

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3772/2018

Reserved on: 14.12.2018
Pronounced on: 11.01.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Dr. K. K. Prasad
S/o Late Shivaprasana Prasad
Aged about 53 years,
R/o 1347-A/13, GF, Govind Puri,
Near Petrol Pump, PO Kalkaji,
New Delhi.

Group- 'A'

Presently Posted as:
(Lecturer)
Ambedkar Institute of Technology
Shakarpur,
Delhi.

... Applicant

(By Advocate : Shri Sourabh Ahuja)

Vs.

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Sachivalaya,
I.P. Estate, New Delhi – 2.
2. Principal Secretary/Secretary,
(Technical Education)
Department of Training & Technical Education,
GNCT of Delhi.
Muni Maya Ram Marg,
Pitam Pura, Delhi – 88.
3. Deputy Director (E-I)
Department of Training & Technical Education,
GNCT Of Delhi,
Muni Maya Ram Marg,
Pitam Pura, Delhi – 88.
4. Director,

Department of Training & Technical Education,
GNCT of Delhi,
Muni Maya Ram Marg,
Pitam Pura, Delhi – 88.

5. His Excellency Lt. Governor of Delhi,
GNCT of Delhi,
Raj Niwas, Sham Nath Marg,
Delhi. ... Respondents

(By Advocate: Shri H. D. Sharma)

: ORDER :

Justice L. Narasimha Reddy, Chairman:

The applicant was appointed as a Lecturer (Mathematics) in the Department of Training and Technical Education (DTTE) in the Government of National Capital Territory of Delhi (GNCT) on 16.01.1995 through UPSC. He obtained Ph.D Degree on 30.11.2011 while in service. Through an order dated 22.04.2015, he was granted benefit of three non-compounded advance increments w.e.f. 15.01.2009 in terms of Clause-13 (iv) (v) and (vi) of the Office Order dated 29.07.2010.

2. A show cause notice was issued to the applicant on 26.04.2018 stating that the benefit of three non-compounded advance increments is not available to the Lecturers in the Pay Band-4 (Rs.37400-67000), and that in view of the Regulations framed by the All India Council of Technical Education (AICTE), he was required to explain as to why the benefit extended to him earlier, be not

withdrawn. This was followed by an order dated 20.09.2018 directing withdrawal of the advance increments. Show cause notice dated 26.04.2018 and the order of withdrawal dated 20.09.2018 are challenged in this OA.

3. The applicant contends that the benefit of three non-compounded advance increments was allowed to him only on being satisfied that he is eligible for the same, and that there was no basis for withdrawal of the increments. It is also stated that the regulations framed by the AICTE vide Notification dated 05.03.2010 do not cover the case of the applicant.

4. The respondents filed a counter affidavit. It is stated that the OA was listed for admission on 04.10.2018 and after admitting the OA, this Tribunal passed an order declining the interim prayer for stay of the orders impugned in the OA, but the recovery of amount already paid towards increments to the applicant was stayed. Not satisfied with the said order, the applicant filed W.P. (C) No.11404/2018. The Hon'ble Delhi High Court through its order dated 23.10.2018 directed that the Tribunal should proceed with the matter on 12.12.2018 without granting any adjournment. In that view of the matter, the OA is taken up for disposal though there is no formal counter affidavit by the respondents.

5. We heard the arguments advanced by Shri Sourabh Ahuja, learned counsel for the applicant and Shri H. D. Sharma, learned counsel for the respondents, and perused the entire record.

6. It is not in dispute that the applicant joined the services of the respondents as Lecturer on 16.01.1995, and that while in service, he obtained Ph.D Degree. GNCT of Delhi issued an office order dated 29.07.2010 for implementation of the recommendations of the AICTE regarding pay scales and other service conditions of teachers and other eligible Staff and diploma level technical institutions under its control. It was with reference to the AICTE Regulations published on 05.03.2010 in Poly Techniques. Para 13 of the office order dealt with the incentives of Ph.D./M.Tech and other higher qualifications. Clauses (i) & (iv) thereof are relevant for this purpose. They read as under:-

“(i) Five non-compounded advance increments shall be admissible at the entry level of recruitment to persons possessing the degree of Ph.D. awarded in the relevant discipline by a university following the process of registration, course-work and external evaluation as prescribed by UGC. If Ph.D. is prescribed as an essential qualification for the post, no incentive increment shall be give. Further, incentive increments shall be given only for one Ph.D. Additional Ph.D.s would not entitle a person for additional incentive increments.”

“(iv) Teachers who complete their PH.D. degree while in service shall be entitled to three non-compounded increments if such Ph.D. is in the relevant branch/discipline and has been awarded by a university complying with the process prescribed by the UGC. If Ph.D. is prescribed as an essential qualification for the post, no incentive increment shall be given. This would not be eligible if a person has got incentive increments for Ph.D. in any other relevant discipline.”

Stated to be in terms of this, the respondents passed order dated 10.08.2010, extending the benefit of three non-component advance increments to the applicant on account of his obtaining Ph.D Degree.

7. The AICTE issued a clarification on 04.01.2016 as regards the implementation of the Scheme for granting advance increments to the candidates who acquired Ph.D Degree. The issue and the clarification were dealt with in Clause 25 as under:-

	Issue	Clarification
25	Admissibility for Non-compounded advance increments/ Non - compounded increments for higher qualifications (Degree and Diploma institutions) as a incentive for Ph. D /M. Tech and other higher qualifications.	(i)There shall be no increments on completion of PDF/Dsc. fellowship programs. (ii)There shall be no advance increments for acquiring M. Tech./ M. Phil or Ph. D degree to those who are already working as a regular faculty with lower qualification and where such higher basic qualifications are/were essential for the post. (iii)Non-compounded advance increments (Three/Two/One) on acquiring Ph.D /M.Phil /M.Tech. and other equivalent qualifications, while in service, wherever applicable in AICTE Regulations, 2010, shall be granted in PB-3 (Rs. 15600-39100) only. The advance increments for those who acquired Ph.D/M.Phil/ M. Tech. and other equivalent qualifications, while in service are not allowed in the PB-4 (Rs. 37400-67000).

		<p>(iv) Associate Professor who has completed Ph.D and other higher qualifications while in service/ or directly recruited will not be given any advance increment and their basic Pay will be fixed as per rule.</p> <p>(v) No advance increments are admissible to those who acquired M. E/M. Tech qualification prior to 01-01-2006, while in service.</p>
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8. The Office Order dated 29.07.2010 was issued on the basis of Notification dated 05.03.2010 issued by the AICTE. Once, the AICTE has given clarification as to the purport of the Scheme framed by it, the respondents have no alternative, except to fall in line. It is in this background that the show cause notice was issued. The applicant is not able to demonstrate as to how the show cause notice is illegal, or otherwise impermissible in law. It is not even his case that the authority who issued the show cause notice is not vested with the power to do it. The record does not disclose that the applicant had submitted any representation. Therefore, the withdrawal of the increments and recovery was issued through the proceedings dated 20.09.2018.

9. As regards the applicability of the Scheme, it was clearly mentioned in the Notification as under:-

- “(i) This scheme shall be applicable to teachers in Technical Institutions and other equivalent cadres of Library and for Physical Education Personnel in all the AICTE approved Institutions. The implementation of the revised scales shall be

subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the AICTE in this behalf.”

From this, it is evident that the implementation of the Scheme was subject to the regulations to be framed by the AICTE in that behalf. The clarification issued by the AICTE is in the form of Regulation. Therefore, the respondents have no option, but to follow it.

10. Learned counsel for the applicant placed reliance upon the judgment of the Hon’ble Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih & Ors.*** (2014) 8 SCC 883. We are of the view that the ratio of the said judgment does not apply to the facts of this case, having regard to the nature of employment, and the circumstances under which the increments were granted.

11. One aspect that becomes important in this regard is that the increments were sanctioned to the applicant on the basis of interpretation by the State Government in the regulations framed by the AICTE. Therefore, no illegality can be said to have crept into that. It was only on 04.01.2016 that a clarification was given by the AICTE to the effect that the benefit of increments on account of acquiring Ph.D qualification were not available to Lecturers in the pay scale of Rs.37400-67000. Extension of such benefit beyond that date can be treated as illegal. The

reason is that in the regulations it was clearly mentioned that the implementation thereof is subject to the clarification that may be ordered from time to time. The applicant did not challenge the clarification issued by the AICTE. Therefore, the impugned order insofar as it proposes to recover the amount paid up to January, 2016 needs to be set aside.

12. The OA is accordingly allowed in part, setting aside the order dated 20.09.2018 insofar as it proposes to recover the amount paid to the applicant towards three non compounding increments on acquisition of Ph.D qualification up to January, 2016. The impugned order shall, however, be effective from February, 2016 onwards. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/