

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.8089 of 2022

With

I.A. NO. CAN 1 of 2022

DR. KAVITA WADHWA

-VERSUS-

UNION OF INDIA AND OTHERS

For the petitioner	: Mr. Anubhav Sinha, Adv., Mr. Samik Sarkar, Adv.
For the Union of India	: Mr. Arun Bandyopadhyay, Adv.
For respondent nos.2 to 11.	: Mrs. Ginny Jetley Rautray, Adv., Ms. Pragya Bhowmick, Adv.
For U.G.C.	: Mr. Anil Kr. Gupta, Adv.
Hearing concluded on	: 25.08.2023
Judgment on	: 19.10.2023

Kausik Chanda, J.:-

The writ petitioner is presently holding the position of “Assistant Professor” (Level-12) at the Indian Institute of Foreign Trade, Kolkata, a deemed University (“IIFT”, in short). The petitioner joined IIFT on May 1, 2018, with a pay scale of Rs.1,01,500-1,67,400/-. The petitioner claims that in terms of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (“UGC Regulations, 2018”, in short), the petitioner is eligible for promotion to the post of Associate Professor (academic level-13A) on completion of more than three years of service, but the said right has been denied.

2. It has been submitted on behalf of the petitioner that in the relevant advertisement dated November 18, 2017, it was specifically mentioned that the pay scales would be offered as per “UGC/CFTI Regulations.” The petitioner submits that she is eligible for appointment to the post of Associate Professor since she fulfills the eligibility criteria as well as promotion criteria in terms of UGC Regulations, 2018. It has been further submitted that the petitioner completed her first Ph.D. in Accounting in the year, 2011, and second Ph.D. in Finance in the year, 2014. She has also various academic publications that fulfill the criteria for promotion. It is contended by the petitioner that since the IIFT is a Deemed University

under Section 3 of the University Grants Commission Act, 1956, she should be governed by UGC Regulations, 2018. Therefore, the petitioner should be promoted to the post of Associate Professor having completed three years of service in the academic level-12/selection grade as an Assistant Professor.

3. It has further been submitted that IIFT has denied the promotion of the petitioner under UGC Regulations, 2018 asserting the applicability of the Internal Promotion Scheme ("IPS", in short). The petitioner disputes the applicability of IPS. It is submitted that the difference between UGC Regulations, 2018 and IPS is essentially that under the former it would take three years of service in the post of Assistant Professor to be eligible for promotion to the post of Associate Professor while under the latter it would take a total eight years i.e. an additional five years. The petitioner submits that IPS of IIFT lacks approval from the Board of Management of IIFT and hence, the same cannot be made applicable to the petitioner.

4. On behalf of IIFT, it has been submitted that the petitioner's case is not governed by UGC Regulations, 2018. IIFT submits that the IPS was introduced in the agenda of the 40th meeting of the Board of Management dated April 24, 2018. Thereafter, the said agenda was deliberated in the 40th meeting of the Board of Management. It was noted that the aforesaid agenda needs to be discussed elaborately and since the matter was sub-judice, IIFT might obtain legal opinion and initiate requisite measures to address the issue appropriately. The Department of Commerce of the Union

vide letter dated August 7, 2018, agreed with the proposal of IIFT for the implementation of IPS for the faculty members. The Board of Management in the 41st meeting noted agenda item no.X (implementation of IPS) and subsequently, in the 42nd meeting held on January 11, 2019, noted that the minutes of 41st meeting held on September 26, 2018 was confirmed. The aforesaid minutes of the meetings of the Board of Management of IIFT, read with the approval of the Department of Commerce are sufficient to show that IPS was duly approved by the Board of Management of IIFT and therefore, the petitioner's case should be governed by IPS.

5. Before delving into the merit of the case, it should be clarified that in the course of argument, both the parties were allowed to disclose relevant additional documents with their respective written notes of arguments. To ensure compliance of natural justice, copies of the documents were served upon the parties. The authenticity of the disclosed documents is undisputed.

6. It is crucial to note that the Governing Body of IIFT (now known as Board of Management) by a decision dated November 24, 1999, approved the proposal for qualification and scale of pay of IIFT Faculty in alignment with the Faculty of Indian Institutes of Management which followed the pay scales of Centrally Funded Technical Institutes.

7. The petitioner applied for the post of Assistant Professor following an advertisement published by IIFT with the last date for submission of online application being November 27, 2017.

8. The pay scale prescribed in the said advertisement for the post of Assistant Professor was as follows:

“PAY SCALE

Assistant Professor: Pay Band of Rs.15,600-39,100 + AGP Rs.6,000/7,000/8000 based on qualifications and experience specified by UGC/CFTI. ...”

9. The petitioner was successful in the selection process and based on her qualifications and experience, she was appointed by IIFT by a letter dated February 15, 2018, in the pay matrix of Rs.1,01,500-1,67,400/- (Level-12) with the Grade Pay of Rs.8,000/-.

10. Such fixation was not made in terms of the Pay Matrix stipulated UGC Regulations, 2018. The Pay Matrix provided to the petitioner does not correspond with the Pay Matrix under UGC Regulations 2018, for an Assistant Professor (Level-12).

11. Instead, the petitioner’s salary matches with the 6th Pay Commission Pay Band applicable to the Centrally Funded Technical Institutes in Pay Band-III (Rs.15,600-39,100/-) for the Assistant Professor (Level-12) at Pay Level-1 as notified by the Department of Higher Education of the Union vide notification no.15-4/2017-TC.

12. Therefore, it is untenable to assert that the petitioner was appointed in terms of UGC Regulations, 2018, and has a consequential right to be promoted under the said Regulations.

13. I am of the view that the petitioner was appointed and given the pay scale of Assistant Professor (Level-12) and given salary in terms of the Pay

Scale of Centrally Funded Technical Institutes as adopted by the governing body of IIFT by the decision dated November 24, 1999. Neither the relevant advertisement nor the appointment letter of the petitioner mentions that the promotion of the petitioner will be in terms of UGC Regulations, 2018. In the advertisement, it was only mentioned that the Pay Scale of the petitioner would be “based on the qualification and experience specified by UGC/CFTI.” I have already indicated that the petitioner was, in fact, provided with the Pay Scale of Centrally Funded Technical Institutes, not UGC. Therefore, the promotion of the petitioner cannot be governed by the UGC Regulations, 2018.

14. The petitioner may understandably perceive her appointment under UGC Regulations, 2018 and any confusion regarding the applicable promotional policy cannot be solely attributed to her. There is enough scope for confusion in identifying the applicable promotional policy to the petitioner.

15. The IIFT in its written notes of argument admits that prior to 2017, it had no promotional policy for the faculty members. The faculty members were required to apply afresh for the higher post after completing specified years of service in the present post. Subsequently, the need to develop a credible promotion policy so as to retain its faculty members for a long period of time at the institute was felt.

16. Accordingly, a draft promotional policy was prepared in consonance with the guidelines issued by UGC Regulations, 2010, with higher

benchmarks. Subsequently, a modified promotion policy was circulated to the faculty members on May 15, 2017 for approval of the Board of Management of IIFT. The proposal was approved by the Director of IIFT on October 27, 2017, and a circular dated October 27, 2017 was circulated through E-mail to all faculty members of IIFT informing that it has been decided to implement “UGC-CAS” for all faculty members and they may apply for the same. IIFT suggests that the promotional policy prepared by IIFT was termed as “UGC-CAS” but it did not denote the Career Advertisement Scheme of UGC.

17. The applications were received in pursuance of the said circular dated October 27, 2017, revealing that labeling the promotion policy as “UGC-CAS” was not justified as it is not the same as “UGC-CAS” but only in consonance with the guidelines therein with higher benchmarks. Therefore, from January 2018, it was formally addressed as Internal Promotional Scheme (IPS).

18. The IPS was introduced as item no.X in the agenda of the 40th meeting of the Board of Management (“BoM”, in short) dated April 24, 2018. In the 40th meeting, the said agenda was deliberated comprehensively with a resolution to discuss it elaborately and obtain a legal opinion. In response to the meeting held on April 24, 2018, the Government of India, Ministry of Commerce & Industry vide their letter dated August 7, 2018, agreed with the proposal of IIFT.

19. In the 41st meeting of BoM, the issue was again discussed and BoM resolved to the following effect.

“Agenda item No.x (implementation of Internal promotional scheme for Faculty Members and promotion of Faculty) was also noted by BoM.”

20. The minutes of the 41st meeting held on September 26, 2018, were confirmed in the 42nd meeting of BoM held on January 11, 2019.

21. It is needless to mention that the words “noted” and “approved” bear different connotations. The word “noted” implies something is kept in mind or paper for further reference while “approved” signifies explicit sanction by the concerned authority. Therefore, grammatically it cannot be said that the Board of Management of IIFT approved IPS in its 41st meeting dated September 26, 2018.

22. Nevertheless, from the sequence of events surrounding the approval of IPS, it is clear that after due deliberation the same was approved by the Director of IIFT on October 27, 2017 and forwarded before the Ministry of Commerce. The Ministry agreed to the proposal which was noted by the BoM on September 26, 2018. Ultimately, on January 11, 2019, the Board confirmed the minutes of September 26, 2018. In my view, the aforesaid process signifies the approval of IPS by the Board. In the aforesaid factual context, the confirmation accorded on January 11, 2019, should be deemed as an approval of IPS, absent any contrary intention.

23. It is also clear that at the time of appointment of the petitioner on February 15, 2018, IPS was not approved by BoM. IIFT in its written note

of arguments has juxtaposed UGC Regulations, 2018 and IPS to suggest that the petitioner joined IIFT at Level-12 with an AGP of Rs.8,000/- which is equivalent to Level-11 of UGC-CAS but with an AGP of Rs.7,000/- per month. It has been sought to be demonstrated that under the UGC Regulations, 2018, promotion from Assistant Professor to Associate Professor would take 16 years while under IPS it would take 12 years. Therefore, the IPS is more beneficial to the petitioner compared to UGC Regulations, 2018. The petitioner, however, argued to the contrary.

24. It is, however, not necessary for this Court to compare the aforesaid two promotional avenues since it has already been noticed that UGC Regulations, 2018, is not applicable to the petitioner. The appointment letter of the petitioner clearly mentions that the petitioner would be governed by the Services Bye-Laws of the institutes and other Rules and Regulations framed or adopted by the institutes from time to time. Therefore, the IPS, which was introduced after her appointment, would govern her promotional avenue.

25. Accordingly, W.P.A. No.8089 of 2022 is dismissed and the connected application I.A. No. C.A.N. 1 of 2022 is disposed of.

26. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)