

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

MISC. PETITION No. 677 of 2025

DR. BIRENDRA JHAJHARIA AND OTHERS

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Yogesh Chaturvedi – Advocate for the petitioners.

Shri Praveen Kumar Newaskar – Dy. Solicitor General for respondents No.1 to 4.

Shri Dharendra Pratap Singh Bhadoriya – Advocate for respondents No.5,6, 9 & 10.

Shri Ajay Bagadiya – Senior Advocate assisted by Shri Rajnish Sharma – Advocate for respondents No.7 and 8.

ORDER

(Passed on this 29th day of October 2025)

Per: Justice Anand Pathak

With consent of parties, heard finally.

2. The present Writ Petition is preferred by the petitioners under Article 227 of the Constitution of India being crestfallen by order dated 11th December 2024 passed in Original Application No.202/433/2019, whereby Original Application preferred by petitioners got dismissed.

3. Petitioners by way of filing O.A., sought following reliefs :-

1. The orders impugned as contained in Annexure A/1, A/2 and A/3 may kindly be quashed.
 2. The respondents may kindly be directed to restore the order dated 14.12.2015 as contained in Annexure A/10, which has been passed in fully compliance of order of Hon'ble Apex Court dated 19.11.2015 in Civil Appeal No.5744 of 2009.
 3. The respondents may also kindly be directed to recall all the consequential benefits extended to the respondent No.5 to 10 pursuant to impugned orders Annexure A/1, A/2 and A/3.
 4. To pass such other further order (s) deemed fit and proper in the interest of justice.
 5. Cost may also be awarded.
4. Factual details necessary for adjudication are that respondents No.5 to 10 were appointed on the post of Lecturer (re-designated as Assistant Professor) on 12.04.2002 in Laxmibai National Institute of Physical Education, Gwalior (in short 'LNIPE'). One Rajendra Tayal challenged their respective appointments by way of Writ Petition in the nature of Public Interest Litigation vide W.P.No.450/2002 and alleged serious irregularities committed in the process of appointment of respondents No.5 to 10. According to then petitioner, selection committee was not properly constituted and appointments were *void ab initio*.
5. Aforesaid PIL was disposed of vide order dt.19.04.2004 with the

directions to the Board of Management of LNIPE Gwalior to consider and decide the representation of the then petitioner with regard to allegations of illegal appointment of respondents No.5 to 10.

6. The Board of Management of LNIPE considered each case of respondents No.5 to 10 and found that their appointment on the post of Assistant Professor was illegal in nature. According to the Board, Selection Committee was not properly constituted and it was contrary to the rules/regulations. Therefore, the services of respondents No.5 to 10 were terminated vide order dt.06.09.2005.

7. Being aggrieved by their termination, respondents No.5 to 10 preferred Writ Petition vide W.P.No.3887/2005 before this Court, however, same was dismissed vide order dt.09.10.2006. Learned Writ Court held that constitution of Selection Committee, which selected respondents No.5 to 10, was illegal. It also held that defects of selection could not be cured by any subsequent act of the institute. Said order was put to challenge by respondents No.5 to 10 before Division Bench of this Court by way of Writ Appeal No.390/2006. Said Writ Appeal was decided vide judgment dt.31.07.2008, by which the appeal was allowed and order dt.09.10.2006 passed by the Writ Court was set aside and a direction was given to reinstate the then appellants (present respondents No.5 to 10) with full backwages.

8. It appears that LNIPE preferred SLP before Hon'ble Supreme Court of India. Leave was granted and Civil Appeal No.5744/2009 was heard and

decided by the Supreme Court vide order dt.19.11.2015, by which a direction was given to the appellant/institute to reinstate respondents No.5 to 10 within two months from the date of the order. However, it was clarified that respondents No.5 to 10 shall not claim any backwages whatsoever and all those persons, who were already appointed, shall not be disturbed by the appellant/Institute. It was also clarified that respondents No.5 to 10 shall not claim any seniority over those persons who were already appointed.

9. By effect of order dt.19.11.2015 passed by the Supreme Court in Civil Appeal No.5744/2009, respondents No.5 to 10 were reinstated vide order dt.14.12.2015 by the Registrar of LNIPE. Therefore, effectively respondents No.5 to 10 remained out of service from 06.04.2004 (date of termination) till 14.12.2015 (order of Registrar, LNIPE).

10. Meanwhile, in the year 2007, present petitioners were appointed on the post of Assistant Professor and continued to work. They preferred intervention application before the Supreme Court to protect their interest/seniority. Order of Supreme Court clarified the position of seniority of persons like petitioners vis-a-vis respondents No.5 to 10. However, some friction arose when the then Registrar passed order of reinstatement on 25.07.2016, by which it was ordered that Personal and Institutional seniority of the Reinstated Assistant Professors (respondents No.5 to 10 herein) shall be calculated from the date of their respective reinstatement

i.e. from the next day of their dismissal in the year 2005 and all benefits of 'Notional fixation' shall be tenable from their dates of virtual reinstatement in the year 2005 itself. Vide order dt.17.05.2017, respondents No.5 to 10 were confirmed in the services from the year 2004.

11. Being aggrieved by such development, present petitioners preferred O.A.No.202/433/2019 before CAT. Same was dismissed vide order dt.11.12.2024. Therefore, petitioners are before this Court.

12. It is the submission of learned counsel appearing for the petitioners that once Hon'ble Supreme Court of India directed for not granting seniority to respondents No.5 to 10 over and above present petitioners and declared them not entitled for payment of backwages for the period of termination, hence, it is not open and within the jurisdiction of the respondents/authorities to grant them benefits of retrospective confirmation, seniority, notional increments and counting of such period (2005 to 2015) as qualifying period towards teaching experience for the purpose of promotion/up-gradation/Career Advancement Scheme of promotion from Assistant Professor to Associate Professor. Grant of higher pay scale considering their seniority from their date of initial appointment is contrary to the mandate of Apex Court.

13. It is the submission of learned counsel for the petitioners that Supreme Court while disposing of Civil Appeal No.5744/2009 directed the

respondent Institute/LNIPE to accommodate/reinstate respondents No.5 to 10 (without seniority over those persons), who were appointed during their termination period. It means, Apex Court has not directed “continuity of service” and also declared them not entitled for “consequential benefits”. Therefore, all actions emanate post order dated 19.11.2015 passed in Civil Appeal No.5744/2009 stands contrary to the directions.

14. It is further submitted that as per UGC Regulations on Minimum Qualifications For Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (hereinafter shall be referred to as the “Regulations of 2018”) issued by the University Grants Commission (UGC), which provides that the stipulated minimum length of service is required to be fulfilled by an employee to become eligible for the next stage of promotion/financial up-gradation. As the private respondents have not completed the minimum qualifying service, their up-gradation/promotion under Career Advancement Scheme (CAS) can not be permitted to stand. As submitted, learned CAT caused illegality in wrongly construing provisions of UGC and ignored wrong seniority list represented by respondents.

15. It is further submitted that In-charge Registrar of LNIPE mentioned in the reply to the application dt.28.06.2024 filed by the petitioners that no

seniority list of the faculty members is being maintained for the period 2020-23. Therefore, reliance placed by the learned CAT on such seniority list is misplaced.

16. It is further submitted that because of such wrong interpretation of order of Apex Court and arbitrariness of the respondents/authorities, petitioners may lag behind vis-a-vis private respondents and in fact they are being denied opportunities like appointment as Head of Department, appointment in Board of Studies, appointment in Board of Management, appointment in Academic Council and appointment as Registrar of LNIPE. All these appointments are given on the basis of seniority and LNIPE is treating private respondents as senior than the present petitioners and gave them such assignments. Learned counsel for petitioners placed reliance over the judgment of Apex Court in the case of **J.K.Synthetic Limited Vs. K.P.Agrawal and others (2007) 2 SCC 433** in support of his submission.

17. *Per contra*, learned counsel for the respondent/LNIPE opposed the prayer. According to Dy. Solicitor General appearing for the LNIPE, seniority of petitioners remained intact and is over and above respondents No.5 to 10. It is clarified by Dy. Solicitor General that private respondents are not being promoted against sanctioned vacant post but granted benefits attached to that post. It is further submitted that at present no gradation list is maintained as per the reply dt.28.06.2024 by the In-charge Registrar and

Public Information Officer. Only a chart is referred where the salary structure, length of service, next promotion due date etc. have been mentioned, which was part of earlier proceeding. Dy. Solicitor General further submits that service prospects of petitioners shall not be compromised vis-a-vis private respondents (respondents No.5 to 10).

18. Shri Ajay Bagadia, learned senior counsel for the respondents No.5 to 10 assisted by Shri Rajnish Sharma (for respondents No.7 and 8) and Shri D.P.S.Bhadoria (for respondents No.5,6,9 and 10) matched the vehemence. According to them, since respondents No.5 to 10 were reinstated in service, therefore as a consequence, their respective pay scale was notionally fixed by considering their services in continuation in pursuance to reinstatement order. Accordingly, the probation was completed and the flow of benefits considering their length of services from 2002 was extended notionally.

19. Learned counsel for the respondents referred the proceedings initiated by the petitioners by way of contempt petition bearing Contempt Petition (C) No.1932 of 2017 taking exception to the benefits of notional fixation extended to the private respondents. Said contempt petition was listed before Apex Court in which respondents filed their reply and accordingly contempt petition was dismissed vide order dt.12.02.2024. Therefore, petitioners can not challenge the orders as challenged before the

CAT because on similar facts contempt proceeding stood concluded.

20. Counsel for the respondents referred the observations of the Tribunal to make an attempt to bring home the analogy that they are getting notional fixation and on the basis of notional fixation they were given benefits of Career Advancement Scheme and other consequential benefits because they are holding substantive sanctioned post.

21. According to them, length of service is criteria for granting benefits, however, there is no word of “seniority” in the entire Career Advancement Scheme. Whoever completes the length of service alongwith requisite qualification, will be eligible for receiving benefits of up-gradation, extension of Career Advancement Scheme benefit etc. Benefit of Career Advancement Scheme is personal in nature and does not depend on seniority and other factors. Under the scheme candidate offers himself for assessment for up-gradation, if he fulfills the minimum grading specified in relevant assessment criteria and methodology tables as prescribed by the UGC by submitting an application in the required assessment criteria and methodology proforma.

22. Learned counsel for the respondents No.5 to 10 referred the gazette notification dt.18.07.2018 – Regulations of 2018. According to Clause 6.1 - Assessment Criteria in Methodology, respondents No.5 to 10 are entitled to get the said benefits.

23. Counsel for the respondents categorically submit that they are not claiming seniority over and above the petitioners because petitioners are senior to them and Supreme Court has also clarified this position. However, they can get individual benefits as per their entitlement. Counsel for the respondents relied upon the judgment of Apex Court in the case of **Sanat Kumar Dwivedi v. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and others - (2001) 9 SCC 402** in support of their submissions.

24. Heard the counsel for the parties at length and perused the record/documents appended thereto.

25. This is the case where petitioners are apprehending march of respondents No.5 to 10 over and above them because of certain orders passed by the LNIPE and thereafter intended to grant benefit of Career Advancement Scheme.

26. This case has chequered history. Long drawn litigation resulted into order dt.19.11.2015 passed in Civil Appeal No.5744/2009, when Apex Court passed an order of reinstatement of private respondents with an additional direction regarding denial of backwages and not to disturb the seniority of persons (petitioners herein), who are already appointed by the appellant/institute. Private respondents were further bound over not to claim any seniority over those persons, who were already appointed (petitioners herein). Therefore, it was luculently clear that Apex Court categorically

maintained seniority of present petitioners vis-a-vis respondents No.5 to 10. Indeed, initially respondents No.5 to 10 were appointed prior to petitioners in year 2002 but their appointment was found to be void ab initio because of defect (Rule 23 of MOA of LNIPE) and defective constitution of Selection Committee. Learned Writ Court in W.P.No3887/2005 in fact made certain remarks also against conduct of the then Vice Chancellor regarding manner of selection.

27. Be that as it may.

28. Apex Court concluded the issue and therefore private respondents can not claim any seniority over the petitioners. So far as contention of parties regarding “continuity of service” and “consequential benefits” are concerned, counsel for the appellant relied upon the judgment of the the Apex Court in the case of **J.K.Synthetic (supra)** and referred paras 17, 18 and 19. However, the aforesaid judgment was discussed in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324** and partially overruled. Apex Court in para 38 of the aforesaid judgment culled out the propositions. Same are reproduced as under :-

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition

of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification

to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [(1979) 2 SCC 80].

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove [*Hindustan Tin Works (P) Ltd.* (supra) and *Surendra Kumar Verma* (supra)] and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

29. Judgment rendered by the Apex Court in **Deepali Gundu (supra)** is again re-affirmed by Apex Court in the case of **Maharashtra State Road Transport Corporation v. Mahadeo Krishna Naik (2025) 4 SCC 321.**

Therefore, case of the private respondents is to be seen accordingly.

30. From the above discussion, interpretation of respondents while passing order dt.25.07.2016, by which personal and institutional seniority

of respondents No.5 to 10 is placed from the date when they were removed in 2005 is contrary to the order dt.19.11.2015 passed by the Apex Court in Civil Appeal No. 5744/2009. In the present case, when Apex Court categorically mentioned the position that seniority of the petitioners (as subsequently appointed candidates) would be over and above private respondents, then LNIPE and its Registrar has to clarify the position of seniority of petitioners over respondents No.5 to 10.

31. Petitioners and those Assistant Professors, who were appointed prior to order dt.19.11.2015 passed in Civil Appeal No.5744/2009 by the Apex Court are entitled to be placed over and above private respondents in all respects flowing from their status being senior to private respondents. Therefore, petitioners and other similarly situated Assistant Professors are entitled to get postings as Head of the Department, in Board of Studies, in Board of Management, in Academic Council and as Registrar in LNIPE.

32. Petitioners and other Assistant Professors appointed prior to 19.11.2015 are always to be treated over and above private respondents No.5 to 10. For that, respondent LNIPE has to issue gradation list denoting the date of appointment of petitioners as well as respondents No.5 to 10 and placing respondents No.5 to 10 below the petitioners and other similarly placed Assistant Professors with a note that respondents No.5 to 10 are below these persons because of the order of the Apex Court and their subsequent

seniority and promotion shall always be guided accordingly.

33. If for a minute contentions of private respondents are accepted and order dt.27.10.2016 is permitted to stand, then it means that respondents No.5 to 10 would although not get salary between period 2005 to 2015 but would get seniority, promotion, Career Advancement Scheme benefit and on the strength of that order, they may march over and above petitioners in future. This would go contrary to the mandate of Apex Court in Civil Appeal No.5744/2009.

34. It is to be kept in mind that appointment of private respondents (respondents No.5 to 10) was challenged on the ground that constitution of selection committee was defective and contrary to the rules. Therefore, very appointment of private respondents was under challenge in the litigation.

35. So far as Career Advancement Scheme and its eligibility criteria is concerned, besides length of service, the teaching experience as well as other qualifications are also required by the UGC. Whether teaching experience required is acquired by the private respondents is the question and that aspect besides other related aspects are required to be scrutinized by the UGC in detail because it appears that all facts were not placed before the UGC before grant of benefits of Career Advancement Scheme.

36. Therefore, in respect of Career Advancement Scheme, Vice Chancellor/Registrar of LNIPE are directed to seek guidance from the UGC while placing all facts of respondents No.5 to 10, specially their ouster of

service between the period 2005 to 2015 and after getting requisite guidance from the UGC, appropriate decision shall be taken in respect of benefit of Career Advancement Scheme to be given to respondents No.5 to 10 and its date of enforcement. This Court is not delineating over this issue because it is the domain of UGC to decide eligibility of respondents No.5 to 10. Till the eligibility is decided, respondents No.5 to 10 shall not get benefit of Career Advancement Scheme. UGC is expected to decide the said aspect within three months from the date of passing this order. A copy of this order be sent to the UGC directly for information purpose also.

37. However, it is hereby clarified that the petitioners shall stand over and above respondents No.5 to 10 in their service gradation list and this seniority shall be maintained always as if the respondents No.5 to 10 were appointed later on after the date of appointment of petitioners.

38. On the basis of above discussion, it appears that learned CAT did not discuss the issue in detail and persuaded by the fact that contempt petition preferred by the petitioners was dismissed. Scope of contempt petition and OA/writ petition is different. Rejection of contempt petition cannot act as *resjudicata*. In the OA, petitioners challenged impugned orders dt.31.05.2018, 25.07.2016 and 17.05.2017 (Annexure A/1, A/2 and A/3 in OA), which adversely affect the prospects of petitioners in future because LNIPE/Vice Chancellor/Registrar did not come very fair and transparent in

this episode. Ergo, they may prejudice the cause of petitioners any day. Therefore, filling of O.A. was maintainable.

39. Resultantly, impugned order dt.11.12.2024 passed by the CAT is hereby set aside. Consequently, impugned orders dt.31.05.2018, 25.07.2016 and 17.05.2017 (Annexure A/1, A/2 and A/3 in OA) are also hereby set aside. Gradation list be prepared, as directed by this Court, within two months and place all Assistant Professors as per the seniority as directed by the Apex Court and as discussed in preceding paras. If UGC permits respondents No.5 to 10 and find them entitled for the benefits of Career Advancement Scheme, same be disbursed to the respondents No.5 to 10 as per law. However, in gradation list they would be placed below the petitioners and other Assistant Professors who were appointed between 2005 to 2015 before order dt.15.11.2015 was passed by the Apex Court in Civil Appeal No.5744/2009.

40. Petition stands allowed and disposed of in above terms.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE

SP