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

Date of Decision: 04th August, 2026

\# **CNR No. DLHC010292062004**

\+ W.P.(C) 7987/2004, CM APPL. 35754/2018

B.C. PANT & ORS. ……Petitioners

Through: Mr. L.K. Singh, Advocate.

versus

UOI & ANR. ….Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Dashmesh Tripathi, Advocate for UOI.

\# **CNR No. DLHC012269112018**

\+ W.P.(C) 8922/2018, CM APPL. 34316/2018

RAKESH BATRA & ORS. …… Petitioners

Through: Mr. L.K. Singh, Advocate.

Versus

UNION OF INDIA & ORS. ….Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Dashmesh Tripathi and Mr. Praveen Gupta, Advocates for UOI.

\# **CNR No. DLHC010224322021**

\+ W.P.(C) 7195/2021, CM APPL. 22690/2021

VINODI KUMARI …..Petitioner

Through: Mr. L.K. Singh, Advocate.

versus

UNION OF INDIA & ORS. ....Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC with Mr. Dashmesh Tripathi and Mr. Praveen Gupta, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

The Dispute

1. These petitions arise from a dispute concerning the pay structure of Assistants, Stenographers and certain employees in the promotional hierarchy of the Sangeet Natak Akademi ["*the Akademi*"] and its constituent units. The controversy traces its origin to the decision of the Government of India to revise the pay scale of Assistants in the Central Secretariat Service and Grade 'C' Stenographers in the Central Secretariat Stenographers Service from INR 1,400-2,600 to INR 1,640-2,900 with effect from 1st January, 1986. The dispute has remained alive for more than three decades and, in the present round, has been pending before this Court since 2004.

2. W.P.(C) 7987/2004 concerns the foundational claim that the Rules, Regulations and Service Bye-laws of the Akademi themselves entitle its Assistants and Stenographers to the pay scale granted to the corresponding categories in the Central Government, independent of the doctrine of '*equal pay for equal work*'.

3. W.P.(C) 8922/2018 and W.P.(C) 7195/2021 arise from orders issued in 2018 withdrawing grade pays granted after implementation of the 6th Central Pay Commission ["*CPC*"], directing retrospective refixation of pay and proposing recovery. W.P.(C) 8922/2018 is by a group of employees of

the Akademi and its constituent units, namely, Rabindra Rangshala and Kathak Kendra. W.P.(C) 7195/2021 is by Vinodi Kumari, whose challenge extends to the pay attached to the post of Section Officer, the non-functional grade pay and regularisation of her promotion as Deputy Secretary.

Constitution of the Akademi and its Governing Instruments

4. The Akademi was constituted by a Resolution of the Ministry of Education dated 31st May, 1952 and was subsequently registered as a society under the Societies Registration Act, 1860. Its Memorandum of Association ["*MoA*"] authorises the creation of administrative, technical and ministerial posts and the framing of Rules, Regulations and Bye-laws. Clause 3(xxvi) of the MoA permits additions, amendments, variation or rescission of those instruments from time to time with the approval of the Central Government.

5. Under Rule 13, the "*general superintendence, direction and control of the affairs of the Akademi*" vest in its Executive Board. Rule 15(vii), subject to approval of the General Council, empowers the Board to incur expenditure on the establishment, create posts considered necessary and prescribe the terms and conditions of appointment. The proviso to that sub-clause requires Government approval for creation and filling of posts whose maximum pay exceeds INR 2,000 per month. Rule 15(xiii), separately, empowers the Executive Board to prescribe the terms and conditions of service in respect of all posts under the control of the Akademi.

6. The Service Bye-laws were approved by the Government of India, Department of Culture, on 28th February, 1995 and by the General Council of the Akademi on 26th April, 1995. Chapter V deals specifically with "*Pay and Allowances*". Bye-law 19 provides that the scales of pay for posts under the Akademi shall be as specified in Schedule 'A', as amended from time to

time. Bye-laws 20, 21, 22 and 23 deal respectively with initial pay and increments, special and personal pay, drawal of pay and allowances. Bye-law 57 governs residuary conditions of service.

Pay-Scale History

7. Before implementation of the 4th CPC, Assistants and Stenographers in the Akademi were drawing the scale of INR 425-800. Upon implementation of the 4th CPC, they were placed in the replacement scale of INR 1,400-2,600.

8. By Office Memorandum dated 31st July, 1990, the Government of India revised the scale of Assistants in the Central Secretariat Service and Grade 'C' Stenographers in the Central Secretariat Stenographers Service from INR 1,400-2,600 to INR 1,640-2,900 with effect from 1st January, 1986. The Office Memorandum also extended the scale to certain non-participating organisations where the posts were in comparable grades, carried the same classification and pay scale and were filled through a similar method of recruitment by open competitive examination.

9. The employees of the Akademi sought the same revision. In April 1992, the Akademi informed them that the Department of Culture had declined the request, relying upon a Ministry of Finance Office Memorandum dated 11th December, 1990 which stated that the instructions dated 31st July, 1990 were not applicable to autonomous bodies. However, the matter did not end there; on 2nd December, 1994, the Finance Committee reconsidered the claim and recommended the higher scale. The Executive Board also supported that recommendation on 7th December, 1994.

10. After approval of the Service Bye-laws in 1995, the matter was again considered by the Finance Committee and the Executive Board. At the

meeting of 27th July, 1995, the representative of the Department of Culture informed the Board that the issue of parity was under examination. The Akademi thereafter addressed detailed communications dated 19th April, 1996 and 15th July, 1996 to the Department of Culture. It relied upon the method of recruitment, the duties performed, the earlier identity of scales, and the position of Assistants and Stenographers as the feeder cadre for the post of Superintendent, later redesignated as Section Officer. No favourable decision followed.

The First Round of Litigation

11. The affected Assistants and Stenographers instituted C.W. No. 3790/1995. By judgment dated 16th October, 1998, a Single Bench of this Court allowed the petition and directed grant of the scale of INR 1,640-2,900 with effect from 1st January, 1986.

12. On 10th December, 1998, the Executive Board considered the judgment. It approved revision of the scale in respect of the successful Petitioners and, separately, extended the revised scale to all other serving Assistants and Stenographers of the Akademi and its constituent units.

13. The Union of India preferred LPA No. 93/1999. By judgment dated 31st May, 2002, the Division Bench allowed the appeal and rejected the claim to the higher scale insofar as it rested on the principle of '*equal pay for equal work*'. The judgment of the Single Bench was set aside.

14. The Petitioners approached the Supreme Court. The first Special Leave Petition was withdrawn with liberty to seek review before the Division Bench. The review petition was dismissed on 18th December, 2003. The Petitioners thereafter filed SLP (C) No. 7916/2004.

15. By order dated 30th April, 2004, the Supreme Court declined to

interfere with the rejection of the claim founded upon '*equal pay for equal work*'. It, however, noticed a distinct claim which had not been "*independently and objectively considered*", namely, whether the Rules, Regulations and Service Bye-laws of the Akademi themselves provided for payment of the scale of pay and allowances applicable to similar personnel under the Government of India.

16. The Supreme Court observed that if the Bye-laws constituting the conditions of service provided for a particular scale of pay and allowances, the right to claim the same could arise *de hors* the general principle of parity. It required the competent court to examine the language and object of the relevant provisions and, in particular, to determine whether the scale contemplated was that of the Central Secretariat Service or some other category of Central Government employees. Liberty was granted to work out the rights, if any, flowing from the Bye-laws, and the issue was directed to be considered afresh, uninfluenced by the observations in the judgment under challenge before it.

17. Even before the Supreme Court passed the order dated 30th April, 2004, the Department of Culture had, by communication dated 26th March, 2004, directed the Akademi to restore the scale of INR 1,400-2,600 with effect from 1st January, 1986, substitute the corresponding scale of INR 5,000-8,000 with effect from 1st January, 1996 and recover the alleged excess payment. The communication proceeded on the effect attributed to the dismissal of the review petition. The Akademi issued the consequential Office Order dated 30th April, 2004.

18. W.P.(C) 7987/2004 was thereafter instituted pursuant to the liberty granted by the Supreme Court. The Petitioners challenge the communication

dated 26th March, 2004 and the Office Order dated 30th April, 2004, and seek adjudication of the claim on the footing of the Akademi's own governing instruments.

Interim Proceedings in W.P.(C) 7987/2004

19. On 18th May, 2004, this Court issued notice and stayed operation of the communication dated 26th March, 2004 and the Office Order dated 30th April, 2004. The order noticed at some length the provisions of the Service Bye-laws under which Central Government rules had been adopted for different incidents of service. On 17th January, 2008, after hearing the Respondents, the Court confirmed the interim protection. It recorded a *prima facie* view that the Bye-laws appeared to contemplate parity in service conditions and placement in the pay structure, independent of '*equal pay for equal work*'. The Court also took account of the prejudice which retrospective recovery would occasion. Rule was issued and the petition was directed to be listed as a regular matter.

20. W.P.(C) 7987/2004 was dismissed in default on 21st December, 2017, after repeated non-appearance on behalf of the Petitioners. By order dated 4th September, 2018, it was restored to its original number. That order also expressly revived the interim protection which had existed before dismissal.

The 2017-2018 Action and the Later Petitions

21. While W.P.(C) 7987/2004 and its interim protection were still subsisting, the Autonomous Bodies Cell of the Ministry of Culture inspected the Akademi. By communication dated 25th October, 2017, the Ministry required the Akademi to identify and rectify pay fixations which it regarded as erroneous before implementation of the 7th CPC recommendations.

22. After W.P.(C) 7987/2004 was dismissed in default, the Akademi and

its constituent units issued orders during 2018 withdrawing grade pay of INR 4,600 granted to Assistants and Stenographers, revising it to INR 4,200 with retrospective effect and proposing consequential refixation and recovery. The Petitioners in W.P.(C) 8922/2018 specifically plead that the action followed because the Respondents treated the earlier interim protection as having come to an end upon dismissal of the 2004 petition.

23. The impugned exercise was not confined to Assistants and Stenographers. It also sought withdrawal of the Non-Functional Selection Grade granted to Upper Division Clerks, the non-functional upgradation carrying grade pay of INR 5,400 granted to Section Officers and Private Secretaries after four years in grade pay of INR 4,800 and, in some instances, benefits under the ACP and MACP schemes.

24. W.P.(C) 8922/2018 has been instituted by twenty-seven employees of the Akademi and its constituent units. Their principal challenge is to the retrospective withdrawal of grade pay of INR 4,600, its substitution by INR 4,200 and the consequential recovery.

25. W.P.(C) 7195/2021 has been instituted by Vinodi Kumari. Her promotion as Assistant was ultimately antedated to 8th November, 1996, following intervention by the National Commission for Scheduled Castes. Her pay was fixed with grade pay of INR 4,600 with effect from 1st January, 2006. She was promoted as Section Officer on an *ad hoc* basis with effect from 22nd July, 2008 with grade pay of INR 4,800 and was subsequently granted the non-functional grade pay of INR 5,400 after completion of four years in that grade. Orders dated 26th April, 2018 and 17th May, 2018 withdrew the benefits. She also seeks regularisation of her promotion as Deputy Secretary from 1st February, 2018.

Petitioners' Contentions

26. Mr. L.K. Singh, counsel appearing for the Petitioners, advances the following submissions:

26.1. The present claim does not seek to reopen the finding on equal pay for equal work. The right asserted arises from the Rules, Regulations and Service Bye-laws of the Akademi, which are binding conditions of service and were approved by the Government of India.

26.2. Bye-law 20 is relied upon as part of a larger scheme under which the Akademi consciously adopted Central Government norms for pay fixation, increments, allowances, pension, leave, conduct and disciplinary matters. The expression "*corresponding categories*" is said to refer, in the case of Assistants and Stenographers, to the Central Secretariat Service and the Central Secretariat Stenographers Service.

26.3. The Akademi itself repeatedly identified those categories as the appropriate comparators. Its Finance Committee and Executive Board supported the higher scale in 1994 and thereafter the communications of 1996 reiterated that position. The Executive Board, which is empowered to prescribe conditions of service, then extended the higher scale on 10th December, 1998, not merely to the successful litigants but to all serving Assistants and Stenographers of the Akademi and its constituent units.

26.4. The plea of *res judicata* is untenable because the Supreme Court expressly found the claim founded on the Rules and Bye-laws to be unexamined and preserved it for fresh adjudication. The dismissal of W.P.(C) 7987/2004 was for default and was subsequently recalled.

26.5. The 2018 action was taken on the assumption that dismissal in default had removed the obstacle to withdrawal. It ignored the reasoned interim orders and, after restoration, the express revival of those orders. The employees had no role in fixing their pay and there was no fraud or misrepresentation. Retrospective refixation and recovery after decades are therefore assailed as arbitrary and inequitable.

26.6. In Vinodi Kumari's case, grade pay of INR 4,800 attached to the post of Section Officer and the later non-functional grade pay of INR 5,400 are an independent source. The petition specifically relies upon decisions taken in February and March 2009 before those benefits were implemented. Her claim for regularisation as Deputy Secretary is pressed separately.

Respondents' Contentions

27. Mr. Bhagwan Swarup Shukla, CGSC for Union of India, opposes the petitions and, on behalf of the Respondents, contends as follows:

27.1. The Akademi is an autonomous society. Its employees are not Central Government servants. Government funding, administrative control or adoption of some Central Government service rules cannot by itself confer a right to every benefit available to members of the Central Civil Services.

27.2. Bye-law 20 concerns the manner of fixation of pay within a scale already prescribed for an Akademi post. It does not itself select or alter the scale of pay. The scale of INR 1,640-2,900 was a Secretariat-specific upgradation and the Office Memorandum dated 11th December, 1990 expressly stated that the instructions dated 31st July, 1990 were not applicable to autonomous bodies.

27.3. The recommendations of the Finance Committee and Executive Board did not receive the approval required for recurring financial liability. The decision dated 10th December, 1998 was taken only to implement the Single Bench judgment and lost its foundation when that judgment was reversed.

27.4. The petitions are also said to be barred by *res judicata* and constructive *res judicata* because the earlier claim to parity was rejected by the Division Bench and not interfered with by the Supreme Court.

27.5. For the benefits arising under the 6th CPC, reliance is placed upon the Office Memorandum dated 7th October, 2008. While Part 'A' of the revised pay structure could be adopted by eligible autonomous organisations, the upgraded structures in Part 'B' did not apply automatically and required a case-specific examination by the administrative Ministry through its Integrated Finance Division.

27.6. Reliance is placed upon ***State of Maharashtra & Anr. v. Bhagwan & Ors.***[1] and ***UOI v. Indian Navy Civilian Design Officers Assn. & Anr.***[2], and the other decisions cited in the written submissions, to emphasise judicial restraint in matters of equation of posts and fixation of pay, particularly in cases of autonomous bodies.

27.7. Once the higher fixation was found to be unauthorised, refixation and recovery followed as a matter of course. Reliance is also placed on certain refund conditions contained in some of the individual fixation orders.

Issues for Determination

28. The following questions arise for determination:

(a) Whether the claim founded upon the Rules, Regulations and Service Bye-laws is barred by *res judicata* or constructive *res judicata*;

(b) what consequence follows from Chapter V of the Service Bye-laws, particularly Bye-laws 19 and 20, read with the wider service framework and the expression "*corresponding categories*";

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[1] (2022) 4 SCC 193.

[2] (2023) 19 SCC 482.

(c) What is the effect of the decisions of the Finance Committee and Executive Board, including the decision dated 10th December, 1998, and whether any further Government approval was required;

(d) Whether the 2018 withdrawal of the 6th CPC grade pays and other consequential benefits can be sustained;

(e) Whether retrospective refixation and recovery are permissible in the circumstances of these cases; and

(f) What relief, if any, is due to Vinodi Kumari in relation to the post of Deputy Secretary.

Analysis

Res Judicata

29. The objection based on *res judicata* cannot be accepted. The earlier adjudication attained finality only in respect of the claim founded upon '*equal pay for equal work*'. The Supreme Court accepted the rejection of that claim. At the same time, it expressly recorded that the claim founded upon the Rules, Regulations and Service Bye-laws had not been "*independently and objectively considered*". It left that claim open, identified the questions which would arise in adjudicating it, and required fresh consideration uninfluenced by the judgment under challenge before it.

30. The consequence is clear. A matter which the Supreme Court expressly found to be unexamined, and preserved for independent adjudication, cannot be treated as one already heard and finally decided. Constructive *res judicata* is equally untenable; it cannot be invoked to foreclose the very inquiry which the Supreme Court directed this Court to undertake.

31. The dismissal of W.P.(C) 7987/2004 on 21st December, 2017 does not

change this position. It was a dismissal for non-prosecution, not an adjudication on merits. Once that dismissal was recalled and the interim order expressly revived, the petition stood restored to the same footing as before. The preliminary objection is, therefore, rejected. At the same time, the Court must keep within the limits of the Supreme Court's order: the claim based merely on '*equal pay for equal work*' cannot be reopened; the present inquiry is confined to rights, if any, flowing from the Akademi's own governing instruments.

Scope of Judicial Review in Pay Matters

32. The governing principle is settled. The equation of posts and formulation of pay structures ordinarily fall within the domain of the executive and expert bodies. That exercise involves assessment of several factors, including qualifications, method of recruitment, duties, responsibilities, promotional avenues, internal relativities and financial implications. A writ court does not undertake a fresh job evaluation, nor does it presume parity merely because two posts bear the same designation.

33. ***Indian Navy Civilian Design Officers Assn.*** reiterates these principles and cautions courts against substituting their own assessment for that of the competent authority. ***Bhagwan*** likewise holds that employees of an autonomous institution cannot claim, as a matter of right, every service benefit available to Government employees merely because the institution is funded or controlled by Government or has adopted certain Government service rules.

34. Those decisions, however, do not conclude the present controversy. ***Bhagwan*** was a case where the service rules of the autonomous institution did not confer the pensionary benefit claimed, and the State had consciously

declined to extend it. ***Indian Navy Civilian Design Officers Assn.*** concerned a claim for equation of posts and pay scales despite differences in the governing recruitment framework, responsibilities and promotional avenues. The present case stands on a different footing: the Court is required to construe the Akademi's own Government-approved Service Bye-laws, the Akademi's institutional decisions, and the limited inquiry expressly kept open by the Supreme Court.

35. The distinction is important. The Court is not comparing duties afresh, nor is it reviving '*equal pay for equal work*' under another label. It is only determining what service conditions the Akademi adopted for its employees, which Central Government category its own record identifies as corresponding to the posts in question, and whether the Respondents could undo that position without examining the governing instruments and material institutional decisions.

<u>*The Governing Scheme*</u>

36. The relevant provisions in Chapter V of the Service Bye-laws read as follows:

> *"19. Scale of Pay*
> *The scales of pay for posts under the Akademi shall be as specified in Schedule 'A' as <u>amended from time to time</u>.*
>
> *20. Initial pay and increments*
> *In the matter of fixation of pay on initial appointment or promotion or appointment to another post and regulation of increments, the employees shall be governed by the same rules as are applicable to central government employees of <u>corresponding categories</u>.*
>
> *21. Special Pay and Personal Pay etc.*
> *In the matter of granting any special pay, personal pay, honorarium, fee to any employee rules as are applicable to central government employees of corresponding categories shall be the guiding factors.*

22. Drawal of Pay
a. An employee shall be entitled to the pay of the post to which he/she is appointed from the date on which he/she assumed charge of the post in accordance with the provision under Rule 36 of the Bye-laws.

....

23. Drawal of Allowances
Employees shall be entitled to draw all allowances at such rates and subject to such conditions as may be prescribed by the Government for its employees <u>from time to time</u>."

[Emphasis Supplied]

37. Bye-law 57 completes the scheme. Where a condition of service is not provided for in the Bye-laws, the matter is to be dealt with in accordance with Government rules and orders. Its proviso enables a concession allowed by Government to be allowed to Akademi employees, subject to the same rules and conditions governing such grant of concession. The Bye-laws elsewhere adopt, apply or use as guiding factors the Central Civil Services rules governing leave, pension, conduct, disciplinary proceedings, suspension and several other incidents of service. The definitions of "*pay*", "*special pay*", "*personal pay*", "*permanent post*" and "*temporary post*" are also drawn from the Fundamental Rules.

38. Bye-law 19 makes Schedule 'A' the repository of the scales of pay for Akademi posts. Therefore, Bye-law 20 cannot be read as automatically substituting every later Central Government scale into Schedule 'A'. When the Service Bye-laws came into force in 1995, Schedule 'A' recorded INR 1,400-2,600 for Assistants and Stenographers. That entry is part of the approved instrument and must be given effect unless it is amended in the manner contemplated by the governing framework.

39. The Respondents' construction, however, stops at the existing entry in

Schedule 'A' and overlooks the words "*as amended from time to time*" in Bye-law 19. Schedule 'A' is therefore the formal repository of pay scales, but it is not immutable. The Executive Board's authority over service conditions is material in this context. Rule 15(xiii) provides:

> "*15. The Executive Board shall have the following powers and functions, namely:*
> *...*
> *xiii. to prescribe the terms and conditions of service in respect of all posts under the control of the Akademi*"

Rule 15(xiii), thus, places the prescription of terms and conditions of service within the Executive Board's authority. That authority is not collateral or merely advisory; it forms part of the rule-based mechanism through which service conditions are considered, adopted and, where necessary, placed for formal approval under the governing instruments. Chapter V reinforces the same approach.

40. Thus, the correct reading is neither that the Akademi surrendered all autonomy over its pay structure, nor that the reference to Central Government employees is irrelevant to the scale attached to a post. The scale begins with Schedule 'A'; the manner in which pay is fixed and increments are regulated is governed by the corresponding Central Government rules; and revision of the scale, when considered, must be examined within the institutional arrangement which the Rules and Bye-laws themselves create.

Which is the "Corresponding Category"?

41. The expression "*corresponding categories*" in Bye-law 20 is not superficial. The Supreme Court specifically required the Court to decide whether the governing framework contemplated the Central Secretariat scale or some other Central Government scale. That question must be answered

from the record of the Akademi.

42. The record contains unusually clear evidence on this point. In 1988, while considering upgradation of the post of Superintendent in the Akademi to Section Officer, the Integrated Finance Division of the Government examined the staffing pattern. Its note records that Assistants and Stenographers of the Akademi in the pre-revised scale of INR 425-800 were comparable to Assistants and Stenographers in the Central Government. It also noticed the graduate qualification for Assistants, the possibility of deputation from equivalent Government posts and the promotional movement from Assistants and Stenographers to Superintendent.

43. The same note went further. It considered Section Officer in the scale of INR 2,000-3,500 to be the appropriate next higher post and observed that the "*balance may not be disturbed*" because the lower posts as well as the higher posts around that level followed the same pattern as in the Central Government. Government approval was thereafter conveyed on 17th November, 1988 for upgradation and redesignation of Superintendent as Section Officer in the scale of INR 2,000-3,500.

44. This assumes significance for a reason independent of equal pay. The 1988 exercise was not a general plea for parity; it was the Government's own appraisal of the Akademi's cadre structure while considering an actual service decision. In that appraisal, Assistants and Stenographers of the Akademi were treated as corresponding to their Central Government counterparts. The identity of the pre-revised scale of INR 425-800, the application of the 4th CPC replacement scale of INR 1,400-2,600, and the Government-approved upgradation of the promotional post of Section Officer to the Central Government level all point in the same direction.

45. The institutional position remained the same when the dispute over INR 1,640-2,900 arose. The Finance Committee recommended the higher scale on 2nd December, 1994. The Executive Board fully supported it on 7th December, 1994. After the Service Bye-laws were approved, the issue remained under consideration. The detailed communications of 19th April, 1996 and 15th July, 1996 again placed the Akademi's own assessment before the Government: recruitment was through open competition and a duly constituted Selection Committee, the posts formed the same feeder level in the cadre, and the Akademi considered its Assistants and Stenographers to correspond to their Secretariat counterparts.

46. These materials are not being relied upon to revive the claim rejected under Article 39(d). Their relevance is narrower, but decisive: they answer the interpretive question left open by the Supreme Court. When the Akademi used the expression "*corresponding categories*" in its Government-approved Service Bye-laws, its own contemporaneous service record identified, for these posts, Assistants in the Central Secretariat Service and Grade 'C' Stenographers in the Central Secretariat Stenographers Service as the corresponding Central Government categories. That record is sufficient to identify the relevant comparator for purposes of Bye-law 20, without converting the inquiry into one of pay parity.

47. The 1995 entry of INR 1,400-2,600 in Schedule 'A' does not defeat that conclusion. It records the scale then formally entered in the approved Bye-laws; it does not amount to a final rejection of the higher scale which the Akademi had already supported and continued to pursue. Since Schedule 'A' was expressly amendable "*from time to time*", the next question is whether the later institutional decisions could be given effect, and what

further approval, if any, was required.

Was Further Government Approval Required?

48. The Respondents' approval argument requires some separation. Rule 15(vii) does not create a general requirement of prior Government approval for every revision of pay scale. Its proviso is directed to the creation and filling of posts whose maximum pay exceeds the prescribed limit. Rule 15(xiii), separately, empowers the Executive Board to prescribe the terms and conditions of service for posts under the Akademi's control. These provisions cannot be collapsed into a broad proposition that the Executive Board is powerless to take a service decision merely because that decision has financial consequences.

49. There is, however, another provision which cannot be ignored. Clause 3(xxvi) of the MoA requires Central Government approval for an addition to or amendment of the Rules, Regulations and Bye-laws. Since Bye-law 19 makes Schedule 'A' the repository of the scales of pay, a formal alteration of the scale entered in that Schedule would ordinarily require the approval contemplated by the MoA. The Board's decision was therefore not irrelevant or void. At the highest, a further institutional step remained to be completed.

50. The Petitioners are seeking a scale which their employer had approved and which the Finance Committee had affirmed and the Executive Board had supported before the first writ was decided. The Akademi twice placed reasoned recommendations before the Government. The Executive Board ultimately extended the scale to the entire serving cadre. What remained in dispute was the Government's concurrence with that institutional decision.

51. The Government was entitled to examine that question. It was

required, however, to examine the right question. The communication dated 26th March, 2004 did not do so. It reasoned that because the Single Bench judgment had been set aside and the review dismissed, the employees were not entitled to the higher scale and recovery should follow. That communication preceded the Supreme Court order dated 30th April, 2004. It could not, and did not, undertake the independent examination of the Rules and Service Bye-laws which the Supreme Court thereafter directed.

52. The 2017 and 2018 exercise does not cure the defect. The Autonomous Bodies Cell proceeded on the broad premise that orders applicable to CSS, CSSS and allied Central Government cadres had been erroneously made applicable to an autonomous body. The consequential orders repeat that conclusion and direct withdrawal. There is no examination of Bye-laws 19 and 20, no consideration of the Government's own 1988 appraisal of the cadre, no analysis of the 1994 and 1996 institutional decisions and no consideration of the legal significance of the Executive Board resolution dated 10th December, 1998.

53. The Government has, thus, repeatedly answered the generic question whether the Office Memorandum dated 31st July, 1990 applied *proprio vigore* to autonomous bodies. The Supreme Court required a different question to be answered in this case: what right, if any, follows from the governing instruments and service history of the Akademi. That exercise has still not been performed in the administrative orders under challenge.

The Authorities Relied upon by the Respondents

54. The decisions cited by the Respondents do not require a different conclusion. They recognise that employees of an autonomous institution cannot claim parity with Government employees merely because the

institution is funded by the Government, has Government representatives in its governing body or has adopted Government Service Rules. Nor can the Court ordinarily undertake the exercise of equating posts or determining pay scales, which is primarily within the domain of the executive and expert bodies. Those principles, however, do not conclude the distinct question arising from the Akademi's own Service Bye-laws and the decisions taken under that framework.

55. The caution in those decisions is accepted. It does not dispose of a case in which the institution's own Service Bye-laws use Central Government categories as a reference point for pay fixation, the Government's own finance wing had identified the relevant cadre correspondence, the governing body repeatedly approved the higher scale and the dispute is about the legal effect and formal approval of those decisions. Nor is judicial review in pay matters an absolute prohibition. ***UOI v. D.G.O.F. Employees Association & Anr.***[3] illustrates that where the applicable Pay Commission recommendations and the historical position bear upon the pay structure governing the employees, the Court may examine whether the administrative decision declining to extend the higher pay scale represents a rational and correct application of the governing framework, without itself undertaking the exercise of determining the appropriate pay scale.

56. The Court is therefore not fixing a pay scale by undertaking its own assessment of the work performed. The inquiry is narrower: whether the Respondents could withdraw a pay structure consciously adopted and

[3] 2023 INSC 995.

implemented by the Akademi, without engaging with the Service Bye-laws, the Government's earlier cadre appraisal and the material institutional decisions. On that limited ground, the impugned action cannot be sustained.

Moulding the Relief

57. Ordinarily, where a recommendation requires approval of another authority, the safer course is to set aside an infirm decision and remit the matter for a fresh exercise. That is not an inflexible rule. Article 226 is couched in wide terms and enables the Court to remove injustice and mould the relief to meet the requirements of the case. Where a public authority has failed to exercise, or has wrongly exercised, the discretion conferred upon it, including by ignoring relevant considerations and materials, the Court can issue directions to compel the exercise of that discretion in a proper and lawful manner and, in a proper case, may itself pass the order or give the direction which the authority should have passed or given had it properly and lawfully exercised its discretion.[4]

58. ***UOI & Anr. v. S.B. Vohra & Ors.***[5] also cautions that statutory duties should ordinarily be allowed to be performed by the concerned authorities at the first instance and that the Court should ordinarily refer the matter back with suitable directions. The Supreme Court further held that only in exceptional cases may the High Court interfere and that such jurisdiction must be exercised with care and circumspection. The question, therefore, is whether the circumstances of the present case warrant such intervention rather than relegating the Petitioners once again to the statutory authority.

59. A bare remand at this stage would do little justice. The foundational

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[4] See: ***Comptroller and Auditor General of India v. K.S. Jagannathan & Anr.*** (1986) 2 SCC 679.

[5] (2004) 2 SCC 150.

petition has remained pending since 2004. The employer's Finance Committee and Executive Board had taken their position even earlier. The Government's own Integrated Finance Division had, in 1988, identified the corresponding cadre and approved the next promotional level on that basis. The scale of INR 1,640-2,900 was actually implemented, successive revisions followed, and the employees arranged the remainder of their service careers around that pay structure. For most of this period, the position was protected by orders of this Court.

60. In these exceptional circumstances, remitting the parties to another round of administrative consideration would serve no useful purpose. It would only prolong a controversy which the existing record is sufficient to resolve. The communication dated 26th March, 2004 and the consequential Office Order dated 30th April, 2004 are set aside. The decision of the Executive Board dated 10th December, 1998, read with the earlier decisions of the Finance Committee and Executive Board, shall be treated as the Akademi's institutional adoption of the scale of INR 1,640-2,900 for the serving Assistants and Stenographers covered by that decision. Respondent No. 1 shall, within eight weeks from today, complete the formal approval or regularisation required under Clause 3(xxvi) of the MoA and make, or cause to be made, the corresponding entry in Schedule 'A' or the relevant service records, as may be administratively necessary.

61. This direction is confined to the cadre and period which form the subject matter of these petitions. It does not hold that every future revision notified for the Central Secretariat will automatically apply to the Akademi. The Government and the Akademi shall not reopen the pay already extended to the Petitioners and the employees covered by the impugned orders on the

grounds rejected in this judgment.

<u>The 6th CPC Benefits and the 2018 Orders</u>

62. The later petitions require one further distinction. The Office Memorandum dated 7th October, 2008 permitted eligible autonomous organisations to adopt the revised pay structure in Part 'A' of the First Schedule to the CCS (Revised Pay) Rules, 2008. It made clear that upgraded structures in Part B did not apply automatically. Such upgradations required a category-specific examination by the administrative Ministry, having regard to functional justification, financial capacity and identity of the pre-revised scale, followed by the prescribed financial concurrence.

63. The Office Memorandum therefore assists neither side in the absolute form in which the matter has been argued. It negatives automatic transposition of every Part 'B' benefit. At the same time, it contemplates extension of such benefits to an autonomous body after a case-specific examination. The 2018 orders do not reveal that exercise. They proceed from the generic premise that CSS or CSSS orders had been wrongly applied because the Akademi is autonomous.

64. The grade pay of INR 4,600 granted to Assistants and Stenographers cannot be viewed in isolation from the pay history which has now been examined. The employees were already drawing the higher pre-revised scale under the Executive Board decision and under judicial protection. The subsequent grade pay was granted through formal orders of the Akademi. Its withdrawal in 2018 rested upon the same premise on which the foundational scale was sought to be withdrawn. Once that premise fails, the consequential withdrawal of grade pay of INR 4,600 cannot survive against the Petitioners.

65. The case of Section Officers requires separate attention. In Vinodi

Kumari's case, the Respondents, in their Counter Affidavit, themselves acknowledge that she was granted grade pay of INR 4,800 on promotion as Section Officer and thereafter grade pay of INR 5,400 on completion of four years, pursuant to an order of the Ministry of Finance. Their answer is that the latter benefit was not applicable to autonomous bodies and was therefore withdrawn on the observations of the Ministry of Culture. The petition, on the other hand, specifically refers to deliberations and decisions in February and March 2009 preceding implementation of the benefits. The Counter Affidavit does not deal with those specific decisions; it answers the issue only by invoking autonomous status and the 2017 inspection report.

66. That is insufficient to sustain a retrospective withdrawal. The ordinary grade pay attached to a promotional post cannot be treated as an error merely because an earlier feeder-cadre benefit is disputed. A non-functional upgradation which was sanctioned, and acted upon for years, also could not be withdrawn without examining the decision by which the Akademi adopted it and the case-specific process contemplated by the Office Memorandum dated 7th October, 2008. The 2018 orders contain no such analysis. They are therefore unsustainable *qua* the Petitioners in these proceedings. This conclusion does not declare a general entitlement of all employees of every autonomous body to the same Part 'B' benefits. It addresses the validity of the orders by which benefits already granted to these employees were withdrawn.

67. The same applies to ACP and MACP consequences which were disturbed merely as a derivative of the impugned pay reduction. If any arithmetical or employee-specific correction is independently necessary under the governing ACP or MACP scheme, it may be made after notice and

for reasons unrelated to the propositions rejected in this judgment. The blanket 2018 exercise cannot furnish the source for such correction.

Recovery and the Effect of Prolonged Pendency

68. There is, in any event, no basis for recovery. The employees did not secure the higher fixation by fraud, concealment or misrepresentation. The scale was granted through formal institutional decisions. Pay was fixed by the employer. The proposed withdrawal and recovery were stayed on 18th May, 2004, and the protection was confirmed on 17th January, 2008 after the Court recorded a *prima facie* case and specifically noticed the prejudice which recovery would cause. Except for the interval caused by dismissal in default, the protection continued and was expressly revived upon restoration.

69. The legal basis of the fixation remained under consideration before this Court and was protected by judicial orders for more than two decades. By this judgment, the Court has recognised the foundation on which that fixation rested and has set aside the impugned withdrawal.

70. Accordingly, no amount already paid shall be recovered. Any amount recovered pursuant to the impugned orders shall be refunded. The pay and service benefits of the Petitioners and the employees covered by the impugned orders shall be restored to the position which obtained immediately before the 2018 withdrawal, together with consequential fixation under subsequent pay revisions. In the case of employees who have retired, pension, gratuity and other retiral benefits shall be recomputed, where necessary, on that basis and shall not thereafter be reopened on account of the controversy decided in these petitions.

Vinodi Kumari's Promotion as Deputy Secretary

71. The remaining prayer of Vinodi Kumari concerns her promotion as

Deputy Secretary. The order dated 1st February, 2018 promoted her on an *ad hoc* basis. An *ad hoc* appointment does not, by itself, confer a right to regular promotion from the same date. The Respondents state in their written submissions that the promotion was subsequently regularised after vigilance clearance, but the order evidencing such regularisation has not been placed before the Court.

72. The appropriate course is, therefore, limited. If an order regularising her promotion has already been passed, it shall be communicated to her and given full effect, including such consequential benefits as follow from its terms. If no such order exists, her case shall be placed before the competent Departmental Promotion Committee or other prescribed authority for consideration under the applicable Recruitment Rules from the date on which the vacancy was available and she became eligible. The decision shall be taken within twelve weeks from today.

Conclusion and Relief

73. The petitions are accordingly allowed in the following terms:

(a) The objection based on *res judicata* and constructive *res judicata* is rejected. The claim arising from the Rules, Regulations and Service Bye-laws remained open by virtue of the Supreme Court order dated 30th April, 2004.

(b) The communication dated 26th March, 2004 and the consequential Office Order dated 30th April, 2004 are quashed.

(c) The Executive Board decision dated 10th December, 1998, read with the earlier decisions of the Finance Committee and Executive Board, shall have effect in terms of paragraphs 60 and 61 above. The formal approval and consequential amendment or entry in Schedule ‘A’ or the relevant service records shall be completed within the period stipulated therein.

(d) The communication dated 25th October, 2017 and the consequential orders issued during 2018 are quashed insofar as they withdraw or reduce, the grade pay of INR 4,600, the sanctioned grade pay attached to the post of Section Officer, the non-functional grade pay of INR 5,400 and derivative ACP or MACP benefits solely on the ground that the relevant Central Government orders were inapplicable to an autonomous body.

(e) The pay and service benefits covered by the impugned orders shall be restored to the position obtaining immediately before the impugned withdrawal, with consequential fixation under subsequent pay revisions. No recovery shall be made of amounts already paid. Any amount already recovered pursuant to the impugned orders shall be refunded within eight weeks from today. Pension, gratuity and other retiral benefits shall be recomputed, wherever necessary, on that basis.

(f) Any independent employee-specific correction under the ACP or MACP scheme, for reasons unconnected with the basis rejected in this judgment, may be undertaken only after notice to the concerned employee and by a reasoned order. No such exercise shall result in recovery of amounts protected under clause (e).

(g) In the case of Vinodi Kumari, if her promotion as Deputy Secretary has already been regularised, the order shall be communicated and implemented within four weeks from today. If no such order exists, her case shall be considered by the competent Departmental Promotion Committee or other prescribed authority within twelve weeks from today in terms of paragraph 72 above, with consequential benefits if she is found entitled.

74. The petitions, along with any pending application(s), are disposed of

in the above terms.

SANJEEV NARULA, J

AUGUST 4, 2026/*nk*