



Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2024

(Arising out of SLP (C) No.9098 of 2018)

**MAHESHKUMAR CHANDULAL
PATEL & ANR.**

...APPELLANT(S)

VERSUS

**THE STATE OF GUJARAT
& ORS**

..RESPONDENT(S)

WITH

**Civil Appeal No. of 2024
(@ SLP (C) No.9272 of 2018)**

WITH

**Civil Appeal No. of 2024
(@ SLP (C) No.9974 of 2018)**

WITH

**Civil Appeal Nos. of 2024
(@ SLP (C) No.4613-4632 of 2019)**

WITH

**Civil Appeal Nos. of 2024
(@ SLP (C) Nos.5193-5212 of 2019)**

WITH
Civil Appeal No. of 2024
(@ SLP (C) Nos.5169-5188 of 2019)

WITH
Civil Appeal Nos. of 2024
(@ SLP (C) Nos.8484-8514 of 2019)

AND WITH
Civil Appeal Nos. of 2024
(@ SLP (C) Nos.10247-10261 of 2019)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. These appeals assail the common impugned order dated 28.12.2017 passed by the Division Bench of the High Court of Gujarat in LPA No. 765/2017 in Special Civil Application No. 3210/2016 along with other allied appeals. The LPA was preferred by the respondent State of Gujarat against the order of Single Judge dated 19.04.2017 directing the State of Gujarat to remove the anomaly in the pay of the appellants Petitioners *qua* their juniors by stepping up their

pay. The Division Bench allowed the LPA by the State and set aside the Single Judge's order.

FACTUAL MATRIX –

3. The matters pertain to the issue whether or not the principle of stepping up of pay of an employee on the basis of the pay of his junior, is applicable in the present case, where the appellants are put on a lesser pay scale than the Assistant Professors who were appointed before them as *ad hoc* lecturers and subsequently regularized. The genesis of controversy goes back to the period of 1984-95 when 111 persons came to be engaged as Lecturers on *ad hoc* basis in various Government Colleges. The University Grants Commission¹ has framed the Regulations of 1998, *inter alia*, providing for minimum length of service of four years for lecturers (Assistant Professor) with PhD and M. Phil and of six years for others to be eligible to move to Senior Scale (i.e., 10000-325-15200) and on completion of another five years of service, for being eligible to move to Selection Grade (i.e., 12000-420-18300).

¹ UGC, hereinafter

The said regulations also provided for counting of services during *ad hoc* period for grant of Senior Scale and Selection Grade Pay.

4. In view of the above regulations, the Education Department, issued a Government Resolution dated 17.06.1999 for considering previous services rendered by the *ad hoc* lecturers for the purpose of their placement in Senior Scale/Selection Grade. Subsequent to the said Resolution, the Government provided benefits to some of the *ad hoc* lecturers subject to conditions as provided therein. In 2001, some other *ad hoc* lecturers [1984-95 Group] approached the High Court for regularization of their services. However, the said Special Civil Application was dismissed against which LPA No. 485 of 2002 was preferred.
5. In the year 2001 itself, the appellants in the instant case came to be directly selected and appointed as Assistant Professors by the Gujarat Public Service Commission².

² GPSC, hereinafter

6. On 15.11.2002, the State Government framed the Gujarat Civil Services (Pay) Rules, 2002³ wherein Rule 21 provides for stepping up of a pay of Government Employee on the basis of the pay of his junior, while categorically stipulating that the provision of the said Rule will apply where the pay of a junior is fixed higher than his senior on his promotion to the higher cadre.
7. Alongside, in LPA No. 485 of 2002 preferred by the *ad hoc* lecturers for regularization, the Division Bench of the High Court in its order dated 11.12.2002 held that the services of the *ad hoc* lecturers cannot be regularized contrary to the Recruitment Rules in the post for which direct recruits were already selected through GPSC, but in the facts and circumstances of the case, directed the *ad hoc* lecturers to be treated as a separate class in view of their *ad hoc* continuance for nearly a decade and be considered for absorption in such posts as may be available with the government. Accordingly, rest of the *ad hoc* Assistant Professors came to be

³ 2002 Pay Rules, hereinafter

selected through GPSC and appointed as regular Assistant Professors in addition to the *ad hoc* lecturers who were already appointed as regular Assistant Professors in 2001.

8. Further, the *ad hoc* lecturers who were appointed as regular Assistant Professors in 2001 approached the High Court by way of Special Civil Application No. 6597 of 2007 and other connected matters seeking the relief of counting *ad hoc* services for the purpose of senior scale/selection grade. The High Court disposed of the said matters by directing the State Authorities to decide their representation. The State Government, *vide* its letter dated 29.03.2008, rejected their claim for counting *ad hoc* services for the purpose of grant of senior scale/selection grade on the ground that their initial appointment was without the requisite permission of GPSC.
9. In 2009, the Assistant Professors who got selected through direct appointment were extended the benefit of senior scale/selection grade effective from their date of selection through GPSC.

10. On 30.06.2010, UGC framed Regulations of 2010 treating Career Advancement Scheme as an avenue for promotion. It may be noted here that *ad hoc* services were eligible to be counted for different recruitments/promotion under Career Advancement Scheme.
11. The Government *vide* its resolution dated 03.08.2011 allowed the *ad hoc* services of 111 Professors [1984-95 Group] to be counted for the purpose of pay, leave and pension. Subsequently, a letter dated 27.09.2011 was written by the Joint Secretary, Education Department to the Commissioner, Higher Education, clarifying that the benefit of Resolution dated 03.08.2011 would not be extended for the purpose of seniority.
12. Consequently, the State Government, while referring to its earlier Government Resolution dated 17.06.1999 and the Government Resolution dated 02.08.2011, issued the Government Resolution dated 22.12.2014 for counting the previous services rendered by the erstwhile *ad hoc* lecturers for extending the benefits of Senior Scale/Selection Grade to the

eligible Assistant Professors out of the total erstwhile *ad hoc* lecturers [1984-95 Group].

13. Accordingly, the State Government issued an Order dated 10.08.2015 granting the benefit of Senior Scale and Selection Grade to 85 eligible Assistant Professors by considering their previous *ad hoc* services. It so happened that by counting such *ad hoc* services rendered by such lecturers [1984-95 Group], all of them were getting higher pay than the direct appointees selected by GPSC. Aggrieved by this, a representation dated 19.10.2015 was submitted to the Government by the direct appointees to step up their pay in accordance with Rule 21 of the 2002 Pay Rules. It also gave rise to filing of petitions before the Single Judge of the High Court for appropriate writ, direction and order to remove the anomaly in their pay resulting from the office order dated 10.08.2015 and grant stepping up their pay on the basis of Rule 21. It is also to be noted here that the State Government, *vide* Resolution dated 06.03.2017, clarified that the Career Advancement Scheme is not related to promotion and deleted the terms

“promotion” occurring in resolutions dated 18.04.2016 and 03.08.2016.

14. The Single Judge of the High Court, *vide* judgment dated 19.04.2017, held that Rule 21 is applicable in the present case based on the finding that the grant of Senior Scale and Selection Grade under the Career Advancement Scheme can be said to be promotion and therefore, when at the time of grant of Senior Scale and Selection Grade under the Career Advancement Scheme, there is anomaly in the pay scale between the Senior and Junior. It, accordingly, granted the benefit of stepping up, holding that the seniors (original Petitioners) are entitled to pay at par with their junior who were selected and appointed subsequent to them.
15. The Single Judge also specifically observed that the original petitioners have not challenged the Government Resolutions dated 03.08.2011 and 22.12.2014 and the office order dated 10.08.2015, or the action of the Respondents in granting the Senior Scale and Selection Grade to the said junior lectures by counting their past seniority rendered as *ad hoc*. Therefore, the

Court chose to refrain itself from expressing any opinion on the validity of the said Government Resolutions. The Single Judge also noted that the subsequent appointees appear to have been treated as a separate class by the State for the purpose of considering their past *ad hoc* services as permissible under the UGC Regulations and such classification is not discriminatory, thus the ground of equal pay for equal work taken by the Petitioners therein would not stand. However, by granting the benefit of Rule 21, the State was directed to step up the pay of the original Petitioners.

16. Feeling aggrieved by the judgment of the Single Judge, original Respondents-State and others preferred Letters Patent Appeals before the Division Bench of the High Court.
17. It was held by the Division Bench of the High Court that in the peculiar facts and circumstances of the case, Rule 21 of the 2002 Pay Rules shall not be applicable at all since it applies only where the anomaly so caused must be the direct result of the application of Rule 21. The Court proceeded on the footing that grant of

Senior Scale and Selection Grade under the Career Advancement Scheme can be said to be promotion. It was observed that if the case on behalf of the original petitioners is accepted and their pay is fixed at par with all those 85 Assistant Professors who as such rendered their services as *ad hoc* lecturers, in that case, all the original petitioners, who admittedly never rendered their services as *ad hoc* lecturers like all those 85 lecturers and who for the first time joined their services in 2001, will be granted the benefit of the earlier years during which they never rendered their services as *ad hoc* or otherwise and/or when they were not even born in the cadre.

18. The Division Bench also noted that though it is the specific case on behalf of the original Petitioners that counting the earlier services of 85 Assistant Professors as *ad hoc* is absolutely illegal, still the very Petitioners are asking the same pay which all those 85 Assistant Professors are getting by counting their earlier *ad hoc* services, meaning thereby, it can be said that the original Petitioners pray that they may also be

granted the benefit of such illegality. There cannot be negative discrimination. Accordingly, it was held that the Single Judge had materially erred in granting the benefit of stepping up under Rule 21. The Division Bench allowed the appeals preferred by the State and set aside the order passed by the Single Judge.

19. Aggrieved by the said order, the original writ Petitioners are in appeals before us. We have heard Mr. Shyam Divan, learned senior counsel appearing for the appellants and Mr. Kanu Agarwal and Ms. Swati Ghildiyal, learned counsels appearing for the respondents.

ARGUMENTS ADVANCED –

20. Appellants have submitted that it is an undeniable fact that the subsequent appointees are junior to the Petitioners. The appellants who are seniors are seeking pay parity with the junior members of the cadre. That the instant case fulfils the requisite conditions for invoking Rule 21 of the 2002 Pay Rules as the said rule does not contemplate such anomalous situation where the junior is paid more salary than the senior. It was argued that the provisions of Rule

21 are applicable in the fact-situation of the present case in view of: -

- a. Junior and senior government employees belong to one and same cadre;
- b. Time-scale of pay of the lower post held by the junior and senior is identical; and,
- c. Time-scale of the higher-post to which the government employee is promoted, is identical.

21. It is also submitted by the appellants that the State Government has resolved that Career Advancement Scheme is in the nature of promotion as indicated in the UGC guideline. Thus, Rule 21 is applicable and if the junior to the appellants have been granted the benefit of Career Advancement Scheme, the appellants who are senior to them, are entitled to the salary that they draw when the appellants are granted the benefit of Career Advancement Scheme.

22. Further, at one point, it is also argued by some of the appellants that the change from *ad hoc* to regular employees should be treated as break in service and service rendered as *ad hoc* ought not to be considered at the time of calculating total length of service. The Respondents, by passing

the aforementioned resolutions, have led to the present anomaly.

23. Appellants also argued that if juniors get higher pay than the seniors, and the seniors have no promotional avenue, their seniority becomes insignificant. In that case, the very purpose of making regular appointment through GPSC after following the due recruitment process would be frustrated and this could have demoralizing effect on the working of seniors. It is to avoid such situation that their pay deserves to be stepped up to the pay equal to their juniors.

24. Lastly, appellants relied on the following judgments to supplement weight to their arguments:

- i) Union of India & Ors. v. C.R. Madhava Murthy & Anr.⁴,**
- ii) Ashok Ram Parhad & Ors. v. State of Maharashtra & Ors.⁵,**
- iii) Gurcharan Singh Grewal v. Punjab SEB⁶**

⁴ (2002) 6 SCC 183

⁵ (2023) SCC Online SC 265

⁶ (2009) 3 SCC 94

25. On the other hand, Respondents submitted that they are not disputing the fact that the appellants are senior to the *ad hoc* appointees [1984-95 Group] and the same position has also been accepted by the Single Bench as well as Division Bench of the High Court. It is submitted that despite the *ad hoc* appointees being juniors, Rule 21 is not applicable in the present case since the conditions stated in the said rule have not been fulfilled in the present case as the anomaly in pay is not a direct result of the application of the rule. That Clause (v) of Sub-rule (1) of Rule 21 clearly contemplates that if even in the lower post the junior Government employee draws from time to time the higher rate of pay than the senior by virtue of fixation of the pay under the normal rule or by grant of advance increments for any reasons, the same shall not be applicable to step up the pay of the senior Government employees.

26. Further, it was submitted that if the argument of the appellants that Rule 21 is applicable and consequently, their pay should be stepped up, is to be accepted, it would amount to giving benefit

to the Petitioners and others of the earlier years, during which admittedly they were not even born in the cadre and not even serving, unlike the 1984-95 Group.

27. The Respondents relied upon the following judgments to stress that in similar facts and circumstances, this Court has held that rule of stepping up shall not be applicable:

- i) Union of India v. R. Swaminathan⁷,**
- ii) Union of India v. M. Suryanarayana Rao⁸,**
- iii) Union of India v. Sushil Kumar Paul⁹,**
- iv) ESI Corporation v. P.K. Srinivasmurthy¹⁰,**

ISSUE AT HAND –

28. It is not in dispute that the appellants have not challenged the Resolutions dated 22.12.2014 and 10.08.2015, nor have they made 85 Assistant Professors [1984-95 Group] as party to the present proceedings. Therefore, it is clear that it is not the case of the appellants that the said 85 Assistant Professors have been wrongly

⁷ (1997) 7 SCC 690

⁸ (1998) 6 SCC 400

⁹ (1998) 5 SCC 268

¹⁰ (1997) 11 SCC 533

granted the benefit, through the said resolutions. It is also not the case of the appellants that the said 85 Assistant Professors were not eligible for getting the said benefits.

29. Further, it is also an admitted fact that the appellants are seniors to the 1984-95 Group and is not under dispute. Moreover, even though the Government, *vide* resolution dated 06.03.2017, has clarified that the Career Advancement Scheme is not related to promotion and therefore deleted the terms “promotions” occurring in resolutions dated 18.04.2016 and 03.08.2016, the High Court had proceeded on the footing that the grant of Senior Scale and Selection Grade under the Career Advancement Scheme can be said to be promotion to elucidate that such an argument would not help the case of the Petitioners. So, considering that the said resolutions of the Government are not under challenge in the instant case, we will also deal with the relevant issue at hand presuming that even if the Career Advancement Scheme is considered to be promotion.

30. The short question that requires determination in the present case boils down to whether Rule 21 of the 2002 Pay Rules would be applicable in the facts and circumstances of the present case or not. Rule 21 is quoted as under:

“21. Stepping up of a pay of a Government employee on the basis of the pay of his junior:

(1) Where on regulating initial pay of a Government employee under above rules-11, 13, 15 to 17 & 19 or on his appointment to a higher post if his pay is fixed at a lower rate of pay in that cadre than another Government employee junior to him in the lower grade but promoted or appointed subsequently in such another identical cadre; the pay of the senior Government employee on the higher post shall be stepped up to the figure equal to the pay as fixed for the junior Government employee in that higher post with effect from the date of promotion of the junior Government employee and it shall be subject to the following conditions viz:-

- i. both, the junior and the senior Government employees belong to one and the same cadre and the posts to which they have been promoted or appointed, shall be identical and in the same cadre and in the same line of promotion;
- ii. the time-scales of pay of the lower posts held by the senior and the junior Government employees shall be identical;

iii. the time scales of the higher posts to which the Government employees are promoted or appointed shall be identical;

iv. the senior Government employee had he not been appointed to the higher post earlier than his junior, he would have been eligible to draw pay at a stage not lower than that admissible to his junior in the lower post immediately prior to the appointment of the junior Government employee to the higher post;

iv. the anomaly so caused must be the direct result of the application of this rule. For example, if even in the lower post the junior Government employee draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules or by grant of advance increment(s) for any reason, these provisions shall not be applicable to step up the pay of the senior Government employee.

v. the pay of the senior Government employee so increased due to stepping up of pay shall not be reduced on reversion of the junior Government employee nor shall it be increased again with reference to the pay of the same officer.

(2) After the re-fixation of pay of the senior Government employee with reference to the pay of his junior, the next increment shall occur to him only after he has rendered the qualifying service which is necessary for drawing such increment from the stage at which his pay had been refixed.”

ANALYSIS –

31. A bare reading of the above provision makes it clear that a strict compliance of the said rule is necessary. The Rule of stepping up shall apply only if the conditions specified therein are fulfilled. Specifically, condition no. (v) of Rule 21 stipulates that the anomaly must be the direct result of the application of this rule. It further states by way of an example that, if even in the lower post the junior Government employee draws from time to time the higher rate of pay than the senior by way of fixation of the pay under the normal rule or by grant of advance increments for any reasons, the same shall not be applicable to step up the pay of the senior Government employee.
32. It is to be noted that in the present case, the anomaly in pay is not a direct result of Rule 21. Rather, the alleged anomaly arose because the 85 Assistant Professors [1984-95 Group] have been granted the benefit of Senior Scale/Selection Grade Pay by taking into account the *ad hoc* services that they have

rendered in the past. Therefore, Rule 21 becomes inapplicable in the present case.

33. Moreover, if the present appeals are allowed, then it would amount to giving benefit to the appellants and others of the earlier years, during which admittedly they were not even born in the cadre and not even serving. This would go against the principle of equity. Such a benefit cannot be claimed by the Petitioners for the years of service that they have not actually rendered.

34. The case laws cited by the Appellants are not applicable to the instant case as they are distinguishable on facts. More specifically, **Madhava Murthy** (supra), it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. However, the said junior had not rendered any ad hoc services, which is not quite the case at hand. Similarly, **Gurcharan Singh Grewal** (supra) was also not a case involving ad hoc services. It was a matter wherein the Appellant was merely seeking to step

up his pay as was done for another appellant situated similarly. Lastly, in **Ashok Ram Parhad** (supra), the grant of monetary benefit was not under contention. Rather, that matter was with regards to the inter se seniority which is not a point of dispute in the instant case. Hence, none of the case laws relied on by the Appellants help their case.

35. It is also befitting here to briefly refer to the relevant judgments by this Court rendered earlier on the subject-matter, which have been relied by the Respondents:

36. The case of **R. Swaminathan** (supra) is a matter with very similar factual matrix wherein certain employees claiming seniority were claiming step up if their juniors are getting more pay on account of their *ad hoc* services being counted. Certain junior employees had officiated on a promotional post on an *ad hoc* basis due to administrative exigencies., due to which their pay on their regular promotion was fixed higher than their senior. The Court held as under:

“**10.** According to the aggrieved employees, this has resulted in an anomaly, Government

Order bearing No. F.2(78)-E.III(A)/66 dated 4-2-1966 has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows:

“10. Removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior.—(a) As a result of application of FR 22-C.—In order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*
- (b) the scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.*

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

As the Order itself states, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical; and (3) anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(I)(a)(1). **We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not as a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors.**

11. The Office Memorandum dated 4-11-1993, Government of India, Department of Personnel and Training, has set out various instances where stepping up of pay cannot be done. It gives, inter alia, the following instances which have come to

the notice of the Department with a request for stepping up of pay. These are:

“(a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may have been promoted earlier to the higher grade:

(b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre. *The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.*

(c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases the senior cannot claim stepping up of pay on a par with the junior.

(d) ***”

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. **The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier**

than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

13. The employees in question are, therefore, not entitled to have their pay stepped up under the said Government Order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; nor is it a result of the application of Fundamental Rule 22(I)(a)(1)."

37. Similarly, in the case of **Suryanarayana Rao** (supra), the Respondent was promoted and he was senior to two other persons, yet his pay was fixed at a lesser scale whereas the pay of the said two persons was fixed on a higher scale for the reason that the said juniors were promoted earlier to the promotional posts on an *ad hoc* basis. The Court had relied on the ratio laid down in **R. Swaminathan** (supra) and refused to grant the relief of stepping up.

CONCLUSION –

38. In light of the facts and circumstances of the case(s), the discussion laid out above surrounding Rule 21 and a perusal of the

authorities elucidated above, we do not find any merit in the contentions of the appellants.

39. We, thus, hold that Rule 21 of the 2002 Pay Rules is inapplicable in the instant case(s) and no relief can be granted to the appellants. The present appeals deserve to be dismissed. It is ordered accordingly.

40. Pending applications (if any) are disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASHANT KUMAR MISHRA)

NEW DELHI
AUGUST 14, 2024