursement. Furthermore, the State Government has already obtained the budget of Rs. 780.00 Crore for the Financial Year 2011-2012 and 800 Crore in the financial year 2010-2011 for the payment of revision of pay-scale to the teachers of the higher education and the same was also accepted by the respondent 1 in the impugned order. Thus, the impugned order is liable to be rejected.

Supporting the action of the State Government, learned Standing Counsel submits that for payment of arrears from 1.1.2006 to 30.11.2008, the State Government adopted the scheme of revised pay-scale, *inter alia*, on the assurance that 80% of the expenses to be incurred in the implementation of the scheme would be borne by the Central Government. Accordingly, the State Government has demanded 80% of the money under the Scheme from the Central Government vide letters dated 16.6.2010 and 1.8.2011 but not a single penny has been sent by the Central Government. Therefore, the revised pay-scale to the teachers of the Universities could not be paid. Furthermore, vide impugned order dated 21.8.2011, it has been explained that after receipt of assistance from the Central Government, arrears will be paid. Thus, the respondent No.1, after considering the entire aspect of the matter, has rightly rejected the petitioner's representation.

Mr. Ajai Ballabh, learned counsel for the Union of India states that after taking into consideration the views expressed by the several State Education Ministers during the Conference held in the year 2010, the Central Government decided to delink the condition of enhancement of age of superannuation from the payment of Central share of 80% arrears to the States. Accordingly, vide letter No. F-1-7/2010-U,II dated 14.8.2012 issued to all the State Education Secretaries in charge of Higher Education, the Ministry of Human Resource Development Department of Higher Education informed that the issue of age of retirement has been left to the State Government to decide at their level and the condition of enhancement of age of superannuation to 65 years as mentioned in the Ministry's letter dated 31.12.2008 may be treated as withdrawn for the purpose of seeking reimbursement of central share of arrears to be paid to the State University and College teachers. It was also clarified vide letter dated 14.8.2012 that reimbursement of 80% of

central share of the additional payment of arrears for the period 1.1.2006 to 31.3.2010 will be made by the Central Government in 2-3 installments, however, this would be by way of reimbursement only, after the State Government has made the payment. Thus, as per the provisions of the Scheme, the State Government has to pay the revision of pay-scale to the employees under the Scheme and it is only thereafter on demand made by the State Government from the Central Government, 80% of the amount would be reimbursed by the Central Government and as such, it is the duty of the State Government to pay the amount to its employees.

It is not in dispute that the said Scheme was essentially for teachers in Central Universities and the provisions of the Scheme could be made applicable by the State Government to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopted and implemented the scheme as a composite scheme and the regulations laid down by the University Grants Commission in this regard. For implementation of the said scheme, the Central Government had decided to provide financial assistance for the period 1.1.2006 to 31.3.2010 to the extent of 80% as reimbursement to those State Governments, who may opt for these revised pay-scales. Furthermore, the State Governments were to provide 20% of the arrears from its own resources. The said assistance was subject to the condition that the entire pay revision package together with all conditions laid down in this regard by the University Grants Commission by way of regulations, would be implemented as a composite scheme by the State Governments without any modification except to the date of implementation ( on or after 1.1.2006) and any higher scales of pay which the State Governments may decide after taking into consideration local conditions into consideration. However, the assistance from the Central Government would be limited to the scales of pay as approved by the Central Government under the Scheme.

It is also not in dispute that the State Government had accepted the terms and conditions of the Scheme and as such, we are of the view that once the scheme has been accepted by the State Government, it is the bounden duty of the State to act thereupon. In the instant case, on perusal of the letter dated 14.8.2012, which has been produced before us during the course of arguments by the

learned Counsel for the Union of India, it transpires that the Central Government has made it clear that reimbursement of 80% of Central share of the additionality of payment of arrears for the period from 1.1.2006 to 31.3.2010 would be made by the Central Government in 2-3 installments by way of reimbursement only after the State Government had made the payment but the State Government has not paid the entire amount of revised pay-scale to the eligible teachers on the pretext that after receiving 80% share from the Central Government, the revised pay-scale would be paid to the eligible teachers, which vitiates the dictum of the scheme so formulated for paying revised pay-scale in pursuant to the VI Pay Commission's Report. Once it is clearly mentioned in the said scheme that after paying the revised pay-scale to the eligible teachers make a request to this effect will be made by the State Government and the Central Government would there after reimburse the same.

In view of the aforesaid facts, we are of the view that the stand taken by the State Government in the impugned order is wholly erroneous and cannot be sustained. The proper course available to the State Government is first to pay the amount pursuant to the recommendations of the UGC, which admittedly has been accepted by the State Government and thereafter shall apply to the Central Government for reimbursement of the amount so incurred towards the payment of arrears of salary. For the reasons aforesaid, the impugned order dated 21.8.2011 is liable to be quashed.

Accordingly, impugned order dated 21.8.2011 is hereby quashed. The State Government is directed to release the necessary fund for payment of arrears of salary of teachers of National Post Graduate College, Barhalganj, Gorakhpur within a maximum period of one month, from the date of receipt of certified copy of this order. Before parting, we would like to observe that if any request for reimbursement of the amount is made by the State Government, then the Central Government will release the necessary funds as per the provisions of scheme as has been assured by the Counsel for the Union of India within a period of three months thereafter.

The writ petition stands allowed in above terms.

**Order Date :-** 17.1.2013  
RBS/Ajit