

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW  
BENCH, LUCKNOW.

Writ Petition No.1303 (S/B) of 2005

Uttar Pradesh Library Association, 56

Deputy Reghubar Dayal Lane Narhi,  
Lucknow, through its General Secretary

S.N.Agarwal and six others.

Petitioner

State of U.P. and others

Respondents.

Sri D.K.Arora & R.C.Tewari

CSC

Hon'ble Jagdish Bhalla, J.

Hon'ble Dharam Veer Sharma, J.

Dated: 12 /1/2007

JUDGMENT:-

**(Delivered by Hon'ble Jagdish Bhalla,J.)**

Petitioner No.1 is a registered association of Librarians of the Libraries and is registered under the Societies Registration Act, 1860 duly recognized by the State Government. It has been formed with the ends to safeguard interest of its members and espouses their cause in the matter of employment. The petitioner No.2 is the General Secretary of the members of the said association and the petitioners are working at different places.

Initially, the instant writ petition was preferred by the petitioners claiming parity in the matter of scales of pay on the posts of Librarian, Deputy Librarian and Assistant Librarian of the Universities and the Librarians in the Degree Colleges with the pay scales of Professors, Readers and Lecturers respectively, in the matter of Universities and the pay scale of Lecturers in the matter of Degree Colleges. The petitioners have also sought a writ of mandamus for directing the opposite parties to give post to post parity in the scales with those of Central Government/ Central Universities, and its affiliated Degree colleges on the post of Librarian, Deputy Librarian and Assistant Librarian of the Universities and the Librarian of the Universities and the Librarian of the Degree Colleges. It has also been inter-alia prayed to direct the opposite parties to pay arrears with effect from 1.4.1980 as well as promotion with retrospective effect.

During the pendency of the writ petition, the State Government issued the G.O. dated 29.2.1996 granting only the UGC pay scales to the Librarians, Dy. Librarians and Assistant Librarians. Therefore, the petitioners amended the writ petition and inter-alia prayed for quashing of the G.O. dated 29.2.1996, as far as it denies the benefit of Merit Promotion Scheme to the petitioners, which has been granted to the Teachers and Lecturers in Physical Education.

At the outset, we deem it necessary to mention that this writ petition was filed in the year 1993 and was registered as Writ Petition No. 1303(MB) of 1993. Later on it came to notice that this writ petition has wrongly been registered as Misc. Bench matter as it relates to service benefits of Librarians. Therefore, by the order dated 28.7.2005, a Division Bench of this Court directed for placing the same before the

Bench dealing with service matters and accordingly, it has been re-numbered as 1303/SB of 2005.

Conspectus of the facts are as under:-

It is averred that on the recommendation of the University Grants Commission, in the year 1956, the Governor was pleased to order that the scale of pay of Librarians in such aided degree colleges where the post Graduate Teaching in at least three subjects was being rendered, be given the pay scales of Rs.200-15-350-EB-20-460 per month with effect from April 1<sup>st</sup> 1956. It was treated to be approved item of expenditures for the purposes of grant-in-aid. This scale was also admissible to the Librarians who have possessed academic qualifications required for appointment of teachers in that scale.

In the year 1962 an order dated 7<sup>th</sup> June, 1962 was issued by the Director of Education, Uttar Pradesh on the recommendations of the University Grant Commission, Uttar Pradesh Allahabad, with respect to the pay scales of Librarians in the Degree Colleges enunciating recommendations that the Librarians attached to the colleges which impart teaching upto Post Graduate standard may get the scale of pay for Lecturers in the College even though they may possess a second class Master's Degree along with first or second class diploma in Library Science having five years experience as Librarian. It further provided that the Librarians attached to the colleges which impart education up to first degree course may get scale of pay for Lecturers in such scales even if they may possess third class Master's Degree provided that they hold a 1<sup>st</sup> or 2<sup>nd</sup> class Diploma in Library Science and have put in 5 years services in Library. There was also a provision to waive the conditions (Annexure No.2). Accordingly, Degree College Librarians got the same pay scale as was given to the Lecturers of Degree Colleges (Vide annexure No.1 and 2).

After the 1962 revision, the parity was maintained (Annexure No.3) and the Deputy Librarians in the University were given the pay scale of Rs.700-1100 and Assistant Librarians were given pay scale of Rs.400-800, which was equivalent to the pay of Reader and Lecturer respectively. The aforesaid parity was maintained on the

basis of the recommendation of the University Grants Commission by the State Government up to 1973 (hereinafter referred as the U.G.C). University Grants Commission further recommended for the revision of the pay scales of Lecturers and Professors of the University and degree colleges in the year 1973. State Government implemented the recommendations of the University Grants Commission in respect of teachers of university and Degree colleges. It created disparity and anomaly of pay scales which was occasioned because of the recommendations of the University Grant Commission. Thereafter various representations were made by the Librarians of the University and their Associations for removing anomaly in the year 1973. University Grants Commission also recommended to Government of India that the pay scales of the Librarians and Director Physical Education (DPEs) should be upgraded keeping at par with those of teachers (Annexure No.4). Thereafter Government of India on 6<sup>th</sup> December, 1981 and 15<sup>th</sup> December 1982 requested the State Government after giving reference to the earlier letter dated 7<sup>th</sup> January, 1977 to revise the scales of pay of Librarians and Directors of Physical Education in Universities and Degree College with effect from 1.1.1973. The State Government after careful consideration decided to upgrade the pay scales of Librarians and Directors of Physical Education with effect from 1<sup>st</sup> April, 1980.

The Government of India modified the earlier directions dated 1.1.1977. Thereafter another direction was issued on 15<sup>th</sup> December, 1982 with respect to expenditure. The Government of India also directed to assist the State Government up to 80% of the additional expenditure involved in upgrading scales with certain general conditions. The Government of India accepted time bound reply from the State Government failing which the presumption ought to have been drawn about no objection to the proposal (Annexure No.5). State Government deprived the Librarians of the pay scales and had not paid any heed to the request of Central Government, which was based on the recommendation of the University Grants Commission. The State of Uttar Pradesh on 19.3.1982 [Annexure No.7] practically accepted the recommendations of University Grants commission and Government of India, and granted parity to the Director of Physical Education in Degree Colleges who were deprived of the parity of the teachers. At the time of 1973 revision, both the Librarians and Director Physical Education lost the parity of the pay scale with that of teachers. On the consideration of the representations of the Librarians and their Associations, the University Grants Commission and Government of India accepted the demand for upgrading their pay scales to bring them at par with teachers and further

directed to the State Governments for restoring their parity. The State Government granted parity only to Director Physical Education with effect from 19.3.1982 with teachers of the same category of the University/Degree Colleges. The Librarians working in the State Universities and Degree Colleges were deprived of the said revision arbitrarily and discriminately. Thereafter Librarians approached the Uttar Pradesh Government for allowing the University Grants Commission pay scales to the Librarians. It is said that the State Government agreed with the proposal but the Chief Minister did not agree to it. The State Government thereafter took a decision that the pay scale would be revised on the principle of post-to- post parity with their counterparts to the Central Government. (Annexure No.8).

State Government referred the matter to the Equivalence Committee (Samta Samiti) which approved the University Grants Commission's pay scales, but qualified the same by providing that University Grants Commission pay scale be given to those Librarians, who perform the teaching work (Annexure No.9).

Before the matter was considered by the Equivalence Committee, the Government of India issued an order with respect to the revision of the pay scale of teachers, Librarians and Director of Physical Education of the Universities and Colleges. According to the said directions, pay scale of the Librarians was revised as per recommendation of the University Grants Commission and Government of India directives and were made at par with those of Lecturers, Readers and Professors, etc. including merit promotion and career advancement. Various Universities and colleges in the country gave the said revised scales of pay, for example Aligarh Muslim University, Banaras Hindu University, Delhi University, Jawahar Lal Nehru University etc.

It is averred that on account of of the rider of Government of India dated 22.7.88 the Librarians who were deprived of their parity with teachers in the 1973 schemes were again deprived of the parity in pay scales with those of teachers of 1986. The Government of India on 22.7.88 directed that the revised pay scale would be admissible to only those Librarian and Physical Education Personnel who have been sanctioned scale of pay of Lecturers, Readers and Professors under 1973 revisions scheme. The Librarians who could not get parity scale of 1973 revision scheme were ousted from the purview of 1986 revision for getting the pay scale of teachers. Even otherwise on the basis of the principles of comparability of the post, there can be no

denial to the fact that the qualifications, career advancement, merit promotion, nature of duties and performance of job of various categories of Librarians in the State of Uttar Pradesh is thus the same as is in the case of Librarians, Deputy Librarians and Assistant Librarians in Delhi University and other Colleges under the Central Government.

Despite recommendations and its acceptance by the Central Government, the State Government failed to implement the recommendations of the University Grants Commission and did not revise the scale of pay, consequently the representation was preferred as contained in Annexure No.13 to the writ petition.

It is further averred that according to the conditions imposed by the Government of India in para-4, those Librarians and Director Physical Education who were not getting revised pay scales as per 1973 scheme, will not be entitled to the 1986 revision. The State of Uttar Pradesh has misread the direction that the criteria which was fixed in the Government Order dated 27.7.1988 has not been made applicable in the case of Director for Physical Education and it has created anomaly, but the same has not been rectified so far. After recommendation of the University Grants Commission, no shadow of doubt or ambiguity will be seen in the whole affair and consequently invidious discrimination is made out. Accordingly, the action of opposite parties in the matter of pay scale which was available to them since 1966 is not only illegal but discriminatory and without any rationale. Since the Director of Physical Education were given benefit with effect from 1.4.1980, petitioners and members of the association on the basis of the recommendations are entitled for benefit of the revised pay scale of 1973 scheme with effect from 1.4.1980. The opposite parties ought to have granted revised pay scale and time bound merit promotion/career advancement with effect from the date Directorsw of Physical Education were granted the benefit. A perusal of the Government Order dated 29.02.1996 (Annexure-14) would show that the opposite parties while granting University Grants Commission pay scales to Librarian, Deputy Librarians, Assistant Librarians of the Universities and Librarians of Degree Colleges specially deprived them of the benefit of Merit Promotion Scheme/Career Advancement Scheme available to the teachers of the Universities and Colleges.

Sri D.K.Arora, learned Counsel for the petitioner contended that the opposite parties arbitrary and illegally deprived the petitioners of ancillary benefits of

University Grants Commission denying career advancement scheme, which is integral part of the University Grants Commission. There were no justifications not to give benefit of the said scheme to the petitioners which were available to the teachers as well as Director Physical Education (Annexure No.15). The opposite parties illegally granted pay scale to the petitioners with effect from. 1.1.1986 while they are entitled for the pay scale from 1.4.1980. Accordingly, the action of the Government in not accepting the recommendation of the University Grants Commission for granting parity to the Librarians/Director Physical Education tantamount unequal treatment. Further the Government Order dated 29.02.1996 is *per se* illegal as the Librarians are not covered under the 'Merit Promotion Scheme' as applicable to the University and Colleges overlooking the fact that the Merit Promotion Scheme was discontinued in the year 1987 and it was replaced by a new scheme that is "Career advancement Scheme". This scheme was introduced by the Government of India after recommendation dated 22<sup>nd</sup> July, 1988 of University Grants Commission.

University Grants Commission appointed Prof. R.C. Mehrotra, to consider the revision of pay scales, career /professional development. On the basis of that reference Mehrotra Committee also discussed the significance of Librarians and made certain recommendations. Aggrieved by the action of the opposite parties in not giving the benefit of pay scales at par with the Teachers and denial of Career Advancement Scheme, petitioners have filed the present writ petition.

On behalf of the respondent No.2 a counter-affidavit has been filed stating that in compliance of the order passed in a writ petition on 6.12.1993, the State Government referred the matter to the Finance Department which put the matter before the Committee, constituted under the Chairmanship of the Chief Secretary, U.P. to consider such matters. The State Government vide its order dated 29.2.1996, granted University Grants Commission scales to the petitioners with effect from 1.1.1986. In view of the qualifications workload of the Librarians and financial burden involved in the matter, the State Government has not conceded to the demand of the petitioners for merit promotion scheme available to the teachers of the Universities and Colleges.

The Service conditions of the Librarians working in the Universities and the Colleges except the Colleges run and controlled by the State Government, are governed by the

U.P. State Universities Act 1973, and the Government Orders issued from time to time in accordance with the spirit of the Act. In view of the higher qualifications, greater responsibilities, continuous involvement in the research work of the teachers working in the Universities and Colleges and also to attract talented people to higher education, the University Grants Commission has introduced Merit Promotion Scheme for the teachers with effect from 1.1.1986 and the same are not applicable to the Librarians working in the Universities and the Colleges in the State. Therefore, the Librarians cannot be treated at par with the teachers in the matter of pay scales and other benefits.

With a view to promote games and sports and extra curricular activities in the Universities and the Colleges in the State, the Government of U.P. re-designated the Director of Physical Education as Lecturers in Physical Education and as such they have been treated at par with teachers of the Universities/Colleges in the State with effect from 19.3.1982.

It has been contended on behalf of the respondents that the recommendations of the University Grants Commission with regard to the revision of pay scales of teachers, Librarians and others of the Universities/Colleges are not mandatory in nature and it is upto the State Government to accept the recommendations in toto or partly. With regard to implementation of University Grants Commission recommendations in respect to merit promotion/Career Advancement Scheme to the Librarians, the State Government took the decision vide order dated 29.2.1996 to sanction pay scales to the Librarians as recommended by the University Grants Commission with effect from 1.1.1986 provided, they fulfilled the qualifications as prescribed by the University Grants Commission, but it was considered expedient not to give the benefit of merit promotion scheme at par to the teachers. It is further averred that only those Librarians who possessed qualifications similar to those of teachers in the Colleges and were working in the Post Graduate Colleges were allowed parity with the teachers and others working in the Degree Colleges were denied.



Librarians in the Colleges were divided into two categories one working in the Post Graduate Colleges imparting teaching in at least three subjects at Post Graduate level and having qualifications similar to those of teachers and the other working in the Degree Colleges. The former category Librarians were treated at par with the teachers and the latter were denied parity with teachers of Degree Colleges. It is pertinent to mention here that the teachers working in the Degree Colleges were not at par with those working in the State Universities and it continued upto December, 1972 and thereafter uniform pay scales were given to the teachers of the Universities and the Colleges in the State.

The teachers working in the Universities and Colleges were given uniform pay scales with effect from 1.1.1973 on the recommendations of the University Grants Commission, which did not recommend the same to the Librarians working in the Colleges. However, it is submitted that the State Government, in view of its financial resources may or may not accept all the recommendations made by the University Grants Commission.

The Librarians, Deputy Librarians, Assistant Librarians working in the Universities/Colleges have been given revised pay scales as recommended by the University Grants Commissions with effect from 1.1.1986. It was decided by the State Government not to implement the Merit Promotion Scheme as recommended by the University Grants Commission. It is the sole discretion of the State Government to implement the recommendations made by the University Grants Commission in toto or partly, and it has not accepted Merit Promotion Scheme for the Librarians in the welfare of the State.

Equivalence Committee has made a recommendation that the pay-structure/revision of the State employees will be decided by the Central Pay Commission and the same is not applicable to the petitioners as they have opted for the pay scales recommended by the University Grants Commission. The State Government accepted recommendation made by the University Grants Commission

with regard to revision of the pay scales of Librarians partly with effect from 1.1.1986.

The Librarians working in the Universities/Colleges in the State have been given revised pay scale as per recommendation of the University Grants Commission with effect from 1.1.1986 due to financial constraints and for the reasons referred to above. The State Governments was not in a position to accept the merit promotion scheme.

It has also been contended on behalf of the respondents that the work load of Librarians working in the Central Universities is far greater than those working in the Colleges in the State as their academic qualifications, nature and quality of work is different than those possessed by the Librarians working in the College and as such the petitioners are not entitled to parity with to those working in the Central Universities.

The Librarians of the Universities/Colleges have been given revised pay scale with effect from 1.1.1986, as per recommendation of the University Grants Commission who fulfill the qualifications as laid down by the University Grants Commission in this regard. Thus the set of Librarians who do not fulfill the qualifications recommended by the University Grants Commission are not entitled to get the pay scales at par with the teachers.

It is averred that whenever the Pay Commission makes its recommendations with regard to revision of pay scales of employees, the employees are given liberty to opt for the revised pay scales or retain their old pay scales in writing, but once they opt for retaining their old pay scales they are not entitled to opt for new pay scales on subsequent revision of pay scales, and as such the Librarians of the Universities/Colleges in the State who retained their old pay scales in 1973, are not entitled to revised new pay scales with effect from 1.1.1986.

It is urged that as per directions of Government of India, the revised pay scales at par with teachers were given to Directors Physical Education with effect from 19.3.1982. The State Government did not implement the recommendation of the Government of India with regard to the revision of pay scales of the Librarians in the Universities/Colleges in the State with effect from 19.3.1982. However, the revised pay scales at par with teachers are provided with effect from 1.1.1986 subject to the conditions as laid down by the University Grants Commission in its recommendations.

Learned Standing Counsel next contended that it is the sole discretion of the State Government to implement the recommendations of the University Grants Commission partly or wholly. Regarding qualifications recommended by the University Grants Commission for the Librarians of the Universities and the Colleges, the State Government cannot relax anyone of them without the approval of the University Grants Commission. The Librarians whose cases are not covered by the scope of the recommendations made by the University Grants Commission with regard to their qualifications and revision of pay scales, they cannot claim parity as a matter of right with the teachers and also relaxation in their academic qualifications. It is further submitted that the Librarians who fulfill the qualification as recommended by the University Grants Commission have been given revised pay scale at par with teachers with effect from 1.1.1986, but they have not been given the benefit of Merit Promotion Scheme and Career Advancement Scheme as applicable to the teachers. The Directors Physical Education have been allowed parity in benefits as given to the teachers. The Librarians working in the Universities and the Colleges in the State have been given revised pay scales at par with those of teachers with effect from 1.1.1986 subject to the conditions laid down in the recommendations of the University Grants Commission. However, due to financial constraints the State Government has taken a decision not to implement the Merit Promotion Scheme and Career Advancement Scheme as applicable to the teachers. Thus, the petition is devoid of any merit and is liable to be dismissed.

On behalf of the respondents it has also been submitted that the University Grants Commission Act, 1956 was enacted by the parliament and it has been empowered to grant financial assistance for maintaining standard of higher education in the Universities and Colleges and may advise the Central Government or any State Government or Universities, which may be referred to the Commission by the Central Government or the State Government or the University as the case may.

Section 20 of the University Grants Commission Act 1956 is guided by the Central Government in the matter of policy and in case any dispute arises between the Central Government and the Commission, the decision of the Central Government will be final in the matter of pay scale of the teaching and non-teaching staff of the Universities. The Central Government after scrutinizing the recommendations refer them to the State Governments and the State Government keeping in mind its financial position, take appropriate decisions with regard to implementation of the recommendations of the University Grants Commission.

Learned Standing Counsel brought to our notice that upon the recommendations made by the University Grants Commission with regard to pay scales of teachers of Universities and Degree Colleges and approved by the Central Government, the State Government issued an order dated 25.8.1967, the University teachers were categorized as Professor, Reader and Lecturer and different pay scales were granted to them, whereas the College teachers were classified into five categories, namely Principal, Reader, Lecturer (Senior Scale), and Demonstrator. The revision of pay scales of non-teaching staff of non-Government were governed by the recommendations made by the U.P. Pay Commission and accepted by the State Government. After certain period, on the recommendations of the Uttar Pradesh Pay commission, the State Government again revised the pay scales of non-teaching staff with effect from 01.8.1972.

The State Government constituted another Pay Commission to consider the revision of pay scales of the State employees. After a gap of 13 years, teachers of Universities and Colleges were again considered by the University Grants Commission for revision of pay scale and it made its recommendations to the Government of India that Career Advancement/Merit Promotion Scheme was also introduced with a view to benefit the teachers to improve their skill and maintain high standard in higher education.

Petitioners while reiterating their stand in the writ petition, stated in the rejoinder affidavit that all over the country there is persistent demand for the parity of Librarians with those of teachers. The matter was referred to Mehrotra Committee, which was appointed by the University Grants Commission to look into the matter. The Mehrotra Committee was High Power Committee consisting of 19 eminent academicians and Senior Administrators. The Committee after considering over all aspect made observations as contained in paragraph 3.2.5 regarding merit based promotion for Librarians, which are reproduced as under:

*“In order to base career prospect on merit, competence and ability, it is essential to introduce a system of assessment for the Librarians as in the case of teachers.”*

After careful consideration of all relevant aspects regarding restoration of parity in the pay scale of the Librarians and DPEs with those of teachers, Mehrotra Committee sent its recommendations to the University Grants Commission. The University Grants Commission accepted the recommendation and the matter was communicated to the Ministry of Education & Culture, Government of India. The Government of India, after careful consideration has decided to upgrade the scales of pay of Librarian & DPEs with effect from 01.04.1980. The qualification prescribed for different categories of Librarians were also at par with teaching posts corresponding to each category of Librarians. Thus, the Government of India has restored the parity of Librarians with that of teachers not only in respect of pay scales but the minimum

qualifications for recruitment has also been prescribed at par with teachers, leaving no room for any type of discretion/distinction between the teachers in University & Colleges and the Librarians/DPEs.

Petitioners have also refuted the contentions raised in the counter affidavit and said that the recommendations of the University Grants Commission should have been accepted in toto as the same were based on the report of Mehrotra Committee, which consisted of 19 eminent academicians. There were hardly any occasions to discriminate the case of the Librarians and to change their position.

Sri D.K.Arora contended that Librarians cannot be treated differently with regard to pay scale and other benefits of the University Grants Commission. The recommendation for the Career Advancement is integral part of recommendations of University Grants commission which was accepted by the Central Government and is part of revised pay scale sanctioned which was on 1.10.1986. It is again submitted that no classification of Libraries on the basis of work in the Post-Graduates & Degree Colleges have ever been made by the University Grants Commission/Central Government. The parity to Librarians with the teachers in University and Colleges has been granted by the University Grants Commission without any such artificial distinction. The benefit of career advancement scheme has to be given on the basis of length of service and benefit of Ph.D given to the Ph.D holders. The minimum qualification remains the same and there is no basis of workload in providing the benefit of career advancement as alleged by the opposite parties. It has further urged that Librarians have been given pay scale at par with the teachers except benefit of career advancement scheme without any justification and paragraph 17 of the Counter-affidavit does not depict a correct picture. It is pertinent to mention that the Director Physical Education have been given pay scales and other benefit irrespective of their qualification. The State Government while giving benefit to the Directors of Physical Education have not followed the criteria prescribed by the University Grants Commission.

The opposite parties have adopted lenient attitude towards the Director of Physical Education as the State Government changed its nomenclature as “Lecturer in physical education” to make them entitled for ancillary benefits that is career advancement scheme and other benefits, which are available to the teachers and by which enhanced their age of superannuation. Thus, there is no justification in not accepting the recommendation of the University Grants Commission in respect of Librarians only.

We have heard the parties at length and perused the record.

The main contentions of the writ petitioners can be summarized as follows:-

I. Librarians of U.P. Universities and degree colleges were granted the parity in respect of pay scales with teachers of State Universities and Degree Colleges since 1956 to 1972 on the recommendations of University Grants Committee, U.P.

III. On the recommendations of UGC, U.P. in the year 1956, the Govt. sanctioned the pay scales of Librarians in such aided Degree Colleges where the post graduate teaching in at least three subjects was being rendered, be given the pay scales of Rs.200-460 per month with effect from April 1<sup>st</sup> 1956 and the expenditure on given this pay scale shall be treated as an approved item of expenditure for the purpose of Grant-in-aid. This scale was made admissible to the Librarians who besides possessing Degree/Diploma in Library Science and also possesses the academic qualification required for appointment of teacher in that scale.

III. Again in 1962, on the recommendations of University Grants Committee, U.P., the Director of Education, U.P. issued an order dated 7<sup>th</sup> June 1962 that the Librarians of Post Graduate Degree Colleges shall get the scales of pay at par with the teachers of

Post Graduate/Degree Colleges respectively provided they fulfill the requisite academic qualifications which is evident from the Annexure No.2 of the writ petition.

IV. After the 1962 revision when the pay scales of Lecturers, Readers and Professors were again revised, the State Government again maintained the parity in the pay scales of Librarians with those of teachers in the Universities and Degree Colleges as is evident from Order dated 13.05.1968.

The pay scales of Rs.700-1100 and Rs.400-800 given to Deputy Librarians and Assistant Librarians of the Universities respectively were at par with the pay scales of Readers and Lecturers of the Universities. It is very much clear that the State Govt. maintained the parity in respect of pay scales and educational qualifications of Librarians of Universities and Degree Colleges with the various categories of teachers working in State Universities and Degree Colleges upto 1972 on the recommendations of University Grants Committee, U.P.

V. University Grant Commission, New Delhi appointed a committee under the Chairmanship of Prof. S.N.Sen (later known as Sen Committee) which revised the pay scales of University and Degree Colleges teachers as well as the Librarians and Directors of Physical Education. As it is evident that the pay scales of Librarians and Director Physical Education were at par with the teachers till 1972. However, the Government of India vide its letter dated 2<sup>nd</sup> Nov., 1974 revised the pay scales of University and College teachers with effect from. 1.1.1973 based on the recommendations of Sen Committee and Librarians and Director Physical Education were deprived from the pay scales given to teachers of University and Degree Colleges in this revision. Both were given only replacement scale based on the pattern recommended by the 3<sup>rd</sup> Central Pay Commission for employees of Central Govt. vide Govt. of India



Order dated 7.1.1977 which were much lower than those approved for teachers of Universities and Colleges. In this way the disparity between the pay scales of teachers and Librarians/Director of Physical Education of Universities and Degree Colleges was created by 1973.

- V. On creation of disparity and anomaly in Pay scales various representations were made by Professional organizations of Librarians and Directors of Physical Education to University Grants Commission, New Delhi and Govt. of India for restoring the parity in respect of pay scales given to teachers of Universities and Degree Colleges, as in the past revisions, same pay scales were recommended to all categories of personnel working in Universities and Colleges namely Teachers, Librarians and Directors of Physical Education. After examining the matter in depth the University Grants Commission, New Delhi recommended to Govt. of India that the past parity should be restored and the pay scales of Librarians and Director of Physical Education should be upgraded so as to bring them at par with those of teachers. The Govt. of India accepted the recommendations of University Grants Commission, New Delhi in this regard and restored the parity in respect of pay scales of Librarians and Directors of Physical Education with teachers of University and Degree Colleges with effect from 1.4.1980. Ultimately, the Govt. of India issued two circulars to various State governments and Central Universities in on 8.12.1981 and 15.12.1982 respectively.
- V. It is urged that the Govt. of India circular dated 15.12.1982 was a detailed circular having the provisions of financial assistance to State Governments on implementing the University Grants Commission Pay scales with respect to Librarians and Directors of Physical Education of Universities and Degree Colleges along with separate required educational qualifications for present

incumbents and for future recruitments. In this letter, the Govt. of India also promised to bear the 80% of additional expenditure incurred in upgrading this pay scales.

The Government of India vide its letter dated 8.12.1981 also issued the directives to State Governments to express their opinion in the matter and communicate their reply by 31.12.1981, otherwise it will be assumed that the State Government is in agreement with the proposal. However, the Government of Uttar Pradesh did not send any reply of the letter of Government of India dated 8.12.1981, which meant that the State Government was in full agreement with the proposal of Government of India.

VIII. While revising the pay scales of Librarian and Director of Physical Education with effect from 1.4.1980 at par with Teachers of Universities and Degree Colleges, the Government of India not only restored the pay parity with the Teachers but the parity in respect of educational qualification for recruitment of Librarian and Director of Physical Education was also maintained. Thus, no scope was left that creates any disparity with Teachers.

IX. On 30<sup>th</sup> January, 1982, the Joint Secretary to the Government of Uttar Pradesh wrote to all Vice-Chancellors in the State Universities for sending the information with respect to all additional expenditures in the matter of up-graduation of pay scales of Librarians and Director of Physical Education as the matter was under consideration in accordance with the directives issued by the Government of India.

X. Consequent to the University Grants Commission recommendations and Government of India's directions dated 15.12.1982, the Government of U.P. vide its

letter dated 19.03.1982 partially accepted the Government of India's directives and granted parity to Directors of Physical Education in State Universities and Degree Colleges in respect of pay scales with Teachers of Universities and Degree Colleges. University Grants Commission pay scales were given to Director of Physical Education by the State Government irrespective of qualification to all those Director/Assistant Directors of Physical Education holding such designation. This act of State Government was most discriminatory/arbitrary and *mala fide* with Librarians of State Universities and Degree Colleges, who were deprived of the parity in the pay scales with teachers.

XI. At the time of 1973 revision, Librarians and Director of Physical Education both were denied the parity with teachers and after reconsidering the matter of restoration of parity to both set of personnel with the teachers by the University Grants commission and Government of India, the Government of India accepted their demand and directed Central Universities & State Governments for restoring their parity. However, the Government of U.P. in a most shocking, surprising and discriminatory manner granted the parity to only Director of Physical education and deprived the same benefit to the other category i.e. Librarians of Universities and Degree Colleges of the State. However, it shows that the Government was in agreement with the proposal communicated by the Government of India vide letter dated 08.12.1981. Thus, the Librarians were given a discriminatory treatment by the State Government, which caused a great injustice and discrimination and also causing mental agony and harassment.

XII. Being seriously aggrieved, the Librarians approached the U.P. State Government for granting the University Grants Commission's pay scales to the said Librarians and after great discussion, the Education and Finance Department agreed with the proposal and send the proposal for approval of the Chief Minister. The Chief Minister

referred the matter to the 3<sup>rd</sup> Pay Committee of U.P. constituted in the mean time for consideration.

XIII. The recommendations of Third Pay Committee of State Government were not in consonance with the demands made by the State Government employees who vehemently opposed the recommendation of Third Pay Committee and the State Government did not approve those recommendations. The State Government took a decision that the pay scales of State employees revised on the principle of post to post parity with their counter parts at Central Government. This decision was communicated to the President, Rajya Karmachari Sanyukta Parishad by State Government vide its letter dated 12.10.1988.

XIV. On the decision of State Government for post to post parity to State Government employees including the employees of State universities and colleges with their counter parts at the Central Government, the State Government constituted another committee known as “SAMTA SAMITI” (Equivalence Committee). The matter of UGC pay scales to Librarians of State Universities and Degree Colleges was referred to this committee. The “Samta Samiti” agreed and approved the UGC pay scales to the Librarians with the condition that only those Librarian shall qualify for the UGC pay scales who also perform the teaching work. This condition was attached on the presumption that the UGC pay scales are meant for teachers only without verifying the facts from University Grants Commission/Government of India and Central Universities where the UGC pay scales have already been implemented in respect of Librarians.

XV. In para 4 of the order dated 22<sup>nd</sup> July, 1988 Government of India, it was provided that the revised pay scales of Librarian and Physical Education personnel are the same as are approved for teachers. Thus the pay scales of Librarians were made at par with those of Lecturers, Readers and Professors etc. including Merit Promotion and Career Advancement Scheme. The various Universities and Colleges in the country gave the said revised pay scales to the Librarians and Director of Physical Education along with teachers. The Central Universities like Aligarh Muslim University, Aligarh, Bararas Hindu University, Varanasi, Delhi University, Delhi, Jawahar Lal Nehru University, New Delhi and the State of Rajasthan, Madhya Pradesh, Karnataka, West Bengal, Punjab, Andhra Pradesh and many others accepted and implemented the revised pay scales in their State Universities and Degree Colleges.

- I. It has been urged that on the one hand the State Government denied the pay scales of University Grants Commission to the Librarians with effect from 1.4.1980 and there after the revised pay scales from 1.1.1986 which were accorded to teachers and Director of Physical Education (Re-designated as 'LECTURERS' in Physical Education) by the State Government vide letter dated 7.1.1989. On the other hand, the State Government also deprived the pay scales admissible to Librarians of Central universities and its colleges on the principle of post to post parity because of the rider imposed by Equivalence Committee of Uttar Pradesh Government i.e. "That only those Librarians of Universities and Colleges shall be accorded UGC pay scales who perform the teaching work in Library Science." The matter was later on referred to Anomaly Committee constituted by the State Government where the Uttar Pradesh Library Association (UPLA) not only submitted a detailed representation to the Convenor of Anomaly Committee/Finance Secretary but also submitted a clarification issued by Aligarh Muslim University, Aligarh and University Grants Commission itself and this was made clear that UGC pay scales are effective from 1.1.1986 as notified by the Government of India and

are applicable to Librarians in Universities and Colleges whether teaching or other wise. Now a days teaching Departments in Library Science and libraries of Universities and Colleges are separate entities and both have got their own personnel separately. The personnel of Department of Library Science of any University and College re designated as Lecturer, Reader and Professor and the professional personnel of any library of University/College are known as Assistant Librarian, Deputy Librarian and Librarian. If the personnel of any Library perform the teaching work also that is not treated his regular work and one is given an extra payment for extra work by the institution.

Admittedly, during the pendency of the present writ petition, the State Government sanctioned the UGC pay scales to the petitioner w.e.f. 1.1.1986 bringing them at par with the Teachers and Directors of Physical Education by the G.O. dated 29.2.1996. It is said that these revised pay scales with effect from 1.1.1986 notified by the government of India vide its notification dated 22<sup>nd</sup> July, 1988 are based on the report of “Mehrotra Committee” constituted for the revision of pay scales for teachers, Librarians and Director of Physical Education of Universities and Colleges. “Mehrotra Committee” in its report (Part B Para 3.2.2) clearly stated that the Librarian do not perform formal teaching. However, keeping in view their active and valuable contribution in pursuance of education, they should be treated at par with the teachers.

“Paragraph 5 of the affidavit filed in support of application for amendment reads as under:-

*“That during the pendency of the writ petition and in pursuance of the interim order passed by this Hon’ble Court, the State Government on 29<sup>th</sup> February, 1996 issued a Government Order granting pay scales to the petitioner with effect from.1.1.1986 but denied the benefit of Career Advance Scheme, though the same was part and parcel of the order dated 22<sup>nd</sup> July, 1988 issued by the Ministry of Human Resource Development (Department of Education).”*

However, after giving the clear cut clarification issued by the University Grants Commission, the State Government did not pay any attention towards the demands for UGC pay scales as ordered by Government of India with effect from 1.4.1980 and there after the revised pay scales with effect from 1.1.1986 and also denied the pay scales admissible to Librarians of Central Universities and Colleges (which are nothing else but the only UGC pay scales recommended by UGC and ordered by Government of India) on the principle of post to post parity of the State Government. Thus the great injustice was done with Librarians of State Universities and Colleges.

XVII. The learned counsel has contended that the Librarians were entitled for the following University Grants Commission pay scales at par with teachers along with 'CAREER ADVANCEMENT SCHEME'.

FOR UNIVERSITIES	FROM 01.04.1980	FROM 01.01.1986
Assistant Librarian	Rs.700-1600	Rs.2200-4000
Assistant Librarian	not existing	Rs.3000-5000
Assistant Librarian (Selection Grade)	not existing	Rs.3700-5700 (under Career Advancement Scheme)
Deputy Librarian	Rs.1200-1900	Rs.3700-5700
Librarian	Rs.1500-2500	Rs.4500-7300

FOR COLLEGES	FROM 01.04.1980	FROM 01.01.1986
Librarian	Rs.700-1600	Rs.2200-4000

Librarian (Senior Grade)	Not existing	Rs.3000-5000
Librarian (Selection Grade)	Not existing	Rs.3700-5700 (Under Career Advancement Scheme)

XVIII. It is argued that the State Government vide G.O. No.2452/15-11-95-14(10)/8 dated 29<sup>th</sup> February, 1996 granted the UGC pay scales to the petitioners with effect from 01.01.1986 neither from 01.04.1980 as recommended by Government of India nor from 19<sup>th</sup> March, 1982 as given to Director of Physical Education without giving reference of the order passed by this Hon'ble Court in the aforesaid petition vide Annexure No.14 and Annexure No.40 of supplementary affidavit dated April 1998.

XIX. On the strength of the said G.O. dated 29.02.1996, it is indicated that the opposite parties while granting the UGC pay scales to Librarians of Universities and Colleges specifically mentioned that they will not be covered under the 'Merit Promotion Scheme'. Thus the State Government deprived them from the ancillary benefits of 1986 pay scale scheme i.e. 'Career Advancement Scheme' available to teachings of the Universities and Colleges.

XX. Petitioners submit that the rider of denial of 'Merit Promotion Scheme' to University and College Librarians was put with out application of mind. The opposite



parties have failed to notice that the 'Merit Promotion Scheme' of University Grants Commission was non-existent in the year 1996 as it was terminated by University Grants Commission as early as in 1987 which is evident from the Government of India Order dated 22<sup>nd</sup> July 1988, which has been annexed as annexure no.-A.41 of supplementary affidavit. In this order the Government of India under the heading 'Career Advancement' and on page 3 para -xi has mentioned that "Promotions made under the Merit Promotion Scheme' of the University Grants Commission, or any other similar schemes before the announcement of the revised pay scales on 17.06.1987 will not be re-opened.....". It means that only the teachers who have been granted the benefit of Merit Promotion Scheme' before the announcement of Revised Pay Scales of UGC before 17.6.1987, the date of announcement of UGC Revised Pay Scales shall be covered under Merit Promotion Scheme' or those existing teachers who opt for the 'Merit Promotion Scheme' before pay-fixation. Otherwise, rest of the teachers shall be covered for promotion under the provisions of 'Career Advancement Scheme' which is integral part of the Revised Pay Scales Scheme of 1986 as announced by the government of India vide its letter dated 17.6.1987. The Government of India letter dated 17.6.1987 is being annexed with set of GOs and Circulars separately.

XXI. Learned counsel for the petitioners submits that State Government granted the University Grants Commission (UGC) pay scales to Librarians of Universities and Colleges with effect from 01.01.1986 and since the benefits of Career Advancement Scheme is part and parcel of pay scales recommended by the University Grants Commission with effect from 01.01.1986, the benefits of Career Advancement Scheme could not be denied to the Librarians of the Universities and Colleges of Uttar Pradesh with effect from 01.01.1986 while recommending the revised pay scales with effect from 01.01.1986 vide letter No.F-3-1/94(PS) dated 24.12.1998, the University Grants Commission specially mentioned that "*the entire scheme of revision of pay scales together with all the conditions attached to it, would be implemented by the State government as a composite scheme with out any modifications.....*". As the Government of India bears the 80% of the additional expenditure occurring on the implementation of the UGC pay scales by the State Governments, therefore, such

conditions are put before the State Governments to maintain the uniformity at the national level in the matter of UGC pay scales. If any State Governments wish to make some changes in the revised pay scale scheme, the approval of University Grants Commission and Government of India is must, otherwise the Government of India will not extend the financial assistance to that State Government on implementing the pay scheme. It is also apprised that the State Government did not seek the approval of Government of India for not extending the benefit of Career Advancement Scheme to the Librarians of State Universities and Colleges. Therefore, the State Government has no right to deprive the benefit of Career Advancement scheme to Librarians. The State was under an obligation to accept the provisions of the whole scheme of pay scales of 1986 and implement it accordingly.

XXII. The Career Advancement Scheme is part and parcel of University Grants commission's revision of pay scales and it should have been implemented as composite scheme while issuing the G.O.No.2452/15-11-95-14(10)/8 dated 29.02.1996 through which UGC's pay scales were provided to the University/College Librarians in the State of Uttar Pradesh.

XXIII. It has also been brought to our notice that three set of personnel, namely, Teachers, Director of Physical Education and Librarians of Universities and Colleges were given the revised pay scales along with 'Career Advancement Scheme with effect from 01.01.1986 by a single letter of Government of India dated 22<sup>nd</sup> July 1988 and two set of personnel, namely, Teachers and Director of Physical Education were given revised pay scales with effect from 01.01.1986 along with the benefit of Career Advancement Scheme but Librarians were deprived with the benefit of Career Advancement Scheme, which is absolutely arbitrary and discriminatory. It is a well settled law that when a recommendation is made for more than one set of personnel, the recommendations shall be made applicable on all set of personnel. The

Government may not be choosy and deny the benefit to one set of personnel. Therefore, the act of State Government in the matter of not granting the benefit to the Librarians of State Universities and Colleges is illegal, unfair and discriminatory.

Learned counsel for the petitioners states that on one hand, the Librarians of U.P. State Universities and Colleges were deprived with the benefit of career Advancement Scheme of UGC pay scales and on the other, they became ineligible for the benefit of provisions of State Government pay scale promotional scheme on being granted the UGC pay scales. Thus at present a Librarian shall be appointed in a particular pay scale and shall retire from the same pay scale without any promotional avenues/benefits in his entire career.

Lastly, learned counsel for the petitioners has urged that the Teachers of Government Degree Colleges are appointed through the U.P. Public Service Commission and the Teachers of Non-Government aided Degree Colleges are appointed through the U.P. Higher Education Service Commission. This procedure is laid down in the G.O. dated 29<sup>th</sup> February, 1996. The same procedure of recruitment has been made applicable for the Librarians of government and Non-government aided Degree Colleges. In the University the selection of Teachers is made through the Selection committee comprising of Experts nominated by Chancellor and the same procedure is adopted for the appointment of Librarians of the Universities. Moreover the qualifications for appointment of Librarian is at par with the Teachers, therefore, there is no cogent reason for denial of 'Career Advancement Scheme' to the Librarians which is admissible to the Teachers and Director of Physical Education in State Universities & Colleges. Thus it is a clear-cut case of invidious discrimination.

Before dealing with the rival contentions of the parties, we deem it proper to refer relevant paragraphs of Mehrotra Committee report on which much emphasis has been laid by the learned Counsel for the petitioners.

#### **MEHROTRA COMMITTEE**

**INTRODUCTION;** The revised pay scales of 1986 scheme are based on the recommendations of Mehrotra Committee which presented a detailed report based on various grounds and justifications to University Grants commission for the revision of pay scales of Teachers, Directors of Physical education and Librarians of universities and Colleges.

**FORMATION OF COMMITTEE;** The Government of India on the recommendation of University Grants Commission, New Delhi appointed a committee to revise the pay scales of 1973 scheme (given to teachers with effect from 1.1.1973 and to Librarians and Director of Physical Education with effect from 1.4.80) under the Chairmanship of Prof. R.C.Mehrotra on December 24<sup>th</sup>, 1983 to consider the revision of pay scales, Career/professional development and service conditions of teachers in Universities and Colleges.

In October 1985, the Commission in consultation with the Government of India requested the Committee to consider the revision of pay scales of Librarians and Director of Physical Education in addition to pay scales of Universities and Colleges Teachers.

**EXPERT COMMITTEE;** The Mehrotra Committee was a high power and an expert Committee consisted of 19 Eminent Academicians and Senior administrators of Government of India and University Grants Commission.

### **MAIN POINTS FOR DISCUSSIONS:**

The main points which emerged from the discussion with the representatives of Library Associations of Universities and Colleges, Associations of Directors of Physical Education and representations received from some prominent persons in the field, are as follows:

1. By revising the pay scales of Librarians and Directors of Physical Education with effect from. 01.04.1980, the Government of India agreed that the Librarians and Directors of Physical Education of Universities and Colleges should be treated at par with the Teachers and this parity should be maintained.
2. The minimum qualifications for the Librarians should be equivalent those of Teachers in Universities and Colleges. At present, the Assistant Librarians/College Librarians should possess two Master's Degree, one of them in Library Science while the Teachers are required only one Master's Degree.
3. Relaxation in qualifications for existing staff/incumbents should be on lines similar to that for Teachers.
4. Promotional avenues/facilities for training and improvement of qualifications, fellowship, study leave and sabbatical leave should be made available to Librarians and Directors of Physical Education as are available to Teachers.
5. Orientation Programmes should be organized to train the existing and newly recruited staff with the modern techniques applicable in Libraries.
6. To avoid in breeding and to ensure appointment of right type of persons in the profession, National Qualifying Test/National Eligibility Test (NET) for recruitment will be a welcome step.

#### **FUNCTIONS OF A LIBRARIAN:**

1. A Librarian is expected to provide a wide range of services to users. It should be of constant endeavor of a Librarian to widen and update his range of knowledge so that he can extend valuable guidance to Teachers as well as students/users.

Mehrotra Committee Report Para 3.2.1 is reproduced below:-

*“A Librarian is expected to provide a wide range of service to the user. He is required to make available in a convenient and attractive form to students and faculty members, a well-organised and properly arranged stock of books, journals and other relevant material which is to be kept properly indexed, catalogued and up-dated. The Librarian has to provide reading and lending facilities and services relating to reference and bibliography, extension, documentation and reprography. It should be his constant endeavour to widen and update his range of knowledge so that he can extend valuable guidance to teachers as well as students”.*

2. It is undeniable that a Librarian, although he is not a formal member of the teaching faculty, performs academic functions and sustain and enriches that academic process, while a Teacher may have specialized in a particular branch. The Librarian is required to have a wide overall acquaintance with various disciplines in order to be able to bring the scholars face to face with knowledge in diverse areas. The student contacts with the Librarian should be accelerating and educative. The Librarians' interaction with members of the faculty should be of mutual benefit. It is expected that the accession of latest books and journals, the queries of student and interaction with Teachers would keep the Librarian mentally alert and sufficiently knowledgeable. Evidently, he should be qualified and trained for the purpose. It follows that the emoluments of duly qualified Librarian should match those of Teachers and that they should have about the same promotional opportunities as have been recommended for Teachers.
3. In order to draw upon a wide range of talent, the Committee recommended a similar eligibility test for Librarianship at the initial stage of recruitment as had been recommended for the Teachers. The Librarian will be recruited out of those who have passed the eligibility test. It would facilitate the work of Selection Committee and improve the quality of entrants.

Para 3.2.5 of Mehrotra Committee Report reads as under:-

*“In order to base career prospect on merit, competence and ability, it is essential to introduce a system of assessment for the librarians. As in the case of teachers, this assessment should consist of a combination of self-assessment and external assessment. It is suggested that every Librarian should be asked to prepare a self-assessment report at the end of each academic session. This report should include items like number of days the library was kept open, daily average of readers, average number of books issued, new acquisitions, book exhibition, if any, additions in data bank, documentation, introduction of new techniques/procedures to improve service to the users, participation in conferences, seminars, refresher courses, workshops etc., list of publications, documentation/ bibliography abstraction and reviews. The improvements effected and the facilities and guidance provided should, in particular, be highlighted”.*

4. The promotion of Librarian should be linked with acquisition of additional qualifications in the context of rapid developments in modern technologies in management of Libraries. Therefore, it becomes essential that Librarian be given opportunities like duty leave etc. for improving their competence. They should also be enable to attain continue educational programmes like Summer Schools, Work Shops and Seminars etc. while the progress in Information Science and Technology demands a substantial increase in the technical competence of the Librarians and general awareness have also to be upgraded continuously.

From the above contents it is evident that Librarian should constantly make the efforts to upgrade and update with the new developments in the filed of Library Science and also with overall academic world like an other teacher of any discipline in our University/College. The continuous efforts of a Librarian in academic endeavor facilitate the overall academic excellence of an

academic institution. It itself shows the importance of Library and Librarians in the field of knowledge.

Para 3.2.7 of Mehrotra Committee Report is relevant which is as under:

*“The promotion of Librarians should be linked with the acquisition of additional qualifications. In the context of the rapid developments in modern technology in management of Libraries, it becomes essential that Librarians be given opportunities, like duty leave etc., for improving their competence. They should also be enabled to attend summer schools, workshops and seminars and satisfactory performance in these summer schools may be taken into account for promotion. While the progress in information science and technology demands a substantial increase in the technical competence of Librarians, their academic (i.e. subject) competence and general awareness have also to be upgraded continuously”.*

#### **REVISION OF PAY SCALES- RECOMMENDATIONS;**

In Chapter 5 of Mehrotra Committee Report, the committee has recommended that “the committee noted that the principle of parity has been established in the matter of scales of pay between university and College Teachers, Librarians and Director/Instructors of Physical Education in the Universities and Colleges.

In case of the teachers, the committee has recommended pay scales in the existing frame work. The same may be applied to pay scales of these categories.....The committee recommends that while converting these scales, it should be ensured that the Librarians and Directors of Physical Education in Universities and Colleges are not put to any financial disadvantage and envisaged parity is maintained.”

Chapter V of Para 5.2 of Mehrotra Committee Report is as follows:-



*“The Committee noted that the principle of parity has been established in the matter of scales of pay between university and college teachers and Librarians and Directors/Instructors of Physical Education in the Universities and Colleges. In the case of teachers, the Committee has recommended pay scales in the existing framework; the same may be applied to pay scales of these categories. These pay scales may, therefore, be treated as notional and would have to be converted in the light of the recommendations of the Fourth Pay Commission. The Committee recommends that while converting these scales, it should be ensured that the Librarians and Directors/Instructors of Physical Education in Universities and Colleges are not put to any financial disadvantage and envisaged parity is maintained”.*

The recommendations made in the Mehrotra Committee Report were accepted by the Government of India and accordingly issued Government Order dated 22<sup>nd</sup> July 1988 granting the pay scales and benefits of Career Advancement Scheme to the Librarians and Directors of Physical Education and as admissible to Teachers of Universities and Colleges.

Learned counsel for the opposite parties claimed that ‘Merit Promotion Scheme’ was introduced for Teachers with effect from 1.1.86 by University Grants Commission and same is not applicable for Librarians working in Universities and Colleges of the State.

As regard to the Merit Promotion Scheme/Career Advancement Scheme, Sri D.K.Arora, petitioner’s counsel stated that the Merit Promotion Scheme was introduced by the University Grants Commission for the time bound promotion of University and College Teachers in the year 1983, in order to avoid stagnation of teachers and to provide promotional avenues on the basis of their length of service in a particular cadre. This scheme was also made applicable for those Librarians who were declared as Teachers (Non Vocational Academic Staff) in the Universities and Colleges by the University Grants Commission vide its letter No.F-1-6/83(MP) dated January 28<sup>th</sup>, 1984. Later on, the ‘Merit Promotion Scheme’ was terminated in the year 1987 and another Scheme

namely 'Career Advancement Scheme' was introduced by the Government of India for time bound promotion of Teachers including Librarians and Directors of Physical Education working in Colleges and Universities while revising their pay scales with effect from 1.1.1986, which is evident from the Government of India's Order dated 22<sup>nd</sup> July 1988.

This fact is established from another document titled as 'UGC Notification On Revision Of Pay Scales, Minimum Qualifications for Appointment Of Teachers in University And Colleges and Other Measures for the Maintenance of Standards 1998' issued by University Grants Commission vide its notification dated 24<sup>th</sup> December 1998. Thus, it is ample clear from aforesaid Government Order that the 'Merit Promotion Scheme' was not existed in the year 1996 while granting the University Grants Commission pay scales to the Librarians of Universities and Colleges by the State Government of U.P. vide its G.O. dated 29.2.1996.

In para 43 of Rejoinder affidavit, the petitioners while rebutting the allegations made in the counter affidavit have stated as under :-

*"It is also pertinent to mention here that the Merit Promotion Scheme of UGC pay scale was abolished in the year 1987 while revising the UGC pay scales with effect from. 1.1.1986 for Teachers and Librarians/ DPEs of Universities and Colleges and the Ministry of Human Resource Development, Government of India through its letter dated 22.7.1988 recommended a new promotion scheme i.e the aforesaid Career Advancement Scheme. Thus the Librarians cannot be treated differently with the Teachers in matter of pay scales and other benefits."*

As regards to the contention of the respondents that recommendation of U.G.C. are not mandatory in nature, the learned counsel for the petitioners submitted that the University Grants Commission (in short referred to as 'UGC') is an apex body of the country which regulates and controls the matters relating to higher education all over the country. The U.G.C's recommendations are binding over all the authorities

concerned in view of the provisions of University Grants Commission Act 1956. The authorities are under obligation to accept the recommendations made by the Commission. Hon'ble Supreme Court as well as this Hon'ble Court has enunciated a principle that the recommendations of any expert body shall be accepted/rejected in toto and the authorities cannot be allowed to pick the portion of the recommendations, which suits to them, and not to adopt the other which is beneficiary to the employees like petitioners. The State Government granted the UGC pay scales to Librarians with effect from. 1.1.1986, there was no reason to deprive them from consequential benefits i.e. Career Advancement Scheme. Apart from the letter dated 12.9.87 of Government of India, the UGC itself in its letter dated 24.12.98 has clearly stated that *“University Grants Commission expects that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State government as composite scheme without any modifications,.....”*

As the Government of India bears the 80% of the additional expenditure occurring on the implementation of the UGC pay scales by the State Governments, therefore, such conditions are put before the State Government to maintain the uniformity at the national level in the matter of UGC pay scales. If any State Government wish to make some changes in this matter, the approval of University Grants Commission and Government of India is must, otherwise the Government of India will not extend the financial assistance to that State Government on implementing the pay scheme. It was also brought to out notice that the State Government did not seek the approval of Government of India for not extending the benefit of Career Advancement Scheme to the Librarians of Universities and Colleges. Therefore, State Government has no right to withdraw the benefit of Career Advancement Scheme to said Librarians and it is binding/mandatory on the part of the State Government of U.P. to accept and implement the provisions of the whole scheme of the pay scales of 1986 in toto and not in part.

The respondents have contended that the Librarians do not fulfill the qualification for Promotion Scheme. This contention is repelled by the petitioners stating that in fact only those Librarians of Universities and Colleges were given the UGC pay scales, who fulfilled the minimum qualifications laid down by the Ministry of Education and Culture, Government of India vide its letter dated 15.12.1982 while recommending the UGC pay scales to the Librarians and Directors of Physical Education of the Universities and Colleges which were at par with the teachers of the Universities and Colleges. The picture presented here about qualifications of Librarians in itself is contradictory to the averments in paragraph -4 of counter-affidavit of July 2001. In para 4 of the said counter affidavit, the opposite parties themselves had accepted that only those Librarians were given the UGC pay scales, who possesses the qualifications similar to those of teachers in the Colleges, which is clear from the State Government's G.O. dated 29.2.1996 that only those Librarians of State Universities and Colleges shall be granted the UGC pay scales with effect from. 1.1.1986 who fulfill the UGC's minimum educational qualifications as given in the Appendix-Ka. Therefore, it is to mislead the Hon'ble Court that the Librarians do not fulfill the educational qualifications. As far as the Career Advancement Scheme or Merit Promotion Scheme is concerned, the minimum educational qualifications remains the same as at the time of initial recruitment or granting the pay scale.

Learned counsel for respondents has also raised the issue of difference of workload between Librarians and Teachers of State Universities/Colleges, which has been repelled by the petitioners by saying that the benefit of Career Advancement Scheme has been introduced to remove the stagnation and create promotional avenues for teachers. The high powered 'Mehrotra Committee' appointed by the UGC consisting of Eminent Academicians has established the parity to Librarians and University and College Teachers after considering all relevant considerations as such there is no justification for denying the benefits of Merit Promotion Scheme/Career Advancement Scheme to the Librarians on vague and flimsy grounds like workload.

According to him, the question of workload raised by the opposite parties is irrelevant as the workload was not at all the criteria laid down by the University Grants Commission/Government of India for according the benefit of Career Advancement Scheme to Teachers, Librarians and Directors of Physical Education. The benefits of Career Advancement Scheme are accorded on the basis of certain length of service rendered by the beneficiary. Only the extra benefits is given to persons, who posses Ph.D. qualifications which would be clearly evident from the Tabular Presentation given hereinafter.

Learned counsel for the petitioners has submitted that the Merit Promotion Scheme was terminated in the year 1987 and another scheme, namely, Career Advancement Scheme was introduced by the UGC for time bound promotion of teachers including those of Librarian/DPEs working in Colleges and Universities. The Career Advancement Scheme provided for time bound promotion of teachers in the Universities and Colleges as under:

From Existing Post	Length of Service	Promoted to Post
Lecturer	With Ph.D. and 5 years Service/without Ph.D. 8 years service	Lecturer (Senior Scale)
Lecturer (Senior Scale)	8 years service	Reader
Reader	10 years service	Professor.

The same parity, according to the petitioners, was extended to the Librarian also and Career Advancement Scheme was made applicable in their case as under:-

From Existing Post	Length of Service	Promoted to Post
Assistant Librarian	With Ph.D. and 5 year Service/without Ph.D. 8 years service	Assistant Librarian (Senior Scale)
Assistant Librarian	8 years service	Deputy Librarian

### COLLEGES

Librarian	With Ph.D. and 5 year Service/without Ph.D. 8 years service	Librarian (Senior Scale)
Librarian (Senior Scale)	8 years service	Librarian (Selection Grade)

Learned counsel for the petitioners submits that the 'Career Advancement Scheme' introduced by the UGC in the year 1987 was made effective with effect from.1.1.1986 i.e. the date from which revised pay scales of University and Colleges teachers were made effective. He also pointed out that the opposite parties have failed to notice that the 'Merit Promotion Scheme' of the UGC was non-existent in the year 1996 as it was terminated by the UGC way back in 1987 and hence the condition of not extending the benefits of Merit Promotion Scheme in the G.O.No.2452/15-11-95-14 (10)/81 dated 29.2.1996 was redundant.

On behalf of the petitioners it has been vehemently argued that since the UGC's pay scales were given to University and College Librarians in the State of U.P. with effect from. 1.1.1986, the benefits of career Advancement Scheme which is part and parcel of pay scales recommended by the UGC with effect from. 1.1.1986, it could not be denied to the University and College Librarians in the U.P. with effect from. 1.1.1986 and it should have been implemented as a composite scheme while issuing the G.O. dated 2452/15-11-95-14(10)/81 dated 29.2.1996 through which UGC's pay scales were provided to the University and College Librarians in the State of U.P.

According to the petitioners, the aforesaid facts and reasons lead to irresistible conclusion that workload has not been the criteria for grant of UGC pay scales neither

for Central universities Librarians nor for giving the benefit of Career Advancement Scheme to the Teachers, and Directors of Physical Education and Librarians working in Colleges and Universities, as it has been framed by the Universities Grants Commission after assessing overall service conditions and future prospects of the aforesaid persons.

Inviting our attention to Article 14 of the Constitution, learned counsel for the petitioners urged that the guiding principle of the Article 14 is that all persons and things similarly circumstanced shall be treated alike both in respect of privileges conferred and liabilities imposed. To strengthen his arguments learned counsel has relied upon *Satish Chandra Vs. Union of India*, AIR 1953 SC 250. *Randhir Singh* (1982) 1 SCC 618, *P.K.Ramchandra Iyer Vs. Union of India* (1984) 2 SCC 141 and *P.Savita Vs. Union of India*, 1985 SCC (Suppl.) 94.

He has also invited our attention towards the judgment rendered by this Court in Special Appeal No.1011 of 2005 *R.P.Shukla Vs. State of U.P. and another*. In this case, the appellant was being denied the benefit of next promotion pursuant to the Government Order dated 2.12.2000 and 3.9.2001 and as such the appellant claimed for granting promotional pay scale of Rs.8000-13500 with effect from 1.3.2000. The Bench, in the said case after considering the various pronouncements found that the appellant has been discriminated and the benefit which has been given to the bulk of Statistical Officer can not be denied to the appellant.

Reliance has also been placed on a decision rendered in *State of U.P. and others Vs. U.P. Sales Tax Officer Grade II Association* (2003) 6 SCC 250. In this case claim of Trade Tax Officers, through their Association, was that they were at par with other District Level officer in the State Services who are carrying pre-revised pay scale of Rs.400-750, the Trade Tax Officers should also be given revised pay scale of Rs.690-1420. The High Court held that keeping in view the nature and the duties and functions of Trade Tax Officer, they are equal in rank to District Officers and have to given revision of pay scales at par with other District Level Officers as both of them

were carrying the same pre-revised pay scale of Rs.400-750. The Apex Court approved the judgment of the High Court.

Learned counsel for the petitioners has vehemently argued that 'equal pay for equal work' is a constitutional guarantee and has placed reliance on the case of **Randhir Singh Vs. Union of India & others** (1982) 1 SCC 618, wherein their Lordships have observed that 'equal pay for equal work' is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by the enforcement of constitutional rights. Article 39(d) of the Constitution proclaims, as a directive principle, the constitutional goal of 'equal pay for equal work for both men and women'. Article 14 and 19 guarantee, respectively, the fundamental rights to equality before the law and equality of opportunity in the matter of public employment and Article 32 provides the remedy for the enforcement of the fundamental rights. In paragraph 8 of the report, the Hon'ble Apex Court held as under:-

*"It is true that the principle of 'equal pay or equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work*



*they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.”*

The Hon’ble Apex Court further observed in the report as under:-

*“The Preamble to the Constitution of the International Labour Organization recognizes the principle of ‘equal remuneration for work of equal value’ as constituting one of the means of achieving the improvement of conditions “involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled”. Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle ‘equal pay for equal work’ is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.”*

Relying upon **P.K.Ramachandra Iyer and others Vs. Union of India and others (1984) 2 SCC 141** learned counsel for the petitioners contended that the discrimination created by State Government is unwarranted and is not based on reasonable classification. In this case, their Lordship observed that in such a situation Article 39(d), must assist us in reaching a fair and just conclusion. Elaborating the underlying intendment of Article 39(d), Chinnappa Reddy, J. in *Randhir Singh Vs. Union of India (1982) 1 SCC 618* observed that the principle ‘equal pay for equal work’ is deducible from Articles 14 and 16 and may be properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

The next case which has been relied is **P.Savita and others Vs. Union of India, Ministry of Defence (Department of Defence Production), New Delhi and**

others 1985 (Supp) SCC 94 wherein their Lordship observed at paragraphs 6,12 and 14 as under:-

*“(6.) It might very well be that “matters relating to employment or appointment to any office” in Article 16(1) are wide enough to include the matter of promotion. Inequality of opportunity for promotion as between citizens holding different posts in the same grade may, therefore, be an infringement of Article 16.*

*12. The High Court did not have the advantage of a decision of the Court in Randhir Singh V. Union of India (1982) 3 SCR 298, to which one of us was a party, which evolved the equality doctrine embodied in Article 39(d) and read with Article 14, into it; while considering the complaint of a driver who was originally in the Army but later employed as a driver constable in Delhi Police Force under the Delhi Administration and who was denied the same pay as was available to the other drivers in the service of the Delhi Administration. This Court allowed the writ petition and directed the concerned authorities to pay the petitioners in that case, salary at least equal to the drivers of the Railway Protection Force....”*

*14. “With respect we agree with the conclusion arrived at in the above judgment, that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently”.*

The guiding principle of the Article 14 is that all persons and things similarly circumstanced shall be treated alike both in respect of privileges conferred and liabilities imposed vide **Satish Chandra V. Union of India, AIR 1953 SC 250,252** and **Kamala Gaiind (Smt.) V. State of Punjab, 1990 Supp SCC 800.**

‘Equality before the law’ means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Hence, what it forbids discrimination between persons who are substantially in similar circumstances

or conditions. It does not forbid different treatment of unequals. The rule rather is that like should be treated alike and that unlike should be treated differently. The same or uniform treatment of unequals is as bad as unequal treatment of equals vide **All India Sainik Schools Employees' Assn. V. Sainik Schools Society, 1989 Supp (1) SCC 205, 212; Builders' ASSn. Of India V. Union of India, AIR 1989 SC 1371; Direct Recruit Class II Engineering Officers' Assn. V. State of Maharashtra, (1990) 2 SCC 715; Prem Chand Somchand Shah V. Union of India, (1991) 2 SCC 48, 56.**

In **State of U.P. and others Vs. J.P. Chaurasia and others (1989) 1 SCC 121** it was held as under:-

*22. "Equal pay for equal work for both men and women" has been accepted as a "constitutional goal" capable of being achieved through constitutional remedies. In Randhir Singh V. Union of India Chinnappa Reddy, J. said : (See p. 622, para 8 : SCR p. 304)"*

*"It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay".*

On behalf of the respondents, it is submitted that Article 14 does not forbid classification. It has further been urged that as a right nobody can claim particular benefit. The recommendations of the University Grants Commission are not binding, as they have no statutory force. The State Government has to take the policy decision after taking into consideration various aspects and equivalence pay scale. State claims that the decision is neither capricious nor arbitrary but is based on reasonable classification. However, financial constraints can also not be ignored in considering the case of the petitioners. The decision so arrived at by the State Government is not violative of any principle of law. The petitioners cannot take hot and cold water simultaneously in their mouth, firstly stating that University Grants Commission's recommendation may be ignored for qualification and consequently the recommendations of the State Pay Commission which has no relevance in this matter may be modified by the Government as prayed. The petitioners cannot take any benefit of the decision of the State Government by ignoring the qualification recommended by the University Grants Commission. Thus, it is not open to the petitioners to ask the benefit of one part of the recommendation ignoring the other part of it. Moreover, the recommendations of the University Grant Commission are not statutory. The State Government has to take overall view of the scale of the pay of the employees working throughout the province. It is not permissible that State should take decision in isolation. Counsel for the respondents has drawn our attention towards following case which deals with the policy decision taken by the State.

***In Jt. Action Council of Service Doctors' Organisations V. Union of India (1996) 7 SCC 256 (See p.258, para 6) the Hon'ble Court held as under:-***

*“ According to us, the present is basically a question of policy and the claim in this regard is not founded on any right as such. Insofar as the policy is concerned, there may be some justification for excluding the non-practising allowance for the purpose at hand because this allowance is seemingly not paid to all the Service Doctors. So, if this allowance is included for the purpose at hand, the same may be disadvantageous even*

*to some Service Doctors. We do not say more than this as this matter is presently under examination of the Fifty Pay Commission.”*

In **Union of India and another Vs. Manu Dev Arya** (2004) 5 Supreme Court Cases 232, the Hon’ble Supreme Court observed in paragraph 9 as under:

*“A policy decision of the State unless affects somebody’s legal right cannot be questioned. The question is as to whether certain allowances would be paid to a section of employees or not and that too at what rate is basically a question of policy. The employees concerned cannot claim non-practicing allowance as a matter of right.”*

Learned Standing Counsel has argued that the State is fully competent to amend the conditions of service of its employees and Article 14 does permit reasonable classification on intelligible differentia. In this regard, he drew our attention towards the case reported in (2004) 4 SCC 646; **M.P.Pural Agriculture Extension Officers Association Vs. State of M.P. and another** (2004) 4 SCC 646 wherein the Hon’ble Apex Court propounded as under:-

*“13. Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications required therefore. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules.*

Before dealing with the merits of the case, we would like to mention that fairness is the essence of State action. In **Nally Bharat Engineering Co. Ltd. Vs. State of Bihar**,

(1990) 2 SCC 48, the Hon'ble the Supreme Court has dealt in detail on the subject of fair play in action. The relevant para reads as under :-

*“The terms ‘fairness of procedure’, ‘fair play in action’, ‘duty to act fairly’ are perhaps used as alternatives to ‘natural justice’ without drawing any distinction. But Prof. Paul Jackson points out that ‘such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice, but on the contrary, to refer to a standard of behaviour which, increasingly, the courts require to be followed in circumstances where the duty to observe natural justice is inapplicable’.”*

*Agreeing with the observations of Prof. Paul Jackson, Apex Court observed: “Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time-hallowed phrase ‘that justice should not only be done but be seem to have been done’ is the essence of fairness equally applicable to administrative authorities. Fairness is thus prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case.*

*Since the soul of the rule is ‘fair play in action’, there is no reason why it would apply only to judicial or quasi-judicial functions and not to administrative actions. Administrative power has no allergy to ‘fairness in action’ so that it should be ignored. On the contrary, in exercise of administrative power, ‘duty to act fairly’ has to be applied since the doctrine of natural justice may not be attracted in absence of ‘duty to act judicially’, expressly or impliedly.*

In catena of cases, the Hon'ble Supreme Court as also this Court has laid down that in order to avoid stagnation and heart burning promotional avenues should be made available in any service as held by the Hon'ble Supreme Court, and this Court in various cases including the recent decision in Special Appeal No.1011 of 2005; *R.P.Shukla Vs. State of U.P. and another* [Decided by this Court]. Grant of selection grade, higher pay scale or promotional avenues is to avoid stagnation or resultant frustration.

In the present case Mehrotra Committee [ the Expert Body] appointed by the UGC to examine the pay scales of Teachers, Librarians, and Directors of Physical Education of Universities/Colleges, the "Career Advancement Scheme" which was granted to Teachers, Librarians & Directors of Physical Education with effect from. 1.1.1986 as the recommendation of the Mehrotra Committee, was accepted by the Central Government vide letter dated 22<sup>nd</sup> July, 1988. The State Government has accepted the principle of post to post parity with the Central Government. Therefore, the State Government has no reason for not granting the benefit of "Career Advancement Scheme" with effect from. 1.1.1986, if not the pay scales from 1.4.1980, the date from which the Teachers and Directors of Physical Education were given UGC pay scale of 1973 Scheme. It may be pointed out that pursuant to the acceptance of recommendation by UGC and the Central Government, the Universities like BHU, JNU, AMU, Delhi University and other State Governments of the country have granted not only the pay scales but the benefit of Career Advancement Scheme. It may be added that on account of opting UGC pay scales, the petitioners and its members are not entitled for the benefit of State Government Pay Scale Promotional scheme as such they cannot be deprived of benefits, which were given to the Teachers and Lecturers in Physical Education while granting UGC scales.

At this juncture, we would like to mention that when the Equivalence Committee insisted on the teaching work the matter was referred to Anomaly Committee. Uttar Pradesh Library Association submitted a detailed representation. University Grants Commission also clarified that the revised pay scale for Librarians in the Universities and Degree Colleges would be effective from 1.1.1986 as notified by

the Government of India and would be applicable to the Librarians in the Universities/Colleges whether they are teaching or otherwise, read with Government of India Notification dated July 22, 1988. University Grants Commissions in its report of 1986 clearly states that though Librarians do not perform the teaching work, but keeping in view their formal contribution in the field of education, they should be treated at par with the teachers. Government of India issued a direction on the basis of recommendation of Mehrotra Committee, which also observed in its report about the academic nature of duties performed by the Librarians and recommended the pay scale of the teachers to the Librarians and Physical Education from 1.1.1986. The relevant extract of the report is reproduced as below:-

*“It is undenying that a Librarian, although he is not a formal member of the teaching faculty, performs academic function, and sustain end enriches the academic process while a teacher may have required to have specialized in a particular branch the Librarians are required to have a wide overall acquaintance with various disciplines in order to be able to bring the scholars face to face with knowledge in diverse areas. It follows that the emoluments of the duly qualified Librarians should match those of the teachers and that they should have the some promotional opportunities as have been recommended for the teachers.”*

There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously, because pay fixation is an exercise requiring to go into various aspects of the employees. It is pertinent to mention that in the present case, the petitioner is not seeking judicial review against the report or recommendation of the Pay Commission but are praying for grant of “Career Advancement Scheme” to them as has been recommended by the Mehrotra Committee, accepted by the UGC and the Central Government, which later on was implemented by the Central Government and various States. Further, when the State Government has granted the UGC pay scale with effect from 01.01.1986 there is no cogent reason to deny ‘Career Advancement Scheme’, which is part of the UGC recommendation and accepted by the Govt. of India.

As regard to the financial constraint on the State Government for not granting Career Advancement Scheme, it has been vehemently argued by the petitioners that the



issue of financial burden raised by the opposite parties cannot be made an excuse of the State Government for not providing the legitimate right of Career Advancement Scheme to Librarians of Universities/Colleges. The State Government shows its inability to bear the burden for petitioners, who are 2 -3 in numbers in each University Library and one person in each College Library, while the number of teachers in a University is about a thousand and in a college it is in hundreds. It is quite surprising that the State Government is able to bear the huge financial burden by giving the benefit of Career Advancement Scheme to teachers of Universities and colleges where as it showed its inability to grant the benefit of Career Advancement Scheme only to Librarians, who are very small in numbers as compared to teachers and involved a very meager extra financial burden.

It may also be mentioned that the perusal of the record shows that the State Government has created recently 266 posts of Lecturers in Physical Education (earlier known as Directors of Physical Education) in those aided Non Government Colleges which were not holding such posts vide its order dated 22.2.2005 (Annexure SRA-2 to Supplementary Rejoinder Affidavit of Amended Writ petition). These posts were created on UGC pay scales of Rs.8000-13500. Thus, the creation of such a large number of the posts for Lecturers in Physical Education which in due course will also be entitled to the benefit of Career Advancement Scheme will also involve a huge amount of finance and ultimately, the State Government has to bear this burden. Thus the ground of financial constraints on exchequer is a vague and flimsy grounds. In other words the financial constraints is an in-genuine and lame excuse of the opposite parties.

From the record it is also established that Government of India has assured to bear the 80% of the additional expenditure occurring on the implementation of the UGC pay scales by the State Government, such conditions are put before the State Government to maintain the uniformity at the national level in the matter of UGC pay scales. If any State Government wish to make some changes in this matter, the approval of University Grants Commission and Government of India is must, otherwise

the Government of India will not extend the financial assistance to that State Government on implementing the pay scheme. Thus we are unable to accept the contention of the respondents raised in this regard.

We would like to add that it is not the clear-cut stand of the respondents that the members of the petitioner's association are not entitled for 'Career Advancement Scheme' as would be evident from the fact that in paragraph 29 at page 13 of the Supplementary Counter-Affidavit filed in May, 2005 by the respondents wherein it is mentioned that *"...However, the University Grants Commission is being consulted by the State Government in the matter of granting Merit Promotion/Career Advancement Scheme to the Librarians of the Universities/Colleges and as soon as the instructions are received from the University Grants Commission, the State Government will examine the same and take on appropriate decision in this regard."* Thus there are contradictory statement.

May be that one or two of these essential items may not be equivalent but if majority of them provides a basis for equivalence, the claim of an incumbent should atleast be scrutinized taking overall aspects. Thus, we are of the view that the State Government has not considered the case of the petitioners with seriousness and taking into account all relevant considerations, like acceptance of the principle of post to post parity with their counter parts at the Central Government, assurance of the Central Government to bear 80% of the additional expenditure on implementation of UGC pay scales, Report of Mehrotra Committee, which recommended for UGC pay scales & Career Advancement Scheme after assessing the nature of work, academic qualifications, academic functions and over all acquaintance with various disciplines.

Petitioners have also brought to our notice that no letter or proof has been brought on record to show that the State Government is sincerely pursuing the matter with the UGC. It is pertinent to mention that there is no need to consult the UGC or Government of India again and again when the Government of India had issued various orders on the basis of recommendations made by the UGC and Mehrotra Committee

constituted for this very purpose. This is only a device to deny the legitimate claim of the petitioners for which they are legally entitled on account of post to post parity with the Central Universities. More so, when the UGC has directed all the State to implement the recommendations of Mehrotra Committee.

We may add here that the purpose of article 39 (d) is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work in matters relating to pay. If two classes of employees perform identical or similar duties and carry out similar functions with the same measure of responsibility having almost same academic qualifications and method of selection they would be entitled to equal pay. If one set of employees is denied parity though the relevant considerations are same the action of the State Government would be in violative of Article 14 & 16 and the Court, in that situation, has ample power to strike down the discrimination and grant relief to the aggrieved employees.

It would be apt to mention that while dealing with such matter, the observations of the Hon'ble Supreme Court as contained in its judgment in 'Council of Scientific and Industrial Research and another Vs. K.G.S. Bhatt and another, (1989) 4 SCC 635' have to be kept in mind. It would be significant to quote the observations for the pleasant reading :-

*".....It is often said and indeed, adroitly, an organization public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an Organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a recruitment for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities or promising employees to move upward. "The organization that fails to develop a satisfactory procedure for*

*promotion is bound to pay a severe penalty in terms of administrative case misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.” There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions.”*

Such socio-democratic views would inspire every one to think of the ones who are serving the nation by doing their duty to the Government, Central or the State and every Government is the care-taker of its employees and the senior officers are duty-bound to be the well-wishers of the junior lots and consider for their well-being. Every Government servant must feel secure, well placed with his morale high. Such a period feeling of doing a Government job cannot develop in the mind of Government employees unless their superiors provide for them a track for progress with periodic promotions, may be in the shape of rank or pay scale or other benefits. The Government and its functionaries, therefore, shall take stock of the situation in this perspective and provide better promotional avenues to the petitioners. Thus keeping in view all what has been discussed above, denial of ancillary benefits while granting the UGC pay scales w.e.f. 1.1.1986 by the G.O. dated 29<sup>th</sup> February, 1996 to the petitioners is unjustified.

Taking the holistic view of the matter, we are of the considered view that the members of the petitioner's Association and other petitioners are also entitled for ancillary benefits of UGC like Career Advancement Scheme and other benefits as has been provided to the Teachers and Directors of Physical Education [ now designated as Lecturer in Physical Education] from the date they were given UGC pay scales. The claim of the petitioners for grant of arrears w.e.f. 1.4.1980 has no force as the State Government has given the benefit of revised pay scales to all the employees w.e.f. 1.1.1986. Furthermore, the petitioners have been granted UGC pay scales, during the pendency of the writ petition, by the G.O. dated 29<sup>th</sup> February, 1996 w.e.f. 1.1.1996. Accordingly, the prayer for grant of arrears w.e.f. 1.4.1980 is rejected.

For the reasons stated hereinabove, the Government Order dated 29<sup>th</sup> February, 1996 [ Annexure-47 to the writ petition] issued by the State Government is hereby quashed as far as it relates to the denial of the benefit of Merit Promotion Scheme now termed as 'Career Advancement Scheme'.

The writ petition stands decided in above terms.

Costs easy.

Date: 12<sup>th</sup> January, 2007

S/-