



2025:DHC:1245-DB



\$~64, 65 & 67

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2339/2025, CM APPL. 11024/2025 & CM APPL. 11025/2025

GOVERNMENT OF NCT OF DELHI & ORS.Petitioners
Through: Mr. Gaurav Dhingra, Mr. Shashank Singh, Advs.

versus

INDER JIT DUARespondent
Through: Mr. Sourabh Ahuja, Adv.

+ W.P.(C) 2340/2025, CM APPL. 11026/2025 & CM APPL. 11027/2025

GOVERNMENT OF NCT OF DELHI, & ORS.Petitioners
Through: Mr. Gaurav Dhingra, Mr. Shashank Singh, Advs.

versus

SATISH BIHARI MATHURRespondent
Through:

+ W.P.(C) 2347/2025, CM APPL. 11144/2025 & CM APPL. 11145/2025

GOVT OF NCT OF DELHI & ORS.Petitioners
Through: Mr. Gaurav Dhingra, Mr. Shashank Singh, Advs.

versus

ASHOK KUMAR DUARespondent
Through:



**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL**

JUDGMENT (ORAL)

%

24.02.2025

C. HARI SHANKAR, J.

W.P.(C) 2339/2025, W.P.(C) 2340/2025 & W.P.(C) 2347/2025

1. These writ petitions emanate from a judgment dated 19 February 2024 passed by the Central Administrative Tribunal¹ in three original applications. The Tribunal has treated OA 3058/2016, filed by Satish Bihari Mathur, the respondent in WP (C) 2340/2025, as the lead case. We also, therefore, would be referring to the facts apropos Satish Bihari Mathur.

2. The reference to the “respondent” would, therefore, be a reference to Satish Bihari Mathur.

3. The respondent was appointed as Drawing Instructor with the Directorate of Training and Technical Education². Following the recommendations of a committee known as the Madan Committee, 87 posts of Junior Lecturer, Senior Drawing Instructor and Demonstrator

¹ “the Tribunal” hereinafter

² “DTTE” hereinafter



among others, in the DTTE, were abolished and an equal number of posts of Lecturers and Officers were created. Of these, 63 posts were of Lecturer in the pay scale of ₹ 2200-4000. On 12 December 1988, the respondent was upgraded as Lecturer on *ad hoc* basis.

4. The respondent was regularised in the post of Lecturer with effect from 28 May 1990 by order dated 10 April 1992. Subsequently, in compliance with the judgment of a Division Bench of this Court in *GNCTD v Usha Anand*³, the date of regularisation was antedated to 12 December 1988, i.e. from the date on which the respondent was appointed as Lecturer on *ad hoc* basis.

5. On 20 September 1989, a Circular was issued by the All India Council for Technical Education⁴, whereunder lecturers were entitled to be granted Senior Scale on the completion of eight years and Selection Grade on the completion of another eight years, subject to suitability. By a subsequent Circular dated 10 September 1993, it was clarified that lecturers who were recruited prior to 20 September 1989 were exempted from the requirement of satisfying the revised qualifications. These circulars were accepted and implemented by the petitioner-GNCTD⁵ *vide* orders dated 8 January 1997 and 25 November 1997. This has come to be known as the Career Advancement Scheme⁶.

³ 2011 SCC OnLine Del 1661

⁴ "AICTE" hereinafter

⁵ Government of National Capital Territory of Delhi

⁶ CAS



6. In accordance with these circulars, the respondent was granted Senior Scale with effect from 28 May 1998.
7. On 30 December 1999, the AICTE brought out another circular, by which Lecturers were entitled to Senior Scale on completion of six years and Selection Grade on completion of another five years from the date of regularisation. This circular was accepted by the GNCTD by a Cabinet decision dated 23 September 2003 and a subsequent order dated 12 December 2003. The circular further provided that the candidates were required to possess a Master's degree and have consistently satisfactory APARs⁷. The grant of Senior Scale or Selection Grade was subject to the recommendation of the Selection Committee.
8. On 10 September 2003, the AICTE issued several clarifications. Of these, Clarification No. 10 reads thus:

“Item No. 10: Anomaly in AICTE recommended pay scales for teachers of diploma level technical institutions (polytechnics)

Decision taken:

The committee had discussed the issue at length and it was decided that the *teachers who have been recruited prior to 1.1.1996*, should be governed by the existing Recruitment Rules (RR's). So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturer (i.e., from Lecturer to senior grade & from senior grade to selection grade) and also for those who were promoted before the implementation of revised AICTE pay scales & service conditions. (From the date of AICTE notification to the date of implementation of the same by the concerned State Govt./ Union Territory).”

⁷ Annual Performance and Appraisal Reports



9. Thus, for Lecturers, who had been recruited prior to 1 January 1996, the AICTE envisaged exemption from the requirement of fulfilling the prescribed qualifications and recommended relaxation on that basis.

10. On 30 June 2004, the respondent superannuated.

11. Seven years thereafter, the grant of Senior Scale, which had been earlier granted to the respondent with effect from 28 May 1996 was antedated to 1 January 1996 by order dated 29 November 2011. *This was admittedly by way of implementation of the 30 December 1999 AICTE circular by which Lecturers, on the completion of six years as Lecturer, were entitled to be granted Senior Scale. The respondent had completed six years as Lecturer on 12 December 1993. However, as the AICTE circular dated 30 December 1999 came into effect from 1 January 1996, the date of grant of Senior Scale to the respondent was preponed to 1 January 1996. This position has not been contested by Mr Dhingra, learned Counsel for the GNCTD.*

12. The respondent, therefore, contended that, further applying the 30 December 1999 AICTE circular to him, he would be entitled to Selection Grade on completion of a further period of five years, i.e. from 1 January 2001.

13. The respondent accordingly represented to the petitioners, for



grant of Selection Grade to him in the post of Lecturer from 1 January 2001. As this was not granted, the respondent moved the Tribunal by way of OA 922/2016. The said OA was disposed of by the Tribunal on 5 April 2016 with a direction to the petitioners to consider the respondents' claim for Lecturer (Selection Grade) in accordance with law.

14. *Vide* order dated 22 July 2016, the GNCTD rejected the respondents' claim, relying on the AICTE circular dated 20 September 1989.

15. Aggrieved thereby, the respondent re-approached the Tribunal by way of OA 3058/2016.

16. The Tribunal has, following the judgment of a Division Bench of this Court in *GNCTD v L.K. Bahl*⁸, allowed the respondents' OA.

17. The Tribunal has, for this purpose, relied on various passages from the decision in *LK Behl* which we also deem appropriate to reproduce, thus:

“6. The facts in brief are that Respondent No.1 joined the DTTE as Demonstrator in the year 1972. He was promoted to the post of Lecturer (Ad Hoc) on 12th December, 1988. The services of Respondent No.1 were regularised by the Union Public Service Commission (Respondent No.2) by an order dated 28th May, 1990.

7. On 8th January, 1997 an order was issued by the DTTE on the topic of implementation of CAS for teachers in Government

⁸ 2019 SCC OnLine Del 11226



Polytechnics. Para (III) is relevant in this context and reads thus:

“III All the existing staff who are eligible for grant of revised scales/benefits of Career Advancement are exempted from application of revised qualifications vide AICTE circular dated 20.09.1989 and such qualifications shall be applicable to new entrants joining after 20.09.1989.”

8. In this context, it is required to be noted that the guidelines of the All India Council for Technical Education (‘AICTE’) for CAS for Lecturers in Polytechnics, issued on 20th September, 1989 provided for senior scale of Rs.3000-5000 for a Lecturer after the completion of 8 years of regular service in the grade of Lecturer (Rs.700-1300, before 1st January, 1986, and Rs.2200-4000 after 4th Central Pay Commission [‘CPC’]). It provided for selection grade of Rs.3700-5700 on completion of 8 years service in the senior scale. Selection grade was to be given through a process of selection by selection committee, set up by the appointing authority. Even under the circular dated 20th September, 1989 revised qualifications i.e. a Master’s degree, and experience were prescribed for the posts of Lecturer, Senior Lecturer, Lecturer (Selection Grade) and Principal. It is in this context that the above order dated 8th January, 1997 exempting “existing staff” from application of the revised qualifications so prescribed, becomes significant. This is also reflected in a further clarificatory circular of 10th September, 1993, where in para (v) of the note below subclause (2) of clause II it was provided thus:

“(v) The revised scales of pay circulated by the AICTE vide circular dated 20.09.89 are applicable with effect from 1.1.86 to all the existing teaching staff such as Principal, Heads of Department, Senior Lecturers and Lecturers who were appointed by the Competent authority. All the existing staff who are eligible for grant of revised scales/benefits of Career Advancement, are exempted from the application of revised qualifications of AICTE circular dated 20.09.98 and such qualifications shall be applicable to new entrants recruited after 20.09.1989.”

9. It is admitted by the DTTE that its order dated 8th January, 1997 was in fact based on the aforementioned circular dated 10th September, 1993 of the AICTE.

10. Following the recommendations of the 5th CPC, the AICTE brought out fresh guidelines in 1999 which were circulated



on 30th December, 1999. The following were the terms of clause 8.3 of these guidelines:

“A Senior Lecturer/Lecturer (Senior Scale) who has a Master's degree and 5 years experience as senior Lecturer of Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.”

11. The AICTE on 10th September, 2003 issued ‘clarification’ on certain issues pertaining to pay scales and service condition for teachers of degree/ diploma level technical institutions. It was clarified that the teachers who have been recruited prior to 1st January, 1996 should be governed by the existing RRs. In other words, it was decided to relax the requirement of a Master’s degree qualification in case of teachers recruited prior to 1st January, 1996 for the purposes of considering them for the CAS.

12. Respondent No.1 retired on 13th November, 2009. The admitted position is that he did not have a Master’s degree qualification. However, it is the case of Respondent No.1 that in terms of the above clarifications issued by the AICTE, since he was appointed as Lecturer on 12th December, 1988 and was also regularised from that date, he was not required to possess a Master’s degree qualification for being eligible to be granted the Senior Selection Grade.

13. It is also the case of Respondent No.1 that many of those appointed along with him as Lecturer (Ad Hoc) by the same order dated 12th December, 1988, and who did not have a Master’s degree, were nevertheless granted selection grade.

14. In the counter-affidavit filed on behalf of Respondent No.1 it is stated that in terms of information obtained by him under the Right to Information Act, 2005 (“RTI Act”) from the DTTE, it was plain that it had granted selection grade to 6 persons with effect from 12th December, 1988 without insisting on the revised qualification in terms of the AICTE guidelines. A copy of the letter dated 20th July, 2017 sent to him by the DTTE pursuant to his application under the RTI Act has been enclosed as Annexure “A” to his counter-affidavit.

15. On 10th July, 2015 another order issued by the DTTE (Annexure ‘A3’) showed that the DTTE had granted selection grade with effect from 12th December, 2004 (i.e. on completion of



16 years of service after regular appointment) to 6 employees; it implemented the decision of the CAT in *Ashok Kumar Chopra v GNCTD*⁹ and *R.K. Bhagi v GNCTD*¹⁰. In both cases the DTTE did not insist on the persons having to possess a Master's degree.

16. Respondent No.1 has also referred to the cases of Mr. Ashok Kr. Chopra, Mr. D.N.K. Gauri and Mr. Virendra Anand, whose pay was fixed as on 1st January, 2006 at Rs. 27010 + Rs. 8000 equal to Rs. 35010.

17. Mr. Shiva Sambyal, learned counsel for Respondent No.1, points out that an order was issued by the GNCTD on 17th May, 2017, by way of implementation of the impugned order of the CAT whereby his services were regularized with effect from 12th December, 1988 instead of 28th May, 1990. The senior scale granted to him was advanced from 28th May, 1998 to 12th December, 1996 on completion of 8 years of service. He accordingly submits that once his services as Lecturer have been regularised on 12th December, 1988 and senior scale has also been granted on completion of 8 years with effect from 12th December, 1996, there is no reason to deny him the selection grade on completion of 16 years with effect from 12th December, 2004.

18. Mr. Sambyal also points out that DTTE did not disclose to this Court that it had granted selection grade to other employees who had not even approached to CAT like Mr. V. K. Sarin and Mr. Heera Singh. He states that on 13th July, 2016 the DTTE granted selection grade to 21 more teachers copies of which have been obtained by Respondent No.1 under the RTI. In particular, he refers to the following paragraph in the minutes dated 4th November, 2015 as under:

“It has been decided that the teachers who have been recruited prior to 01.01.1996 should be governed by the existing RRs. So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturers i.e. from Lecturer to Senior Grade and from Senior grade to Selection grade ...”

19. Mr. Sambyal points out how the DTTE divided the lecturers, who were to be considered for grant of selection grade into the categories, one of which of those lecturers appointed prior to 1st January, 1996. In this context, the minutes recorded, as under:

⁹ OA No.3696 of 2012

¹⁰ 2013 SCC OnLine CAT 1560



“further AICTE vide letter dated 10.09.2003 clarified that the teachers who have been recruited prior to 01.01.1996 should be governed by the existing RRs. So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturers i.e. from Lecturer to Senior Grade and from Senior grade to Selection grade and also for those who were promoted before the implementation of revised AICTE pay scales and service conditions.”

20. Thus, DTTE applied the same clarification of the AICTE and granted selection grade to diploma holders like Savita Sharma, Virender Kumar, Heera Singh and V. K. Sarin, none of whom possessed a Master's degree and this fact was noted by the committee in a separate column.

21. Respondent No.1 has placed on record a copy of the decision dated 30th April, 2010 of the CAT in OA Nos.1586 of 2009, 1587 of 2009 and 1669 of 2009. One of the issues is discussed in the said judgment was whether Lecturers in Polytechnics under GNCTD, who were appointed on or before 19th September, 1989, would be eligible for being granted selection grade without having a revised academic qualification prescribed by the AICTE's circular dated 28th September, 1989. The CAT concluded, after referring to the above circulars, that the Applicant before it would be eligible for grant of selection grade after 8 years of regular service in the senior scale or after the completion of 16 years of service. The said order of the CAT was challenged in this Court in W.P.(C) No.21435-436/2005, in which the GNCTD stated on affidavit that it had decided to implement the orders of the CAT within three months.

22. Mr. Sambyal submits that 20 other employees were given the same benefit, even when they had not approached the CAT. It is pointed out that in all of the other cases, including OA Nos. 1501/2004 (Usha Anand v. GNCTD) and OA No. 2291/2012, the GNCTD never raised the issue of the revised qualifications, as relevant for the grant of selection grade to those appointed prior to 1st January, 1996.

23. In response to the above submissions, it is submitted by Ms. Vibha Mahajan Seth, learned counsel for the Petitioners, that the judgment of the High Court of Assam in *Sri Bhabesh Goswami v*



*State of Assam*¹¹ clearly holds that the clarification dated 10th September, 2003 of the AICTE would not obviate the necessity of a Lecturer (Senior Scale) possessing a Master's Degree for being granted the selection grade.

24. The Court has perused the said judgment of the learned Single Judge of the Guwahati High Court in Sri Bhabesh Goswami (supra) carefully. It first comes to the conclusion, and perhaps incorrectly, that Clause 5 of the AICTE Guidelines would not come to the aid of those seeking selection grade. It also notes that under clause 8.3 the requirement for movement under the CAS is a Master's degree. Para 21 of the said judgment reads as under:

“21. Clause 8.3 of the notification dated 30.12.1999, amongst others, requires a Master's Degree in respect of Senior Lecturer/Lecturer (Senior Scale) for movement under CAS. It is to be noted that First Class Bachelor's Degree is an educational qualification prescribed for Lecturer under notification dated 30.12.1999, but such a Lecturer does not become entitled to be moved as Lecturer (Selection Grade) under CAS in terms of Clause 8.3 unless he/she has a Master's Degree apart from other requirements. Therefore, for placement at Lecturer (Selection Grade) under CAS, the entry level qualification as per existing recruitment rules prior to 01.01.1996 will not suffice. The arguments advanced by Mr. Choudhury that for movement to Lecturer (Selection Grade) for Lecturers recruited prior to 01.01.1996, the only requirement is length of service as Lecturer (Senior Scale), does not commend for acceptance, because the AICTE notification dated 30.12.1999 read with the notification dated 10.09.2003, on which the petitioners rely on, only gives relaxation in entry level qualification for the purpose of consideration under CAS. Therefore, unless a Lecturer (Senior Scale) has a Master's Degree, he/she will not be eligible for consideration under CAS. It is noticed that some of the petitioners in WP(C) 578/2013 had obtained Master's Degree after they were appointed as Lecturer.”

25. The Court notes that the said judgment of the Guwahati High Court misconstrues the actual decision of the AICTE to the extent of holding that the notification provided for “relaxation in entry level qualification for the purposes of consideration under CAS. It actually applies to all teachers recruited prior to 1st

¹¹ (2017) 6 Gau LR 558



January, 1996 as well as to those ‘who were promoted before the implementation of the revised AICTE pay scales and service condition.’ In other words, it does not mean that a Lecturer (Senior Scale) cannot be granted the selection grade unless he has a Master’s degree. There is no occasion for such a narrow construction to be placed on the circular. This becomes particularly clear when viewed in the context of the earlier relaxation in terms of exempting the applicability of the 1989 guidelines, in respect of which clarification was issued on 10th September, 1993 to the effect of exempting the existing incumbents of having to possess the revised qualification. Consequently, this Court is not persuaded that the judgment of the learned Single Judge of the Guwahati High Court in *Bhabesh Goswami (supra)* lays down the correct position in law.

26. On the other hand, learned counsel for the Respondent has placed reliance on the judgment of this Court in *Govt. of NCT of Delhi v Suresh Chand Vashist*¹², where in the context of the requirement of educational qualifications for Librarians and Physical Education Personnel, the same AICTE guidelines for CAS were applied along with the clarifications issued by the AICTE and it was held that those already appointed prior to 1st January, 1996 would not have to acquire the revised qualifications to be eligible for the CAS.

27. To the same effect is the decision dated 20th October, 2015 of the learned Single Judge of the Rajasthan High Court in *Arti Bhargava v State of Rajasthan*¹³, which was upheld by the Division Bench of that Court by a judgment in *State of Rajasthan v Arti Bhargava*¹⁴. This 2019 judgment in fact goes a step further in holding that the revised guidelines could not have the retrospective effect of taking away any rights of the employees who became members of the service in terms of the existing rules. Indeed, the Court is of the view that the decision of this Court in *Suresh Chand Vashist (supra)* and that of the Rajasthan High Court in *Arti Bhargava (supra)* support the case of Respondent No.1.

28. Further, with the Petitioners having granted the selection grade to many of the batchmates of Respondent No.1 who were promoted along with him on 12th December 1988, and even to those junior to him without insisting on the post-graduate degree qualification there appears to be no good reason to subject him to

¹² 2010 SCC OnLine Del 2626.

¹³ Judgment Dated 20 October 2015 in S.B. Civil W.P. No.897 of 2013

¹⁴ Judgment Dated 28 February 2018 in D.B. Special Appeal Writ No.221 of 2016



discrimination on that score.

29. The upshot of the above discussion is that the impugned order of the CAT dated 3rd March, 2016, insofar as it requires the Petitioners to grant Respondent No.1 the benefits granted to all others in terms of the CAT's order in OA No.1501 of 2004 'with all consequential benefits' does not call for any interference.

30. In particular, it is directed that there would be no occasion to deny Respondent No.1 the benefit of the CAS. The order granting him the selection grade will no longer, therefore, be kept in abeyance. Any further consequential benefits that are owed to Respondent No.1 will also not be denied to him, thus obviating the need for him having to litigate for those benefits."

18. Accordingly, the Tribunal has held and directed as under:

"8.1 Having gone through the aforesaid order of the Hon'ble High Court in *L.K. Bahl* (supra), we are of the considered opinion that since the respondents have granted the benefit of Selection Grade to many of the similarly situated employees, who were promoted along with the applicant without insisting on the post-graduate degree qualification, there appears to be no good reason to deny the same benefit to the applicant.

8.2 In totality of the facts and circumstances brought out above, we quash the impugned order dated 22.07.2016 (Annexure A-1). Since the applicant had been granted Lecturer (Senior Scale) w.e.f. 01.01.1996 vide order dated 29.11.2011, we hold that he is entitled to the benefit of Selection Grade w.e.f. 01.01.2004, after reckoning eight years' of regular service in Senior Scale granted w.e.f. 01.01.1996.

8.3 Since the applicant unfortunately expired during the pendency of this OA and his legal heirs have been brought on record in terms of Tribunal's order dated 18.10.2023 passed in MA No. 3237/2023, we hereby direct the respondents to re-fix the pay and revise his pension/family pension, after granting him Selection Grade w.e.f. 01.01.2004 and pay arrears thereof to his legal heirs, within a period of eight weeks from the date of receipt of a certified copy of this order.

9. We dispose of OA No.3058/2016 in terms of the above directions. The other two clubbed matters, i.e., OA No.3059/2016 and OA No.3071/2016 also stand disposed of in the same terms."



19. Aggrieved by the aforesaid decision, the respondents before the Tribunal have approached this Court by means of the present writ petition.

20. We have heard Mr. Dhingra, learned Counsel for the petitioner and Mr. Ahuja, learned Counsel for the respondent in WP(C) 2339/2025. The respondents in remaining other two writ petitions are not represented.

21. Mr. Dhingra submits that the decision in *L.K. Bahl* was distinguishable as the said case dealt with direct recruits who had been recruited on regular basis. He submits that, as against this, the respondents had only been upgraded consequent to the decision or the recommendations of the Madan Committee. He submits that there is a distinction between upgradation and regularisation. He places reliance on the judgment of the Supreme Court in *Rajasthan Agricultural University v Dr. Zabar Singh Solanki*¹⁵.

22. On the attention of Mr. Dhingra being drawn to the fact that the respondent had in fact been regularised as Lecturer (ME) with effect from 12 December 1988, Mr. Dhingra submits that that was an error as he belonged to a different cadre and was appointed as Lecturer on upgradation in terms of the Madan Committee recommendation and he cannot claim parity with regard to direct recruit Lecturers. The

¹⁵ 2024 SCC OnLine SC 1885



Court queried of Mr. Dhingra, as to how, in case the respondent was not entitled to the benefit of the GNCTD Circular dated 30 December 1999, the petitioner itself antedated the grant of Lecturer (Senior Scale) to the respondent with effect from 1 January 1996, *vide* order dated 29 November 2011, on the basis of that very Circular. He had no satisfactory response thereto but submits that that may also have been by way of an error.

23. However, Mr. Dhingra has drawn our attention to Clause 1.1.3 in Appendix-1 to the Clarification dated 10 September 2003 issued by the AICTE, of which Mr. Ahuja had relied on Item No. 10.

24. The said clause reads thus:

“1.1.3 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.”

25. A bare reading of Clause 1.1.3 shows that it does not state anywhere that the benefit of the CAS would be available to only direct recruits. All that it says is that the Selection Committee for CAS would be the same as those for direct recruits. By no stretch of imagination can this be treated as any kind of affirmation of the position that the CAS would be available only to direct recruit Lecturers.

26. We may also note that, even in the clarification with respect to Item No. 10, the expression used is “teachers who have been *recruited* prior to 1 January 1996”. The concept of recruitment includes



recruitment by all modes, of which direct recruitment is but one.

27. We are not, therefore, able to subscribe to Mr. Dhingra's submission that the benefit of the CAS was available only to direct recruit Lecturers.

28. The respondent was initially regularised as Lecturer (ME) with effect from 28 May 1990. The decision to antedate the regularisation of the respondent to 12 December 1988 was in compliance with the judgment passed by a Division Bench of this Court in *Usha Anand* which directed that the Lecturers should be granted regularisation from the date when they were initially appointed on *ad hoc* basis. It cannot, therefore, be sought to be contended that the grant of regularisation to the respondent as Lecturer with effect from 12 December 1988 was an error. In any event, apart from the fact that it is too late in the day for the petitioner to so urge, we also find that, even before the Tribunal, it was never the case of the petitioner that the grant of regularisation to the respondent as Lecturer with effect from 12 December 1988 was an error.

29. Once the respondent was granted regularisation from 12 December 1988, there is no way in which he could be denied the benefit of the AICTE Circular dated 30 December 1999. The mandate of the Circular is clear and categorical. Lecturers were entitled to Senior Scale on the completion of six years as Lecturer and Selection Grade on the completion of a further period of five years as Lecturer (Senior Scale). In fact, in compliance with this Circular, the date of



grant of Senior Scale to the respondent which was initially granted with effect from 28 May 1998 on 13 August 1999 was subsequently preponed to 1 January 1996. This was admittedly by way of extension, to the respondent, of the benefit of the AICTE Circular dated 30 December 1999 insofar as the grant of Senior Scale in the post of Lecturer was concerned.

30. Having thus accepted the applicability of the AICTE Circular dated 30 December 1999, so far as the entitlement of the respondent to Senior Scale in the post of Lecturer was concerned, we see no justification for the petitioner seeking to deny to the respondent the grant of Selection Grade in the post of Lecturer which naturally accrues to the respondent on completion of five years as Lecturer (Senior Scale).

31. Further, we have also gone through the decision of the Division Bench of this Court in *L.K. Bahl*. The judgment applies on all force to the facts of this case.

32. The passages from *L.K. Bahl* which have been extracted *supra* clearly clinch the issue in favour of the respondent.

33. Insofar as the judgment of the Supreme Court in *Dr. Zabar Singh Solanki* is concerned, that dealt with a case of redesignation. Besides, the very paragraph to which our attention was invited by Mr. Dhingra, specifically notes that there is a distinction between re-designation and regular appointment.



34. There are two reasons why this decision would not apply to the present case.

35. In the first place, the appointment of the respondent as Lecturer consequent to the recommendations of the Madan Committee was not by way of redesignation but by way of upgradation. There is a distinction between redesignation and upgradation, well understood in service law.

36. Secondly, in any case, the respondent was regularised with effect from 12 December 1998 by the petitioner itself, *vide* order dated 2 April 2012. The respondent is not seeking any benefit except that which would accrue to him consequent to his regularisation as Lecturer with effect from 12 December 1998.

37. We may note that the decision in *L.K. Bahl* travelled to the Supreme Court and the SLP against the said decision was also dismissed, albeit keeping the question of law open. We have, in our recent decision in *SSC v Darpan Sharma*¹⁶ examined the implication of dismissal of an appeal by keeping the question of law open. Paras 16 to 19 of the said decision may be reproduced thus:

“16. We are conscious of the fact that, in its final order dated 30 July 2019, the Supreme Court left the question of law, arising before it, open. That, however, according to us, only means that the

¹⁶ 2024 SCC OnLine Del 8280



Supreme Court did not pronounce on the question of law that arose before it. The implication of the Supreme Court leaving the question of law open was only, therefore, that the Supreme Court has not pronounced on the question of law which arose in the SLP, one way or the other. That, however, does not, in any way, lessen the precedential value of the judgment of the High Court. When, in the case of a candidate situated identically to the respondent in the present case, relief was granted by the High Court, and the grant of the said relief was performed by the Supreme Court, there can be no two views on the fact that the respondent would be entitled to the same relief. Else, it would result in a situation in which two persons, identically situated, had been accorded differential treatment by Courts, which is obviously unthinkable in law.

17. On the implication of a question of law being left open by the Supreme Court, while dismissing an appeal or a Special Leave Petition, a Division Bench of the High Court of Gujarat in *Collector v Liquidator Petrofills Cooperative. Ltd.*¹⁷, ruled thus:

“27. When the Supreme Court records that the question of law is kept open, *undoubtedly it is meant to be reconsidered in future by the Supreme Court only. The question of law, as correctly contended by Shri P. Chidambaram, is not kept open for the High Court.* This is precisely what was held and observed by the Division Bench of this Court in an unreported decision in Tax Appeal No. 380/2013 dated 9/12/2013. We are in full agreement with the view expressed therein. It was a case where an issue of unabsorbed depreciation under section 32(2) of the Income Tax Act, 1961, was raised by the Revenue before the High Court. An identical issue was already decided by the High Court in case of *General Motors India (P) Ltd. v Deputy Commissioner of Income Tax*¹⁸ by allowing the appeal of the assessee and setting aside the order of the Commissioner. The judgment of the High Court was carried in appeal before the Supreme Court. The Supreme Court dismissed the SLP making it clear that the question of law is kept open. When a similar question came up before the High Court in the Tax Appeal, the Revenue argued that when the Supreme Court has left the question of law open, it would be open for the High Court to reconsider the issue regardless of the judgment of another Division Bench in case of *General Motors Pvt. Ltd. v Deputy Commissioner of Income*

¹⁷ MANU/GJ/1291/2015

¹⁸ (2013) 354 ITR 244(Guj)



*Tax*¹⁹. It was in this background, Division Bench made the following observations:

“10. Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of *General Motors India (P) Ltd. v Deputy Commissioner of Income Tax (supra)*, as such, Special Leave to Appeal was preferred before the Honble Supreme Court and the same came to be dismissed by the Honble Supreme Court on the ground of delay and kept the question of law open, this Court may consider the question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of *General Motors India (P) Ltd. v Deputy Commissioner of Income Tax (supra)*. Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Honble Supreme Court kept the question of law open. Therefore, it cannot be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently by this Court Coordinate Bench. It can be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently in other cases by the Honble Supreme Court. So far as this Court is concerned, the decision of the Division Bench of this Court in the case of *General Motors India (P) Ltd. v Deputy Commissioner of Income Tax (supra)* is binding unless a contrary view is taken and the matter is referred to the Larger Bench. In view of the decision of the Division Bench of this Court in the case of *General Motors India (P) Ltd. v Deputy Commissioner of Income Tax (supra)* which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now.”

¹⁹ MANU/GJ/0909/2012



28. We are in full agreement with the view so expressed and in our understanding brings about a correct legal position. *When a question of law is kept open by the Supreme Court not entertaining a SLP against the judgment of the High Court, in fact, what is done is neither to confirm nor to dilute the ratio of the judgment under challenge. That however, does not mean that the High Court in a future case is allowed to take a fresh view ignoring the law of precedence. It only means that the Supreme Court refused to bind itself or put its seal on the ratio propounded by the High Court in the judgment under challenge. Therefore, when an identical question comes up before the same High Court and is presented for consideration before a Bench of coordinate strength, by virtue of principles of law of precedence, the Bench would be bound by the ratio of the earlier judgment of the High Court, unless persuaded to refer it to a larger Bench.* This is precisely what has been recorded by the Division Bench in the said case and this is why the Bench was of the opinion that it had either to follow the ratio in case of General Motors or make a reference to the larger Bench. This per-se however, would not mean that the review consideration is shut out, if the review is otherwise maintainable. Normally, in almost all the cases, the same Bench would be reconsidering the matter on the grounds raised in the review petition. If in the process, it is found that the proposition of law laid down suffers from some error apparent on face of the record, review certainly would be available. In other words, if a decision has become final, it would continue to bind the Bench of coordinate strength of the same High Court in future though in SLP the Supreme Court it might have been observed that the question of law is kept open. But when a review petition comes before the same Bench, it is the judgment in review which is being criticised. It would have the same limitations as in any other case of review where SLP may not have been filed. Nothing more nothing less. In other words, the expression “question of law is kept open” does not put any additional fetters on the High Court exercising review powers.

18. We find ourselves in respectful agreement with the above views expressed by the Division Bench of the High Court of Gujarat.



2025:DHC:1245-DB



19. Inasmuch as the Supreme Court has upheld the grant of relief to the petitioner before the Andhra Pradesh High Court and there is no substantial difference between the error committed by the Petitioner before the Andhra Pradesh High Court and the present respondent, in our view, keeping in mind the order passed by the Supreme Court, the petitioner would be entitled to similar relief. We, therefore, find no reason to interfere with the impugned judgment of the Tribunal, which so holds.”

38. Thus, the issue in question has attained finality up to the Supreme Court.

39. We, therefore, find no error in the decision of the Tribunal to allow the OA filed by the respondent.

40. The judgment of the Tribunal is, therefore, upheld in its entirety.

41. Compliance therewith be ensured with a period of six weeks from today.

42. These writ petitions stand dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 24, 2025

ar

[Click here to check corrigendum, if any](#)