

CB-II (JCOP) No.

**JOINT COMMITTEE ON OFFICES OF PROFIT
(SEVENTEENTH LOK SABHA)**

EIGHTH REPORT

Presented to Lok Sabha on 08.08.2022

Laid in Rajya Sabha on 08.08.2022



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

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JOINT COMMITTEE ON OFFICES OF PROFIT
(SEVENTEENTH LOK SABHA)

Dr. Satya Pal Singh

Chairperson

Members

Lok Sabha

2. Shrimati Aparajita Sarangi
3. Shri Balashowry Vallabbhaneni
4. Shri Benny Behanan
5. Shri L.S. Tejasvi Surya
6. Shri Mahendra Singh Solanky
7. Dr. Manoj Rajoria
8. Shri Shyam Singh Yadav
9. Shri Vijay Kumar Hansdak
10. Shri Vinod Chavda

Rajya Sabha

11. Ms. Dola Sen
12. Shri Hardwar Dubey
13. *Shri Mahesh Poddar
14. *Dr. Sasmit Patra
15. *Shri V. Vijayasai Reddy

Secretariat

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| 3. | Shri Uttam Chand Bharadwaj | - | Additional Director |
| 4. | Ms. Vandana | - | Executive Officer |

* Shri V. Vijayasai Reddy, MP (RS) retired w.e.f 21st June, 2022; Dr. Sasmit Patra, MP (RS) retired w.e.f. 01st July, 2022 and Shri Mahesh Poddar, MP (RS) retired w.e.f. 07th July, 2022 *vide* CB-I note dated 03rd February, 2022. A motion to fill up the casual vacancy in the Committee, consequent upon retirement of these three Members, has already been moved and adopted by the Lok Sabha on 15th March, 2022.

INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorized by the Committee to present the Report on its behalf, present this Eighth Report of the Committee.

2. At their sittings held on 20.11.2019, 19.11.2020, 27.07.2021, 07.12.2021 and 05.04.2022 the Committee examined the requests of Prof. Manoj Kumar Jha MP(RS), Shri Rakesh Sinha MP(RS) and Dr. Sukanta Majumdar MP(LS) regarding drawing of salary/allowances by Teacher/Professor of Universities on being elected/nominated as Member of Parliament.

3. The Committee considered and adopted this Report at its sitting held on 04.08.2022.

4. The Committee wishes to express their thanks for the assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee and the University Grants Commission, the Election Commission of India, Ministries of Education (Department of Higher Education), Law and Justice (Legislative Department and Department of Legal Affairs) and the University of Delhi for furnishing the information desired by the Committee for detailed examination of the issues involved in the matter.

5. The Observations/Recommendations made by the Committee in respect of the matter considered by them are given at the end of this Report in bold letters.

NEW DELHI:

4th August, 2022
Sravana 13, 1944 (Saka)

DR. SATYA PAL SINGH
Chairperson,
Joint Committee on Offices of Profit

REPORT

Requests of Prof. Manoj Kumar Jha MP(RS), Shri Rakesh Sinha MP(RS) and Dr. Sukanta Majumdar MP(LS) regarding drawing of Salary/Allowances by Teacher/Professor of Universities on being Elected/Nominated as Member of Parliament.

The Member's Salary & Allowance Branch, Rajya Sabha Secretariat *vide* ID note RS/4(67)/91/2018-MSA dated 26.04.2019, had forwarded the requests dated 21.05.2018 (received on 23.05.2018) and 24.07.2018 of Prof. Manoj Kumar Jha MP (Rajya Sabha) and Shri Rakesh Sinha nominated MP (Rajya Sabha) (**Annexure I**), wherein the Members had informed that they were teaching at the University of Delhi and would continue to do so apart from attending to their Parliamentary duties. Prof. Manoj Kumar Jha MP had stated that, during his tenure as Member of Parliament, he would like to draw his salary from University of Delhi.

Shri Rakesh Sinha, MP later, *vide* letter dated 10.08.2018 (received on 13.08.2018) had also requested Rajya Sabha Secretariat to pay him only allowances and other amenities barring salary, as a Member of Parliament and requested to protect his salary which he had been getting from the Motilal Nehru College (Evening), Delhi University as an Associate Professor. Later, Prof. Manoj Kumar Jha MP and Shri Rakesh Sinha MP *vide* letter dated 01.02.2019 had also intimated that they were drawing salary from University of Delhi and not from the Rajya Sabha Secretariat and had requested the Rajya Sabha Secretariat to release the allowances as admissible in their favour.

2. While the above matters were still under examination, a similar request was received from Dr. Sukanta Majumdar MP(LS) on 19.06.2021(**Annexure II**), which was addressed to the Secretary General, Lok Sabha, wherein the Member, while referring to a guideline issued by the University Grants Commission as mentioned in a news item in the Hindustan Times(New Delhi) on 04.03.2019, requested Secretary-General, Lok Sabha to allow him to take teaching and research assignments in the University of Gaur Banga, West Bengal as an Assistant Professor, where he has been serving even before getting elected as a Member of Parliament (17th Lok Sabha). The request of Dr.

Sukanta Majumdar, MP was also clubbed with the above request at the behest of the Committee, so as to examine it together, as one issue.

3. In this regard, the Article 102(1)(a) of the Constitution of India , which enshrines the law relating to office of profit, reads as under:-

“102 (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament –

(a) if he holds any **office of profit under the Government** of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder”

4. The expression “holds any office of profit under the Government” occurring in Articles 102(1)(a) has not been defined. The Joint Committee on Offices of Profit, however, has been following the under mentioned criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being, a Member of Parliament:-

(i) “Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;

(ii) Whether the holder draws any remuneration other than the ‘compensatory allowance’ as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;

(iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and

(iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.”

If reply to any of the above criteria is in affirmative then the office in question may entail disqualification.

5. Thus, following two issues were examined in respect of the extant references :-

(i) Whether as per extant rules/guidelines, the Members concerned would attract disqualification as members from the Parliament under Article 102(1)(a) by continuing

their profession of teaching at University of Delhi and the University of Gaur Banga while simultaneously attending to their parliamentary duties; and

(ii) Whether Members can draw salary from their Universities and allowances/amenities from Rajya Sabha Secretariat/Lok Sabha Secretariat.

6. The matter was examined as per the views of the University Grants Commission dated 20.08.2018 (**Annexure III**) and the comments of Ministry of Education (the then Ministry of Human Resource Development) dated 28.11.2018 (**Annexure IV**), as were furnished by the MS&A Branch, Rajya Sabha Secretariat. The UGC and the MoE intimated the following :-

(i) The UGC in their letter dated 20.08.2018 referred to the circulars dated 10.09.1974 and 06.03.1987 issued by them and quoted para 7(iv) of Programme of Action on National Policy on Education from circular dated 06.03.1987, which provides:-

“.... Teachers who are elected/ nominated to Parliament or State Legislature will be required to take leave of absence during their term as Member. However, in this process they will not be losing their seniority of increments.”

(ii) The Department of Higher Education, Ministry of Human Resource Development in their reply dated 28.11.2018 also referred to the twin circulars of the University Grants Commission dated 10.09.1974 and 06.03.1987 and provided :-

(a) The teachers who are elected / nominated as Members of the Parliament/ State Legislatures may not be required to resign their academic position.

(b) However, during their term as Member of Parliament/ State Legislatures they need to take leave of absence and during this leave of absence, they will not be losing their seniority or increments.”

7. The matter was referred to the Department of Legal Affairs and Legislative

Department of Ministry of Law and Justice *vide* this Secretariat O.M. dated 26.06.2019 for their opinion. The Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) furnished their views/reply dated 10.07.2019 and 11.09.2019 respectively (**Annexure V**), that are summarised as under:-

(i) As per the Department of Legal Affairs, payment of any pecuniary benefit, in addition to daily allowances are in the nature of remuneration constitute profit and therefore Lok Sabha Secretariat may allow the release of only those allowances which fall under the expression daily allowances/compensatory allowances.

(ii) As per the Legislative Department, the Members of Parliament may not continue their Profession of teaching in any University while attending to their legislative duties without taking extraordinary leave or a similar leave of absence during his membership of Rajya Sabha/Lok Sabha.

8. The Committee considered the views of Ministry of Law and Justice in the Memorandum No.4, in their Sitting dated 20.11.2019. The views furnished by the Legislative Department and Department of Legal Affairs, were primarily hinged upon the pecuniary aspects i.e. benefits attached and receivable in respect of any particular office. On the other hand the erstwhile JCOPs in the similar cases, had adopted a holistic approach and were following the under mentioned criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being, a Member of Parliament :-

(i) *"Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;*

(ii) *Whether the holder draws any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;*

(iii) *Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and*

(iv) *Whether the body in which an office is held enables the holder to wield influence or power by way of patronage."*

9. The Committee during the sitting pointed out the incoherence in the comments of two departments and asked both the departments of the Ministry of Law and Justice to give one very clear-cut opinion avoiding any contradictory views to give clear insights in the issue and called Ministry of Law and Justice to tender oral evidence before the Committee on 19.11.2020. During this sitting, the then Secretary, Department of Legal Affairs requested the Committee to take views of other stakeholders i.e. Ministry of Education (MoE), University Grants Commission and University of Delhi to know the ground reality and on certain other intrinsic issues. Accordingly, the comments on the matter were sought from these organizations.

Opinion of the Ministry of Education, University Grants Commission and University of Delhi

10. The UGC *vide* letter dated 22.01.2021 (Annexure VI) referred to the UGC's resolution dated 26.02.2019, which provides as mentioned below:-

"1. As per UGC Circular of 1987 and as stated in the Programme of Action on National Policy on Education , the teachers who wish to take the leave of absence during their term as Members of the Parliament/State Legislature may be allowed to do so while ensuring that they do not lose their seniority or increments in the process In this case they will draw their salary from Parliament /State Legislature Secretariat.

2. The teachers who wish to continue teaching in the University departments/ colleges after being elected/nominated as Members of Parliament/State Legislature, may be allowed to continue with the teaching and research work in the Universities/colleges with the provision that they may be treated as 'on duty' when the Parliament/State Legislature is in session for attending the session and when such teachers undertake any other Parliamentary/State Legislature assignments. To ensure that the teaching work does not suffer, the university may consider assigning appropriate work load to such teachers. However, such teachers should not hold any administrative positions/ responsibilities in the university/ college during the period they are Members of Parliament/ State Legislatures."

11. The UGC informed that the Commission are of the following view on the issue of place of drawing Salary & Allowances by the Members of Parliament :-

“..... it is for the Rajya Sabha Secretariat/ Lok Sabha Secretariat to determine whether or not the MP concerned holds an ‘office of profit’ by virtue of being a faculty at the university in light of Article 102(1)(a) of the Constitution of India. Similarly, it is for the Rajya Sabha Secretariat/Lok Sabha Secretariat to decide whether or not such MPs can draw a salary from the University concerned when such MPs undertake teaching work , in light of the provisions of the ‘Salary, Allowances and Pension of Members of Parliament Act, 1954’.

The UGC can only comment on the permissibility of paying salaries/ allowances to the MPs, who are faculty as well, from the perspective of the educational institution concerned. Accordingly, the UGC’s resolution only states that such MPs ‘ may draw their salary from the university / college”. Leaving it open to the Rajya Sabha Secretariat/Lok Sabha Secretariat to determine whether an MP can actually draw such salary as a Member of the House.”

12. The Ministry of Education *vide* their O.M. dated 09.04.2021(**Annexure VII**) also reiterated the above of the UGC’s resolution dated 26.02.2019, stating that “*in view of the UGC’s Circulars/ Resolution issued in this regard have clarified that the teaching work and remuneration of faculty who are elected/ nominated to the Parliament or a State Legislature and it is for the Lok Sabha Secretariat/ Rajya Sabha Secretariat to decide on an ‘Office of Profit’ or administer the Salary, Allowances and Pension of Members of Parliament Act, 1954.*”

13. The Committee, also sought views from Ministry of Parliamentary Affairs (MPA) regarding the position relating to the ‘payment of Salary, Allowances and Pension’ to MPs who are in the administrative control of the ‘Salary, Allowances and Pension of Members of Parliament Act, 1954’. In their written reply dated 05.02.2021, the MPA had submitted the following:-

“Salary and Allowances of Members of Parliament are governed under the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the Rules made thereunder. This Act is silent on the issue of ‘Office of Profit’

and does not provide for the option of drawing Salary from any other source as a Member of Parliament.”

14. The Committee as per decision taken by the Committee in sitting dated 19.11.2020 called UGC and University of Delhi, along with the Election Commission of India (ECI) and the Ministry of Education (MoE) to tender their oral evidence before the Committee on 07.12.2021.

15. During the sitting, the Committee desired to know the views of the Secretary, Ministry of Education in regard to the UGC circulars dated 10th September 1974 and 6th March 1987, wherein it *inter alia* provides that Teachers who are elected/nominated to Parliament/State Legislature will be required to take leave of absence during their term as Member and they will not be losing their seniority or increments. The Secretary, MoE deposed before the Committee as mentioned here under:-

“.....As per the deliberations held by the UGC, they have opined that the matter pertaining to him continuing to discharge his duties as lecturer or teacher of that university is permissible in the periods that he is not functioning as Member of Parliament there. They have made it clear in their deliberations that the hon. Member of Parliament who happens to be a teacher and who is performing his duty in the Parliament will be, subject to taking his classes in the other period of time, eligible for continuing or drawing his salary in the university. Now, the issue is pertaining to his emoluments or other benefits that are available. It is in that context that they have clarified that it will not be admissible under the provisions of the Universities Act because he is already performing a service outside the University.”

16. The Representative from the University Grants Commission further elaborated:-

“ Sir, with regard to the position of teachers of universities who are elected or nominated to Parliament with regard to salary or allowances, UGC had constituted a committee. Based on the recommendations of the committee, UGC has made certain recommendations that the teachers of university or colleges may draw their salary from the university and allowances may be drawn from the Parliament. But the matter may later – as was mentioned – may be decided by the Secretariat of Lok Sabha or Rajya Sabha. They also said that when the Members who are elected or nominated, they can continue to teach in the university department after being elected. When the Parliament is in session, they may be treated on duty. The university may assign teaching work or research work, as appropriate, to them.”

17. In this regard the Ministry of Education in their written replies dated 09.03.2022(Annexure VIII) submitted the following:-

“ An expert committee was constituted by the UGC to examine the issues relating to the Office of Profit arising out of the election/nomination of teacher to the Parliament/State legislature, The decision of UGC in this regard is based on the recommendations of the Committee which inter alia recommends that.

Teachers who are elected / nominated to parliament or State Legislature may take leave of absence during their term as Member. However. They will not be entitled to draw their pay and allowances from the University/ college as the case may be during this period as per rules:

OR

The teachers who wish to continue teaching in the university departments/colleges after being elected/nominated as members of Parliament/ State Legislature, may be allowed to continue with the teaching and research work in the universities/colleges with the provision that they may be treated as “On Duty” when the parliament /State Legislature is in session for attending the session and when such teachers undertake any other Parliamentary/State Legislative assignments, In this scenario as they are teaching in the university/college, they may draw their salary from the university/college. However, they may draw their allowances due to them from the Legislature during the session subject to audit clearance. The concerned teacher shall be required to exercise his options accordingly.”

18. The Committee sought to know, if the UGC's Circular dated 6th March 1987 is in the nature of granting an implied permission for Lecturers/ Professors to accept the role and responsibility of a Member of Parliament i.e the implied exemption from disqualification, when it provides that teachers who are elected/nominated to the Parliament or State Legislatures will be required to take Leave of Absence, during their term as Members. However, in this process they will not be losing their seniority and increment. The Ministry of Education/UGC vide their written replies dated 09.03.2022

provided as mentioned below :-

“ The circular issued by UGC in 1987 was based on the “Programme of Action” to implement the National Policy on Education 1986 wherein under clause 7(iv) it was mentioned that “Teachers who are elected/ nominated to Parliament or State Legislature will be required to take leave of absence during their term as Member. However, in this process they will not be losing their seniority or increments.”

19. When the Committee desired to know the reasons behind the special privilege extended to the Professors of the University and not to other Professionals in the Government Sector , the Ministry of Education informed that *“Professors of Universities are not considered as Government Servant. Hon’ble Courts in the country have reiterated this in many judgments.”*

Opinion of Election Commission of India

20. During the oral evidence, the Committee also sought perspective of the Election Commission of India on the entire gamut of disqualification of Members of Parliament on the basis of Office of Profit, the representative ECI apprised the Committee as stated below :-

“As far as the Election Commission is concerned, we are guided by two things. First, we see the Parliament (Prevention of Disqualification) Act which the Parliament has enacted. If any office is mentioned in the Parliament (Prevention of Disqualification) Exemption Act, our inquiry stops there. Otherwise, we examine each case on its merits and based on the criteria evolved over time by the judicial pronouncement, we examine the case and come to the conclusion. So, that is all I can say.”

21. The Committee noted that the University Professors are not required to resign from their Universities for contesting elections. The Committee desired to know about the rationale behind the differential treatment of University Professor from other professions, in the matter of contesting of elections. The ECI representative submitted as under :-

“ The Commission has not given any kind of instruction or guideline that who is permitted to contest the election or who is not permitted to contest the

election because for contesting the election, the guidance comes from the Representation of People Act and the qualification and disqualification are prescribed in that particular Act as to who can contest the election and who cannot contest the election.

Now in those qualifications and disqualifications, this particular category is not specifically mentioned in the category of things whether they can contest or they cannot contest. So, as per the statute of the RP Act, the provision is not covering the aspect that the university professors are allowed to contest or not allowed to contest. So, in this particular Act, it is not mentioned."

22. In this connection, ECI *vide* their written reply dated 14.12.2021(**Annexure IX**) stated the following:-

" University Professors/ lecturers are not a homogenous group and their eligibility for contesting election depends upon status of the University(private, aided, State, Centre etc.) and the nature of employment (part, full, honorary, emeritus etc. Therefore the response would be contingent upon the facts of a particular case at hand and no generic response either in affirmative or negative can be provided....."

23. ECI in their written reply further informed that :-

" Any matter with respect to 'Office of Profit' is considered by the commission only when a reference is received under Article 103, in cases of Member of Parliament from Hon'ble President or under Article 192, in cases of MLAs, from Governor of the State/ UT concerned. Determination of office of profit has been envisaged in the constitution as a quasi-judicial function of the Election Commission. Therefore any response would be in the nature giving a pre-determined opinion on a subject matter which requires application of judicial mind by the Commission as per the facts of each individual case at hand."

Opinion of Ministry of Law and Justice

24. The Legislative Department and the Department of Legal Affairs *vide* Legislative Department, M/o Law and Justice OM dated 14.12.2020 had furnished their consolidated views in which they were of the concerted opinion that a Member shall be entitled for salary and allowances as per the statute and not as an option, as no choice

is provided to them in this regard. And if the Members of Parliament are entitled to allowances in excess to that of 'compensatory allowance' as defined under clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959, they may incur disqualification on the ground 'office of profit'.

25. The Committee, nonetheless again sought to clarify the position in matter of choice in drawing salary and allowances and called for the views of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs), considering the latest comments dated 09.03.2022 of the Ministry of Education and comments dated 14.12.2021 of the Election Commission of India. The Legislative Department *vide* OM dated 05.04.2022 furnished their consolidated opinion (**Annexure X**) on the issue. The relevant excerpts from these comments are stated below:-

" 2. The Department of Legal Affairs has examined the present reference and stated as under:-

'..... It may be recalled that, on earlier occasion, we have examined the subject matter in detail ...wherein we have arrived at a conclusion that the salary, allowances and pension of Members of Parliament is governed by the Salary, Allowances and Pension of Members of Parliament Act, 1954 (Annexure XI) and there is no exception provided for drawing the same from some other authority as long as the person holds the office of the M.P. (whether elected or nominated). The word 'shall' used in the Section-3 of the Act is mandatory in nature and taking salary from any other source, except as provided under the Act, may be against the intention and scheme of the legislature. Any interpretation of the Act, other than above will be against the intention of the Act and will not with the purpose to suppress public mischief and promote public justice.

Now, with regard to the comments/replies provided by the Secretariat, it is observed that there appears no substantial input for our concern which may lead reconsideration of our earlier opinion. However, with regard to the input of Ministry of Education/UGC at Serial No. 1 of the questionnaire, we have to state that only first option suggested by them appears legally tenable which is in consonance of our view on the subject matter. As such, we reiterate our earlier opinion and we have no further comments to offer.'

3. In this regard, it may be pertinent to mention here that a consolidated opinion of both the Department of Legal Affairs and the Legislative Department in the matter was forwarded to the Lok Sabha Secretariat on 14th December 2020. Now, the matter has been examined by

the Legislative Department in light of the replies of the Election Commission and the Department of Higher Education.

4. To the Questionnaires provided by the Committee Secretariat to the Department of Higher Education, that Department at Sl.No.8 and 9 has categorically stated that:

'Professors of Universities are not considered as Government Servant. Hon'ble Courts in the country have reiterated this in many judgements'

5. According to the Election Commission, the eligibility of University Professors to contest elections will depend on case-to-case basis and a generic response can not be provided.

6. It may be mentioned that the JCOP (Sixteenth Lok Sabha, Fourth Report) in the matter of Dr. Anupam Hazra, Assistant Professor, Visva Bharti University concluded that 'Office' of Assistant Professor does not disqualify him as an MP as Visva Bharti University is not an Office "under Government". Similarly, in the matter of Dr. Manmohan Singh, JCOP (Sixteenth Lok Sabha, Eleventh Report) opined that the 'Office' of Jawaharlal Nehru Chair Professor does not fall within the purview of "Government", and therefore, acceptance of JN Chair professorship of Punjab University by him may not attract the angle of 'Office of Profit'.

7. In view of the above, it is to be determined as to whether an 'Office' is one under the 'Government of India', or under the 'Government of a State' in order to decide an 'Office of Profit' for disqualifying a person as Member of Parliament. "

26. As regards the issue as to whether the Members of Parliament hold an office of profit when they serve as Professors so as to incur disqualification under 'office of profit', the representative from Legislative Department during the oral evidence dated 05.04.2022, submitted the following:-

" We have sought comments of the University Grants Commission as well as the Department of Higher Education. Now that the comments of the Department of Higher Education are made available for the perusal of this august Committee which says that the Professors of Universities are not regarded as Government servant. As the hon. Chairperson and the Members appreciate, the basic test to decide whether an office is an office of profit is to find out if that office is under the Government of India or the Government of a State. The question before us is only to determine whether this particular office belongs to the Government of India or

the Government of a State. We do not know if this august Committee has the mandate to declare whether they receive salary and allowance from one source or the other. The Committee Secretariat may have to peruse the Directions given by the hon. Speaker as to the subject that we need to deal with. The Committee is empowered to deal with, to determine whether an office is an office of profit or not, and not beyond. This is my humble submission.

Secondly, if you permit me to draw your kind attention to the two Acts which deal with this particular appointment of Professors, one is the Gour Banga University Act, 2007 which was passed by the West Bengal Legislative Assembly, and also the Delhi University Act, 1922 which is a pre-Independence Act.

When we peruse this legislation, we will be able to find out that both these are autonomous institutions. They are incorporated companies for the purposes of the statutes. They have their independent functioning without interference either by the Central Government or the State Government. They are self-governed autonomous bodies. Government may be giving them some grant, but that does not make them a body under the Government of India or under the Government of any State."

27. When asked about the views of the Legislative Department regarding drawing of salary and allowances by a Member of Parliament who are also a teacher/professor in any University or college, the representative from the Legislative Department deposed before the Committee as under:-

" The authority to decide whether a Member of Parliament is entitled to receive his salary from the university and the allowances from the Parliament Secretariat may not be, with due respect, with this Committee. The authority is with the University Grants Commission, and the concerned Ministry in the Central Government or the State Government, as the case may be, which deals with that particular subject. Here, the Department of Higher Education has categorically stated that they are not regarded as Government servants. They are not regarded as the Government servants, and they are governed by the rules and regulations, and statutes of the university. The controlling authority, that is the University Grants Commission, has specifically permitted

them to draw salary from there and draw allowances from the Parliament Secretariat."

28. The representative from the Department of Legal affairs further enlightened the Committee as stated below:-

“.....the matter primarily relates to the drawing of salary and allowances by a Member of Parliament who happens to be a teacher or a professor in any university or college. It has been requested on their behalf that they may be permitted to draw the salary from the university and the allowances from the Parliament Secretariat.

In this regard, we had previously also mentioned that as per the provisions of Article 106 (Annexure XII), and Section 3 of the Members of Parliament (Salary, Allowances, and Pension) Act, 1954, the mandate to draw salary for a Member of Parliament is only as per the law which has been made by the Parliament in pursuance of Article 106. Both the provisions, in fact, speak about the word 'shall', that is, a Member of Parliament shall be entitled to draw salary and allowances from the Parliament.

So, in the given situation, when the use of word 'shall' has been specifically made both in the Constitution, and the law which has been made in pursuance of the constitutional provision, in our opinion there is no possibility of a Member drawing salary from any other source unless and until there is a specific provision in the law permitting the same. In brief, this is our opinion which we would like to submit to the hon. Committee.”

Recommendations/ Observations

The Committee note that Prof. Manoj Kumar Jha, MP(RS) and Shri Rakesh Sinha, the nominated MP (RS) are teaching at the University of Delhi. They have intimated Rajya Sabha Secretariat that they would like to draw their salary from University of Delhi and allowances from the Parliament. Similarly, Dr. Sukanta Majumdar MP(LS) has also requested to allow him to take teaching and research assignments in the University of Gaur Banga, West Bengal as an Assistant Professor, where he has been serving even before getting elected as a Member of Parliament.

30. As regards the permissibility of paying salaries/ allowances to the MPs, who are faculty as well, from the perspective of the educational institution concerned, the University Grants Commission *vide* their Resolution dated 26.02.2019 provides that such MPs may draw their salary from the university/college, however the decision, whether an MP can actually draw such salary as a Member of the House has been left open for the Rajya Sabha Secretariat/Lok Sabha Secretariat. However, the mandate of the Joint Committee on Offices of Profit is to determine whether the office in question falls under the 'office of Profit' category or not. Matters pertaining to the salary and allowances are beyond the actual domain of the Joint Committee on Offices of Profit. This is in the exclusive domain of the Parliament and the University Grants Commission, to decide from where the salary and allowances are to be drawn by a Member of Parliament, who also happens to be a University Professor/ lecturer. The subject matter in the extant case does not pertain to the Joint Committee on Offices of Profit.

31. The Committee further note that the UGC's Circulars dated 10.09.1974 and 06.03.1987 provides in clear terms that the teachers who are elected/nominated as Members of the Parliament/State Legislatures may not

be required to resign from their academic positions. However, during their term as Member of Parliament/ State Legislatures they need to take 'leave of absence'. The UGC resolution dated 26.02.2019 further reiterates this position. The administrative Ministry of Education (Department of Higher Education) along with the UGC are also of the similar views and have submitted that Professors of Universities are not considered as Government Servant and Hon'ble Courts in the country have reiterated this time and again in many Judgments.

32. As per the Ministry of Law and Justice, the basic test to decide whether an office is an 'office of profit' so as to disqualify a person as a Member of Parliament, is to find out if that office is under the Government of India or the Government of a State. They further informed that the Gour Banga University and Delhi University constituted under the Gour Banga University Act, 2007 and the Delhi University Act, 1922 are self-governed autonomous institutions and function without interference either by the Central Government or the State Government. Albeit, these institutions may be receiving some Government grants but that alone is not sufficient to make them a body under the Government of India or under the Government of any State.

33. The Committee note that both of the Circulars and Resolution of UGC are in the nature of providing an implied permission to University Professors to take up the roles and responsibilities of a Member of Parliament as well as that of a University Professor/Teacher. The relevant UGC Circulars/resolution provides that teachers who wish to continue teaching in the University departments/colleges after being elected/nominated as Members of Parliament/State Legislature, may be allowed to continue with the teaching and research work in the Universities/colleges either by taking 'leave of absence' or by being 'on duty' as per option exercised by the Member of

Parliament. Likewise, Election Commission of India also provides that the eligibility of University Professors/lecturers for contesting elections depends upon multiple factors like status of the University (private, aided, State, Centre etc.) and the nature of employment (part, full, honorary, emeritus etc.) and the response would be contingent upon the facts of each case.

34. As regards the reference received from Dr. Sukanta Majumdar MP(LS), the Committee is of the considered opinion that the Professor of the Gaur Banga University, West Bengal may not attract disqualification for being chosen as, or for being, a Member of Parliament under Article 102 (1) (a) of the Constitution, as the University of Gaur Banga is an autonomous institution not subjected to the control of the Central/State Government. In view of the UGC Circulars dated 10.09.1974 and 06.03.1987, Dr. Sukanta Majumdar, MP during his term as Member of Parliament either need to take 'leave of absence' from the University or in compliance of UGC resolution dated 26.02.2019 the Member may continue their teaching work and research work and may apply for on-duty when the Parliament is in session, for attending the session or for attending to other Parliamentary assignments.

NEW DELHI:

4th August, 2022
Sravana 13, 1944 (Saka)

DR. SATYA PAL SINGH
Chairperson,
Joint Committee on Offices of Profit

RAJYA SABHA SECRETARIAT
(M.S&A BRANCH)

Room No.228,
Parliament House Annexe,
New Delhi.

Subject: Salary to a teacher/professor of University of Delhi on being elected/nominated as Member of Parliament from the University- Clarification-reg.

A Memorandum on the subject mentioned above is forwarded with the request that the same may be placed before the Joint Committee on Office of Profit for their consideration. The decision of the Joint Committee may be conveyed to this Secretariat thereafter.

Encl: As above.



(Sreejith V.)
Under Secretary
☎:23034228

Committee Branch-II, Lok Sabha Secretariat (Shri Munish Kumar Rewari,
Deputy Secretary), Room No.013, PHA Extn., New Delhi

RS/4(67)/91/2018-MSA

Dated 26th Apr, 2019.


2019/119

PROF. MANOJ KUMAR JHA
MEMBER OF PARLIAMENT
(RAJYA SABHA)



3943
28/5/18

To
Secretary General
Rajya Sabha
Parliament of India

Subject: Regarding drawing of salary from the university where I serve.

Dear Sir,

This is to bring to your kind notice that, I took oath as Member of Parliament Rajya Sabha on 3rd April 2018. I have been teaching at the University of Delhi for more than two decades and shall continue to do so apart from attending to my Parliamentary duties.

I write this to inform you that during my tenure as member, I shall be drawing my salary from my university i.e. University of Delhi. This is for your information and necessary action

Thanking You

Yours Sincerely,

M/Kha
21/5/18
(PROF. MANOJ KUMAR JHA)

1462
22/5/18

Pl find up

21/5/18

PR

1287
21/5/18

2633
22/5/18

23/5
Div (MSA)
MSA Branch

Secy.

JS & FA 22/5
Sd/- NIB
22/5

Website: <http://rajyasabha.nic.in>

Singh ...

Sri Manoj Kumar ...

Dr. Mahendra Prasad ...

RAKESH SINHA
MEMBER OF PARLIAMENT
(RAJYA SABHA)



(3)
A-101, ISPATIKA MART

PLOT No 29, SECTOR - 4,
DWARKA, NEW DELHI

Shri. Desh Deepak Verma ji

575
24/11/18

This is to inform you that presently, I am employed as an ~~Assistant~~ ^{Associate} Professor in Delhi University. Now, as I have been nominated as a Member of Parliament in Rajya Sabha by the Hon'ble President of India, therefore, I request Rajya Sabha Secretariat to pay me only allowances and other amenities barring salary, as a Member of Parliament, till further communication from my side.

Yours' sincerely

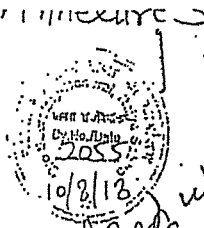
Rakesh Sinha
(Rakesh Sinha)

I.C.N. 4796.

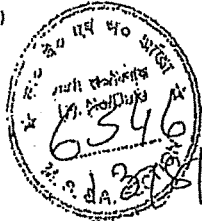
Sh. Desh Deepak Verma
Secretary General
Rajya Sabha

Website: <http://rajyasabha.nic.in>

RANESH SIMHA.
Mobile: 9911153110/9810578823
OFFICE OF PARLIAMENT
SECRETARIAL



(5)
Rajya Sabha
By. No. 74
Date: 10/8/18
Notice Office



To:
The Secretary General
Rajya Sabha

Pl. forward up
by 10/8/18
copy 10-8-201

Sub: Protection of Salary & Duty leave
Sir,

I humbly request you to kindly
the protection of my salary which

I have been getting from Motilal
Nehru College (E), Delhi University,
as an Associate Professor. I being
a nominated member, in the Rajya
Sabha, expect the Rajya Sabha to
protect my salary.

Moreover, I humbly

2296
13/8/18

NB: 11
13/8

10/8/18

Website: <http://rajyasabha.nic.in>

6

Request you to consider the question of my leave from the College till my term, i.e., 2024, as duty leave.

In many states, including Bihar, once a person is elected/nominated in the legislature, he or she is not eligible for duty leave from the mother institution.

Thanking you
Yours sincerely
Ramesh Singh
CRAMESH SINGH
DIVISION No. 97

10.8.98

14.7.15
13.9.2024

7

Manoj Kumar Jha



प्रोफेसर मनोज कुमार झा
संसद सदस्य
राज्य सभा

संसद सचिवालय
नई दिल्ली

MPRS/BJH/2019/174
Date: 01.02.2019

To,

Shri Desh Deepak Verma
Secretary General,
Rajya Sabha,
Parliament House
New Delhi

M.S.A. Office
Diary No. 797
Date 04/2/19

As I have already informed earlier that I am holding the post of Professor in Department of Social Work, University of Delhi, Delhi, therefore, drawing salary from University of Delhi not from the Rajya Sabha Secretariat. Further, I requested Rajya Sabha Secretariat to release the allowance as admissible in favour of undersigned, but the issue is still pending.

You are humbly requested to kindly direct the concerned to expedite the issue and make the payment of allowances w.e.f. 3.4.2018 as admissible under the rules.

Thanking you,

Yours truly,

(Prof. Manoj Kumar Jha)

X

12/19

326
4/1/19

602
1/2/19

1.2.19

Pl. put up immediately
P.P.O. Jha
J.S. (MSA)

E-mail: jha.manojk@sansad.nic.in Twitter: @manojkjadu
Website: www.manojkjha.in Mobile: +91 9650746617

Dr. (MSA)
10/2/19
A...

RAKESH SINHA
MEMBER OF PARLIAMENT
(RAJYA SABHA)



सत्यमेव जयते

M.S.A. Branch
Date: 4/2/2019

9

- 1. Department related Committee on Home Affairs
- 2. Department related Committee on Commerce

424

No:

327
4/2/19

Date: 03/02/2019

Secretary General
Rajya Sabha
17-2-19

Dear Desh Deepak Verma,

As I have already informed earlier, that I am holding the post of Associate Professor in University of Delhi, therefore, drawing Salary from University of Delhi not from Rajya Sabha Secretariat. Further, I requested Rajya Sabha Secretariat to release the allowances as admissible in favour of undersigned but the issue is still pending.

You are humbly requested to kindly direct the concerned to expedite the issue and make the payment of allowances w.e.f. 14.07.2018, as admissible under the rules, to me at the earliest.

600
1/2/19

With regards,

[Handwritten signature]
12-19

[Handwritten signature]
3/2/19
5/2/19
(Rakesh Sinha)
IC No. 4796

Shri Desh Deepak Verma
Secretary General,
Rajya Sabha Secretariat, New Delhi
RESIDENCE:- AB-98, SHAHJAHAN ROAD, NEW DELHI-110011
Mobile: 9862181364/9711153110
Email: rakesh.sinha46@sansad.nic.in

[Handwritten notes and signatures]
Dir (MSA)
16/2/19
A. S. T.

Dr. Sukanta Majumdar
Member of Parliament (Balurghat Lok Sabha)

Member:
Standing Committee on Information Technology
Committee on Petition Consultative
On Human Resource Development



172, North Avenue, New Delhi-110001

Sansad Karyalaya
Nazrul Sarani, near taxi stand,
Balurghat, Dakshin Dinajpur
Phone: 03522-255066
Mo- 8768333983, 94349 64125
E mail:
sukanta.majumdar@sansad.nic.in

Letter No. BG/LSS/2020/06/19

Dated 19.06.2020

Subject: Teaching/Research in the University of Gour Banga, Malda (West Bengal):

Ref: News item on the above subject published in Hindustan Times on 04.03.2019

Namaskar Madam!

✓ S/A
The University Grants Commission (UGC) has recommended that teachers who are members of Parliament or legislative assemblies be allowed to teach and do research when their respective House sessions are on, according to the news published in prominent news papers including Hindustan Times dated 04.03.2019. According to the recommendations, such teachers may draw their salaries from the university they are teaching in and their allowances from the parliamentary or legislative secretariat. They should be marked "on duty" when they attend House sessions or undertake any parliamentary or legislative assignments.

In the above context, I would like to request you to kindly allow me to take the teaching and research assignments in the University of Gour Banga where, I was an Assistant Professor before electing into the 17th Lok Sabha as Member of Parliament. In this regard, you may get the vetting from constitutional experts if desired so.

Looking for your response in this regard so that I may fulfil my teaching goals and commitments along with the legislative responsibilities in Lok Sabha.

With Regards

Encl: Copy of HT News, 04.03.2019

To,
Smt. Snehlata Srivastava
Secretary General
Lok Sabha Secretariat

S. Majumdar

(Dr Sukanta Majumdar)
MP, Balurghat Lok Sabha

MPs, MLAs can be allowed to teach:

3

UGC

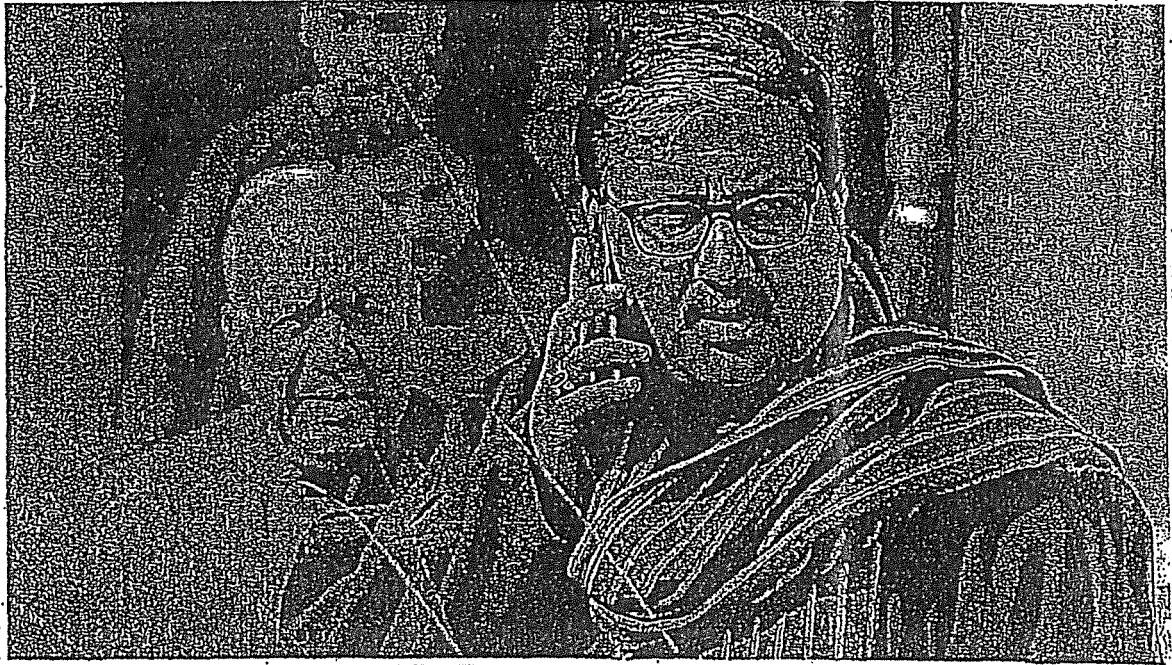
However, such teachers should not hold any administrative position in the university/college during their term as MPs/MLAs so their legislative work does not suffer.

INDIA

Updated: Mar 04, 2019 08:22 IST



Amandeep Shukla
Hindustan Times, New Delhi



RJD MP Manoj Jha in Parliament in New Delhi. (Sonu Mehta/HT PHOTO)

The University Grants Commission (UGC) has recommended that teachers who are members of Parliament or legislative assemblies be allowed to teach and do research when their respective House sessions are on, according to two commission officials familiar with developments.

The higher education regulator held discussions on the matter on a reference from Rajya Sabha regarding the salary and perquisites given to such MPs, one official said. At least two Rajya Sabha MPs — Rakesh Sinha of BJP and Manoj Jha of RJD — are teachers in Delhi University.

According to the recommendations, such teachers may draw their salaries from the university they are teaching in and their allowances from the

parliamentary or legislative secretariat. They should be marked "on duty" when they attend House sessions or undertake any parliamentary or legislative assignments.

Moreover, the university/college should appropriately assign their workloads to ensure their teaching assignments do not suffer, the recommendations, which will shortly be placed before the Rajya Sabha secretariat, said.

However, such teachers should not hold any administrative position in the university/ college during their term as MPs/MLAs so their legislative work does not suffer, the first UGC official said.

According to the second official, the UGC has opted not to go into matters relating to office of profit and suggested that they be looked into and decided by the parliamentary or legislative secretariat.

According to Articles 102(1)(a) and 191(1)(a) of the Constitution, an MP or MLA is barred from holding an office of profit as it can put them in a position to gain a financial benefit.

Two years ago, former PM Manmohan Singh — an RS MP from Assam — had sought clearance from the parliamentary panel on office of profit to accept a teaching offer from Panjab University. The panel gave him clearance, noting that teaching in educational institutions would not attract office of profit provisions.

It also suggested that teachers who wish to take leave of absence during their term as MPs/MLAs may be allowed to do so, but it has to be ensured that they do not lose their seniority or increments.



मानव-संसाधन विभाग

प्रो. रजनीश जैन
सचिव

Prof. Rajnish Jain
Secretary



सत्यमेव जयते

By Special Messenger

विश्वविद्यालय अनुदान आयोग
University Grants Commission

(मानव संसाधन विकास विभाग, भारत सरकार)
(Ministry of Human Resource Development, Govt. of India)

बहादुरशाह ज़फ़र मार्ग, नई दिल्ली-110002
Bahadur Shah Zafar Marg, New Delhi-110002

Ph.: 011-23236288/23239337

Fax : 011-2323 8858

E-mail : sery.ugc@nic.in

No.F.1-1/2014(PS)

16th August, 2018

Shri V.S.P. Singh
Director
Parliament of India
Rajya Sabha Secretariat
Parliament House/Annexe
New Delhi 110001

20 AUG 2018

Sub.: Clarification on whether a teacher/professor of a University on being elected/nominated as Member of Parliament is required to take leave of absence during his term as a Member.

Sir,

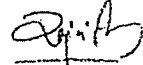
Please refer to your letter No.RS.4/11/169/2018-MSA dated 2nd August, 2018 on the subject mentioned above. In this regard, I would like to inform you that UGC had issued two circulars dated 10.09.1974 and 06.03.1987. Copies of the circulars are enclosed herewith. The UGC circular dated 06.03.1987 mentions that the Programme of Action on National Policy on Education under para 7(iv) on page 74 states as under:

".....Teachers who are elected/nominated to Parliament or State Legislature will be required to take leave of absence during their term as Member. However, in this process they will not be losing their seniority of increments."

In addition, UGC has sent a letter dated 18.08.2016 with a reminder on 14.12.2016 (copies enclosed) to the Ministry of HRD wherein a reference was made to an outstanding audit para of 1995 wherein the audit had objected to the admissibility of increment and seniority for such teachers since period of absence was treated as Extra Ordinary Leave and pay and allowances are not admissible to teachers who are elected to Parliament/State Legislature. The clarifications from the Ministry of HRD is still awaited.

This is for your information and necessary action.

Yours faithfully,


(Rajnish Jain)
Secretary

Encl. As above.

May link to me at desk page.
TS&A - Seen

Pl. link and put
up in file
21
2018

~~Annexure 8, 13, 17~~

ANNEXURE - IV

No.F.17-36/2018-CU.II/ U.II
Government of India
Ministry of Human Resource Development
Department of Higher Education

8813
Date: 2/12/18

Shastri Bhavan, New Delhi,
Dated the 28th November, 2018

Office Memorandum

Subject: Salary to a teacher/ professor of University of Delhi on being elected/ nominated as Member of Parliament from the University- regd.

The undersigned is directed to refer to Rajya Sabha Secretariat's OM No.RS. 4/11/169/2018-MSA dated 28.08.2018 on the subject mentioned above, wherein the case of two newly elected/ nominated Rajya Sabha MPs (Shri Manoj Kumar Jha and Shri R. K. Sinha) both teachers in Delhi University has been forwarded for considering them for drawing salary as per Delhi University norms and allowances as per Rajya Sabha norms.

2. In this context, it is informed that the extent guidelines of the University Grants Commission (copy enclosed letter dated 10.09.1974 and 06.03.1987) provides that:

- (i) The teachers who are elected/ nominated as Member to the Parliament/ State Legislatures may not be required to resign their academic position.
- (ii) However, during their term as Member of Parliament/ State Legislatures, they need to take leave of absence and during this leave of absence, they will not be losing their seniority or increments.

3. In addition, it is informed that this Department had taken up the matter with Legislative Department and Department of Legal Affairs (copy of the responses are enclosed).

4. It is understood that on a petition of Dr. Anupam Hazra, MP (Lok Sabha) for statutory approval for discharging professional service as an Assistant Professor of Visva Bharati (Central) University, the Joint Committee on Office of Profit (Sixteenth Lok Sabha) in its fourth report had held that the office of Assistant Professor does not qualify as an office of profit under the Government.

4.2 Dr. Hazra was ready to forgo his salary as an M.P. while he would discharge duty as an M.P. with leave of the University only on admissible monetary allowance and facilities as an M.P. The committee on this had held that the University (Visva Bharti) may resolve the matter on its own in light of the specific service requirements subject to the condition that the circulars of UGC mentioned in para 2 above is strictly followed by the University.

Contd....

29

5. It may be seen from above that the matter has already been considered earlier by the Joint Committee on Office of Profit (Sixteenth Lok Sabha) for an M.P. of Lok Sabha. Since the instant reference pertains to Hon'ble Members of Parliament (Rajya Sabha), Rajya Sabha Secretariat is requested to place it before the Joint Committee on Office of Profit. ..

6. This issues with the approval of competent authority.

Encl. As above.

Rajya Sabha Secretariat,
(Kind Attn: Shri V.S.P. Singh, Director),
Parliament House/ Annexe, New Delhi.

Renuka Mishra
(Dr. Renuka Mishra)
Director (U.II)
Tele. 011-23388632

*1st. Examined
1st. wk.*

30/11/18

Head. Secy (M & A)

30/11/18

Waidya
30/11/18

VS (MSA)

S No 111 w
15 25
20
9

University Grants Commission
Bahadur Shah Zafar Marg
New Delhi-1.

D.O.No. F. 1-113/73(CD)

September 10, 1974.

Dear Vice-Chancellor:

The question whether a teacher who is elected or nominated to the Parliament or State Legislature may be allowed to continue teaching work without being obliged to resign his teaching position or to take long leave from the university or college concerned and the procedure to be followed by the universities in this respect have been under consideration of the University Grants Commission.

The University Grants Commission had referred this question earlier for advice to its Advisory Committee of Vice-Chancellors and the Commission after considering the advice of the Committee of Vice-Chancellors had expressed the view that "the teachers who are either elected or nominated to the Parliament/State Legislatures may not be required to resign their academic position or to take long leave during the tenure of their membership. In order that the teaching work may not suffer, the University may consider prescribing the minimum number of days that such teachers should be available for their academic teaching and the research work in the University. Such teachers should not hold any administrative position/ responsibilities in the University or College during the period they are members of Parliament/Legislature."

The Government of India have agreed with the views of the Commission. I am writing to bring the above advice of the Commission to the notice of the University. This may also kindly be brought to the notice of the colleges affiliated to your university.

The receipt of this letter may kindly be acknowledged.

With regards,

Yours sincerely,

o/c.

R.K. Chhabra
(R.K. Chhabra)

To all Vice-Chancellors of Universities
and Institutions deemed to be Universities.

Jzh 10/9
ISSUED

No 223 (copy) 12.11.73
①

Secretary, UNIVERSITY GRANTS COMMISSION
Bahadur SHAH ZAFAR MARG
NEW DELHI

Dated: 6.3.87

No. P. 1-143/73 (CPR)

Vice-Chancellor,

Kindly refer to Commission's d.o. letter of even number dated September 10, 1974 (copy enclosed) regarding election/nomination of teachers to the Parliament/State Legislature.

10/11/73

The Programme of Action on National Policy on Education under Para 7 (ii) on page 74 states as under:

Teachers who are elected/nominated to Parliament or State Legislature will be required to take leave of absence during their term as Member. However, in this process they will not be losing their seniority/allowments.

The above provision in the Programme of Action (NEP) is brought to the notice of the University for appropriate action and guidance.

We shall be grateful if the action taken in this regard is intimated to the UGC at an early date.

With regards,

Yours sincerely,

Copy to -
IS (CPR)
EO (CPR) P 113
ECM

E.O.No:334795/LS/2019
 Ministry of Law & Justice
 Department of Legal Affairs

.....

The present reference is from Lok Sabha Secretariat seeking our advice regarding payment of allowances and other amenities as admissible under the Rules to a teacher/professor of University of Delhi on being elected/nominated as M.P. of the Rajya Sabha while taking salary of professorship from the University.

2. Shri Rakesh Sinha M.P. Rajya Sabha working as Associate Professor, Delhi University has requested the Rajya Sabha Secretariat to pay his allowances and other amenities while he will draw the salary of Associate Professor from Delhi University. Similarly, Shri Manoj Kumar Jha, M.P. Rajya Sabha who is Professor, Department of Social Work, University of Delhi has also requested the Rajya Sabha Secretariat to release the allowances as admissible under the Rules while drawing salary from University of Delhi. In this context, the Hon'ble M.P. have also sought clarification from the Secretariat as to whether they attract disqualification from the Parliament under article 102(1) (a) of the Constitution by continuing their profession of teaching in University of Delhi while simultaneously attending to their legislative duties and drawing their salary from the University of Delhi and allowances from the Rajya Sabha Secretariat.

3. Article 102 (1) of the Constitution bars an MP and entails disqualification from holding any 'office of profit' under the Central or State Government. Article 102(1) reads as under:-

"102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

....."

The essence of disqualification for holding an 'office of profit' emanates if a legislators holds an 'office of profit' under the government, they might be susceptible to government influence. Thus, the basis of 'office of profit' is to enforce the basic feature of the Constitution *i.e.* the principle of separation between the legislature and the executive so that the Member can freely discharge his duties as a legislators.

4. What constitutes an 'office of profit' has not been defined in law. However, an 'office of profit' has been interpreted to be a position that brings to the office-holder some financial gain, or advantage, or benefit from Government. The amount of such profit is immaterial. The Supreme Court in *Shibu Soren vs Dayanand Sahay & Ors (2001) 7 SCC 425* while dealing with expression "office of profit" has held that it is the substance and not the form which matters. The quantum or amount of "pecuniary gain" is not relevant, what needs to be found out is whether the amount of money receivable by the concerned person in connection with the office he holds, gives to him some "pecuniary gain", other than as 'compensation' to defray his out of pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is

conferring that benefit on him. In *Shivamurthy Swami vs. Agadi Sanganna Andanappa, 1971(3) SCC 870* the Supreme Court laid down the test for determining whether a person holds an office of profit namely the factors such as: (i) whether the Government makes the appointment, (ii) whether the Government has the right to remove or dismiss the holder; (iii) whether the Government pays the remuneration, (iv) what are the functions of the holder; and (v) Does the Government exercise any control over the performance of those functions? In *Gurugobinda Basu vs Sankari Prasad Ghosal and Ors 1964 SCR (4) 311* the Apex Court held that all these factors need not coexist. Mere absence of one of the factors may not negate the overall test. The decisive test for determining whether a person holds any office of profit under the government, is the test of appointment.

5. It is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether pecuniary gain is "receivable" in regard to the office and not whether pecuniary gain is, in fact, received or received negligibly. The Supreme Court in *Jaya Bachchan v. Union of India (2006) 5 SCC 266* case developed the doctrine of 'potential effect of an office' to ascertain the nature of office. The Court held that an office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". Nature of the payment must be considered as a matter of substance rather than of form. In fact, mere use of the word "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. Therefore, deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a).

6. The Supreme Court in *U.C. Raman v. P.T.A. Rahim, (2014) 8 SCC 934* held that word 'profit' is confined to pecuniary benefits only and does not include other factors such as status, power, influence, etc. emanating from the post. The very context, in which the word 'profit' has been used after the words 'office of', shows that not all offices are disqualified but only those which yield pecuniary gains as profit other than mere compensatory allowances, to the holder of the office. A post having only travelling allowance and daily allowance and not pay, salary, emoluments, remuneration, commission, etc. receivable in connection with the office does not get covered by the expression office of profit.

7. In the light of the above it may be inferred that an office of profit is an office which is capable of yielding a profit or pecuniary gain. Actual obtaining the

monetary gain by the holder of the post is not the relevant. A post under the Central or State Government which carries some pay, salary, emolument, remuneration or non- compensatory allowance is said to be post of 'office of profit'. Payment of any pecuniary benefit, in addition to daily allowances are in the nature of remuneration and constitute profit. Emoluments/honorarium like conveyance or travel or house rent allowance are all constituents of "compensatory allowance" not constituting profit. Thus Lok Sabha Secretariat is advised to allow the release of allowances which falls under the expression daily allowances/compensatory allowances. As regards, attracting disqualification of Hon'ble Members from the Parliament under article 102(1) (a) of the Constitution by continuing their profession of teaching in University of Delhi while simultaneously attending to their legislative duties and drawing their salary from the University of Delhi and allowances from the Rajya Sabha Secretariat is concerned, it is stated that Hon'ble Members would attract disqualification if the post of professor is capable of yielding a profit or pecuniary gain even though actual obtaining of monetary gain is not availed by Hon'ble Members as per the law laid down in Jaya Bacchan Case.

RMani

(Dr. Rajiv Mani)

JS & LA

10.07.2019

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Lok Sabha Secretariat

निधि कार्य विभाग
Dept. of Legal Affairs
नं. व./.....स. (बी.)
Cy. No. 334795/LS/19 Adv.(B)
दिनांक/Date...16/07/2019

Most Immediate

F.No.17(4)/2018-Leg.II
Government of India
Ministry of Law and Justice
Legislative Department

Shastri Bhawan, New Delhi
Dated the 11th September, 2019

Office Memorandum

Subject: Request for clarification regarding payment of salary to a Teacher/Professor of University of Delhi on being elected/nominated as Member of Parliament from the University – regarding.

The undersigned is directed to refer to the Lok Sabha Secretariat, Committee Branch-II, O.M No.21/2/1(2)/2019/CII dated the 26th June, 2019 and the 2nd August, 2019 on the subject cited above seeking clarification of this Department as to whether the Members of Parliament may attract disqualification under sub-clause (a) clause (1) of article 102 of the Constitution by continuing their profession of teaching while simultaneously attending to their legislative duties and drawing their salary from the University of Delhi and allowances from the Rajya Sabha Secretariat.

2. It is noteworthy to mention that the Joint Committee on Offices of Profit (Sixteenth Lok Sabha) had considered the said issue in their Fourth Report *vide* para 1.9, while delivering their opinion that Dr. Anupam Hazra as a Member of Parliament does not hold an office of profit by holding the office of an Assistant Professor at the Visva-Bharati University and hence does not attract any disqualification for being a Member of Parliament under sub-clause (a) of clause (1) of article 102 of the Constitution.

3. However, it is relevant to mention here that the High Court of Andhra Pradesh in the case of Kethamreddi Venkata Ramana Reddi Vs. Government of Andhra Pradesh reported in AIR 1985 Andhra Pradesh 73 had held that a teacher who is elected as a Member of Legislative Council of the State under sub-clause (c) of clause (3) of article 171 of the Constitution cannot simultaneously continue as a teacher. It was also held in the said case that he can be granted extraordinary leave, or a similar leave of absence during his membership of the Council, so that, after serving his term, he can come back as a teacher.

4. In view of the aforesaid judgment, it appears that the Hon'ble Members of Parliament may not continue their profession of teaching in University while simultaneously attending to their legislative duties without taking extraordinary leave or a similar leave of absence during his membership of Rajya Sabha.

P. Sg

(Sathish Murugan. P.)
Assistant Legislative Counsel
Ph: 2307 4189

The Lok Sabha Secretariat (Committee Branch-II),
{Joint Committee on Offices of Profit }
[Kind Attn: Sh. Munish Kumar Rewari, Additional Director]
G-013, Parliament House Annexe Extension Building,
New Delhi. 110 001

Handana
by
2/9/19



प्रो. रजनीश जैन
सचिव
Prof. Rajnish Jain
Secretary



विश्वविद्यालय अनुदान आयोग
University Grants Commission
(मानव संसाधन विकास मंत्रालय, भारत सरकार)
(Ministry of Human Resource Development, Govt. of India)
बहादुरशाह जफर मार्ग, नई दिल्ली-110002
Bahadur Shah Zafar Marg, New Delhi-110002
Ph.: 011-23236288/23239337
Fax: 011-2323 8858
E-mail: secy.ugc@nic.in

No.F.1-1/2014 (PS)/Audit

January, 22, 2021

To,

22 JAN 2021

Shri Munish Kumar Rewari
Additional Director
Committee Branch II
Joint Committee on Office of Profit
Lok Sabha Secretariat, Parliament House Annexe
New Delhi 110 001

Sub: Request of Prof. Manoj Kumar Jha and Shri Rakesh Kumar Sinha, Hon'ble Members of Parliament (MP), Rajya Sabha seeking clarifications regarding drawing of salary/ Allowances by Teacher /Professor of University of Delhi on being elected /nominated as Member of Parliament-reg.:


Sir,

Kindly refer to your letter N o. 21/2/2(13)/2019/CII, dated 7th January, 2021 on the matter cited above. In this regard, it is submitted that the Commission's resolution, which was conveyed to the Rajya Sabha Secretariat vide letters no.F.1-1/2014(PS) dated 20.8.2018 and F.No.1-1/2014(PS)/Audit, dated 27.2.2019, duly answered the query as to whether Hon'ble MPs -- who are also teachers -- would be entitled to draw salary / allowances from the University concerned, and if so, in what circumstances.

While taking the decision the Commission had also taken into consideration the issue of 'office of profit' and mentioned in the resolution that it is for the Rajya Sabha / Lok Sabha Secretariat to determine whether or not the Hon'ble MP concerned holds an 'office of profit' by virtue of being a faculty at the University in light of Article 102(1)(a) of the Constitution of India. Similarly, it is for the Rajya Sabha / Lok Sabha Secretariat to decide whether or not such Hon'ble MPs can draw a salary from the University concerned when such Hon'ble MPs undertake teaching work, in light of the provisions of the 'Salary, Allowances and Pension of Members of Parliament Act, 1954'.

The UGC can only comment on the permissibility of paying salaries/allowances to Hon'ble MPs, who are faculty as well, from the perspective of the educational institution concerned. Accordingly, the UGC's resolution only states that such Hon'ble MPs "may draw their salary from the university/college", leaving it open to the Rajya Sabha / Lok Sabha Secretariat to determine whether an Hon'ble MP can actually draw such salary as a Member of the House.

In view of above, it is submitted that the UGC's circulars / resolutions issued in this regard have clarified the teaching work and remuneration of faculty who are elected / nominated to Parliament or a State Legislature and it is for the Lok Sabha/Rajya Sabha Secretariat to decide on an 'office of profit' or administer the 'Salary, Allowances and Pension of Members of Parliament Act, 1954'.

Yours sincerely,

(Rajnish Jain)

No. F.17-36/2018-CU.II/U.II
 Government of India
 Ministry of Education
 Department of Higher Education

Shastri Bhavan, New Delhi,
 Dated the 9th April, 2021

OFFICE MEMORANDUM

Subject: Request of Prof. Manoj Kumar Jha and Shri Rakesh Kumar Sinha, Member of Parliament, Rajya Sabha seeking clarification regarding drawing of salary/ allowances by Teacher/ Professor of University of Delhi on being elected/ nominated as Member of Parliament-reg.

The undersigned is directed to refer to Lok Sabha Secretariat's Office Memorandum No.21/2/2(13)/2019/CII dated 07.01.2021, 01.02.2021 and 03.03.2021 on the subject mentioned above.

2. In this connection, the University Grants Commission (UGC) has informed that the Commission in its Meeting held on 26th February, 2019 had resolved as under:

- i. "As per UGC Circular of 1987 and as stated in the Programme of Action on National Policy on Education, the teachers who wish to take the leave of absence during their term as Members of the Parliament/ State Legislature may be allowed to do so while ensuring that they do not lose their seniority or increments in the process. In this case they will draw their salary from the Parliament/ State Legislature Secretariat."
- ii. The teachers who wish to continue teaching in the university department/ colleges after being elected/ nominated as Members of Parliament/ State Legislature, may be allowed to continue with the teaching and research work in the universities/ colleges with the provision that they may be treated as "on duty" when the Parliament/ State Legislature is in session for attending the session and when such teachers undertake any other Parliamentary/ State Legislative assignments. To ensure that the teaching work does not suffer, the university may consider assigning appropriate work load to such teachers. However, such teachers should not hold any administrative positions/ responsibilities in the university/ colleges during the period they are Members of Parliament/ State Legislature. Such teachers may draw their salary from the concerned university/ college. However, the admissible allowances may be drawn from the Parliament/ State Legislature Secretariat.

The Commission further recommended that the issue relating to holding of Office of Profit by the Members of the Parliament/ State Legislature may be looked into by the respective Secretariat.

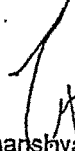
3. Further, UGC has already sent its comments in the matter to Lok Sabha Secretariat, vide its letter dated 22.01.2021. UGC has clarified in the said letter that while taking the decision, the Commission had also taken into consideration the issue of 'Office of Profit' and mentioned in the resolution that it is for the Rajya Sabha/ Lok Sabha Secretariat to determine whether or not the Hon'ble MP concerned holds an 'Office of Profit' by virtue of being a faculty at the University in light of Article 102(1)(a) of the Constitution of India.

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 16/4
 UGC (C-11)
 MS Vandana

4. In addition, UGC has stated that UGC can only comment on the permissibility of paying salaries/ allowances to Hon'ble MPs, who are faculty as well, from the perspective of the educational institution concerned. Accordingly, the UGC's resolution only states that such Hon'ble MPs "may draw their salary from the university/ colleges", leaving it open to the Rajya Sabha/ Lok Sabha Secretariat to determine whether an Hon'ble MP can actually draw such salary as a Member of the House.

5. In view of that above, UGC's circulars/ resolution issued in this regard have clarified the teaching work and remuneration of faculty who are elected/ nominated to Parliament or a State Legislature and it is for the Lok Sabha/ Rajya Sabha Secretariat to decide on an 'Office of Profit' or administer the 'Salary, Allowances and Pension of Members of Parliament Act, 1954'.

6. This issues with the approval of competent authority.


(Ghanshyam) 09/4/2021
Under Secretary to the Govt. of India
Ph.23381460

Lok Sabha Secretariat,
(Kind Attention: Shri Munish Kumar Rewari, Addl. Director),
Committee Branch-II,
Parliament House Annexe,
New Delhi-110001.

FTS = 1024081/2022

Confidential

F. No. H.11011/05/2021-CDN(pt.)
Government of India
Ministry of Education
Department of Higher Education
CDN Section

~~CONFIDENTIAL~~

229-C, Shastri Bhawan, New Delhi
Dated the 09th March, 2022

To

Sh. Manjinder Pubbi
Under secretary
Lok Sabha Secretariat,
Committee Branch-II
(Joint Committee on Office of Profit)
013, PHA Extn., New Delhi.
Committee-br2@sansad.nic.in

D. No. I/74117/2022

Sub: Proceedings of the sitting of the "Joint Committee on Office of Profit held on 07.12.2021 – Reg

Sir,

I am directed to refer to Lok Sabha Secretariat's letter no.21/3/2021/CII dated 20.12.2021 enclosing therewith the Proceeding of the sitting of the Joint Committee on Office of Profit held on 07.12.2021. The reply to the queries raised by the Committee which remained unanswered in the Proceedings are enclosed.

2. This issues with the approval of Secretary(HE).

Yours sincerely,



(Lakshmi Chandra)

Under Secretary to the Govt. of India
Phone: 011-23387980

Questionnaire of the proceedings of the sitting of the Joint Committee on
Offices of Profit held on 07.12.2021

Sl. No.	Queries Raised by Members	Comments/Replies
1	They (MPs) want to draw the allowances from the Parliament. Do your rule, regulations and guidelines allow this kind of a thing?	<p>An expert committee was constituted by the UGC's to examine the issues relating to the Office of Profit arising out of the election/nomination of a teacher to the Parliament/State legislature. The decision of UGC in this regard is based on the recommendations of the committee which inter-alia recommends that,</p> <p><i>Teachers who are elected / nominated to Parliament or State Legislature may take leave of absence during their term as Member. However, they will not be entitled to draw their pay and allowances from the University / college as the case may be during this period as per rules.</i></p> <p align="center">Or</p> <p><i>The teachers who wish to continue teaching in the university departments/colleges after being elected/nominated as Members of Parliament/State Legislature, may be allowed to continue with the teaching and research work in the universities/colleges with the provision that they may be treated as "On Duty" when the Parliament/State Legislature is in session for attending the session and when such teachers undertake any other Parliamentary/State Legislative assignments. In this scenario, as they are teaching in the university/college, they may draw their salary from the university/college. However, they may draw their allowances due to them from the Legislature during the session subject to audit clearance.</i></p> <p>The concerned teacher shall be required to exercise his options accordingly.</p>
2	The Ministry of HRD wherein a reference was made to an outstanding audit para mentioned earlier where the audit had objected to the admissibility of increment and seniority for such teachers since the period of absence was treated as extraordinary leave and that pay and allowances are not admissible to teachers who are elected to Parliament and Legislature. These are the basic issues on which the Committee would like to have your views.	The audit observation was also placed before the expert committee. Accordingly, teachers who are elected/nominated to Parliament or State Legislature may take leave of absence during their term as Member. However, in the process they would not be losing their seniority or increments. In order to ensure uniformity of action, rules of the universities and colleges should be framed /amended to protect their seniority and incremental pay to tide over the audit objections which may arise in future. The JPC may also consider framing of Regulations on

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		these lines to be implemented uniformly throughout India.
3	UGC and the Ministry of Education may please clarify as to what objections were raised in the outstanding Audit para 1995. Secondly, is there any difference in the position of nominated or elected Members of Parliament in respect of choice of drawing allowances or salary from a particular place, keeping in view that it would amount to jeopardising financial interest of a member who has been nominated by the choice of the President of India? There are some other issues. We will come to them later on. You can respond on this issue now.	In the Audit Para 1995 under reference, certain objections were raised to the admissibility of increment and seniority of teachers whose period of absence was treated as extraordinary leave stating that pay and allowances are not admissible to teachers who are elected to the Parliament and State Legislature.
4	On the one hand, we say that they will be on extraordinary leave (EOL) and during extraordinary leave they will not be entitled for any increment or seniority. It happens in all the Government Departments. Why was the special favour shown or was being shown to the professors of university? It is because all the members of the committee which UGC constituted must be professors only. They must be all from the teaching fraternity. They went for this kind of a thing. Do you think it is rational? I would like to know from the Vice Chancellor also. A teacher was not working under you. It is his sweet will whether he will come and teach, how much he will teach, how many periods he will take and he will enjoy all the privileges of the university.	National Policy on Education was notified in the year 1986. Under the Programme of Action to implement National Policy on Education, this privilege was extended to teachers. The Circular issued by UGC in 1987 was on the basis of this Programme of Action report
5	I would like to know whether you would like to have this kind of a disciplinary thing in the university. We also know what is happening. We wanted to know your stand on this.	The University ensures that all its staff performs assigned duties to the best of their capabilities. Disciplinary issues, if any, are strictly dealt with as per rules.
6	UGC is a part of the Government of India. They are working under an Act of the Government of India. How can they take this kind of a decision? How can they give their written consent like this? It can be very harmful to them also.	UGC had constituted an Expert Committee to deliberate on the issue of office of profit. UGC's decision on the matter is based on the recommendations of the expert committee.
7	Further, in their 1987 circular they noted that the teachers who are elected/ nominated to the Parliament or State Legislatures will be required to take Leave of Absence during their term as Members. However, in this process they will not be losing their seniority and	As informed at Question at Sl. no. 4 above, the circular issued by UGC in 1987 was based on the "Programme of Action" to implement National Policy on Education 1986 wherein under clause 7(iv) it was mentioned that "Teachers who are elected/nominated to Parliament or State

	increment. Therefore, it can be ascertained that the UGC does not have any issue with the professor assuming the role of an MP, and has made it clear that they must not hold any administrative post.	Legislature will be required to take leave of absence during their term as Member. However, in this process they will not be losing their seniority or increments".
8	Why is this kind of special privilege given to the professors of the University and not to the doctors in Government sector and other professionals?	Professors of Universities are not considered as Govt. Servant. Hon'ble Courts in the country have reiterated this in many judgments.
9	I can become a police commissioner as well as a Member of Parliament. Why it is not allowed? Why not scientists or government servants?	Professors of Universities are not considered as Govt. Servant. Hon'ble Courts in the country have reiterated this in many judgments.
10	Do you not think that it is violative of Article 19? Why are the University professors put on the separate pedestal?	Article 19, inter alia states that all citizens shall have the rights to practice any profession or to carry on any occupation, trade or business. In the instant case as the Professors of Universities are not considered as Govt. Servants this privilege remain a possibility.
11	You are the Vice- Chancellor. You are giving the salary to a Member of Parliament. Can you take disciplinary action against him? Can you take a disciplinary action as Vice-Chancellor against the Member of Parliament who happens to be on your pay-rolls?	As the Member of Parliament, he/she is on the rolls of the University and paid salary by University. University is well within its rights to take any disciplinary action against him/her for acts as an employee of University.
12	पहली बात तो यह है की no Vice- Chancellor as per my information takes the review whether a Member of Parliament who is also a professor is taking the classes or not. क्या यूजीसी के पास किसी का रिव्यू है? I just wanted to know and we would like to have it on the record. रजनीश जी अगर आप आंसर यस करते हैं तो Please give it in writing. क्या कभी किसी ने यह रिव्यू किया है? Whether somebody is teaching or not? This analogy that Government officers are going on sabbatical leave is there. For that, there are guidelines. They have to follow that. वहाँ अलाउंस और सैलरी का चक्कर नहीं होता है। They get the salary from the Government Department concerned. अगर लेते होंगे तो हम आपसे रिपोर्ट मांग लेंगे तो आपको जवाब देना पड़ जाएगा और आपके लिए मुश्किल हो जाएगी ऐसा मत कीजिए।	The University permitted the faculty members who were appointed as MP to take classes and guide M.Phil/Ph.D. students as per UGC rules. The report submitted by the Head of the Department (enclosed at Annexure-A) indicate that the faculty member has been performing the assigned duties.

13	आजकल थंब इंप्रेशन से अटेंडेंस होती है, फेस रिकॉग्निशन से अटेंडेंस होती है, वर्चुअल अटेंडेंस होती है। सभी यूनिवर्सिटी और कॉलेजिस में होती है, भारत सरकार कर रही है। अगर ऐसी नौबत आ गई तो क्या आप सैलरी को जस्टिफाइड कर पाएंगे ?	The University has implemented attendance through thumb impression for its non-teaching staff. This record is considered for release of salary. At present attendance of teachers through thumb impression is not being taken. When it will be implemented the salary will be released considering this data. It is pertinent to submit that the attendance through thumb impression has been suspended due to prevailing pandemic in compliance of MHA, DoPT, DDMA & MoHFW guidelines.
14	यूनवर्सिटीज प्रोफेसर का अन्य गवर्नमेंट एम्पलाईज के साथ जो यह पार्श्वटी की गई है, क्या यह जस्टिफाइड है? सबसे बड़ा प्रश्न यह है कि क्या यह जस्टिफाइड है? क्या जो अन्य गवर्नमेंट एम्पलाईज हैं, चाहे वो सेंटर गवर्नमेंट में हों, चाहे स्टेट गवर्नमेंट में हों, पब्लिक सेक्टर यूनिट्स में हों, कहीं पर भी हों, क्या उनको भी यह अनुमति दी जानी चाहिये ?	विश्वविद्यालयों के प्रोफेसरों को सरकारी नौकर नहीं माना जाता है। देश के माननीय न्यायालयों ने कई निर्णयों में इसे दोहराया है।
15	इंटर कॉलेजो में जो पढ़ाते हैं, यूनिवर्सिटी में जो नहीं पढ़ाते हैं, उन टीचर्स को क्या यह अनुमति मिलनी चाहिए ? पहले उनको सरकारी नौकरी से रिजाइन करना पड़ता है, उसके बाद सिलेक्शन होता है ।	इंटर कॉलेज उच्च शिक्षा के परिक्षेत्र में नहीं आते।
16	इसलिए पहली बात तो यह है कि आप लोग जो कर रहे हैं, क्या यह एज पर लॉ है? आप खुद एगजमीन कर लीजिए मैं लॉ वालो से भी आग्रह करूंगा कि एक बार इसको देखे कि यूजीसी जो डिजीजन ले रही है, क्या यह एज पर लॉ है? यह बहुत बड़ा सवाल है। अगर यह एज पर लॉ है, तो यह अन्य लोगों पर अब तक एप्लिकेवल क्यों नहीं हो रहा है, उसको इलेक्शन कमीशन इलेक्शन लड़ने से क्यों रोक रहा है? मेरा आपसे यह सवाल है।	विशेषज्ञ समिति ने अपने रिपोर्ट में जिन दस्तावेजों का संदर्भ लिया वे हैं: <ul style="list-style-type: none"> • भारत के संविधान के प्रासंगिक प्रावधान। • लाभ छूट सूची के कार्यालय के साथ संसद (निरर्हता निवारण) अधिनियम, 1959 (संख्या 1959 का 10) • सर्वोच्च न्यायालय और उच्च न्यायालयों द्वारा समय-समय पर सुनाए गए लाभ के पद से संबंधित विभिन्न न्यायिक निर्णय। • लाभ के पद के मामले में भारत निर्वाचन आयोग के निर्णय। • इस मुद्दे पर अतीत में समय-समय पर यूजीसी की सिफारिशों को संप्रेषित किया गया • संसद सदस्यों का वेतन, भत्ते और पेंशन अधिनियम, 1954 (1954 का अधिनियम संख्या

		30) और उसके तहत बनाए गए नियम संदर्भ के लिए प्रासंगिक कोई अन्य सामग्री।
17	यह आर्टिकल 19 का वॉयलेशन है कि नहीं है? फिर सवाल आता है सैलरी का या वेजेंस का और ऑफिस ऑफ प्रॉफिट बाद की बात है उस पर तो बाद में आयेगे, यहाँ तो उससे ऊपर जा कर हो गया कि मैं सैलरी यहाँ से विथड्रा करूँ, अलाउंसेज यहाँ से करूँ ।	Article 19, inter-alia states that all citizens shall have the rights to practice any profession or to carry on any occupation, trade or business. In the instant case as the Professors of Universities are not considered as Govt. Servants this privilege remain a possibility.
18	क्या यह स्टाइफ किसी दूसरे को मिल सकती है? For e.g., tomorrow a university professor becomes a legislature is law making वहाँ पर जो सैलरी है, that is Rs. 2.5 lakh. हमको 1 लाख रुपये मिले हैं । कहीं किसी स्टेट लेजिस्लेचर में think Rs.4.5 lakh or something. In that condition, your university professors will claim that no, I will get the salary from the Legislature, not from the university'. Since university professors are getting more salary, they want it from there and since they are getting more allowance from Parliament, they want allowance from Parliament but salary from the university. Is It Justifiable? That is the question. मेरा कहना यह है कि अगर हमने पहले गलत डिसेजन लिया है, we can correct it now. Please examine it thoroughly and we want your guidance and advice as we have to decide on the issue.	यू.जी.सी. ने विशेषज्ञ समिति की शिफारिश पर फैसला लिया, इस सन्दर्भ में अंतिम फैसला लोक सभा / राज्य सभा सचिवालय ले।
19	ऐसा भी किया जा सकता है कि जो तीन लोग हैं, इनको राहत मिले, इनका टेन्योर आराम से निकल जाए और हम नेक्स्ट टाइम के लिए धीरे-धीरे करके अगले तीन साल बाद की ऐसी व्यवस्था बना लें, ताकि इसका टेन्योर इज्जत से निकल जाए। अगले टाइम पर ऐसी कोई परिस्थितियां पैदा नहीं हो, ऐसा हमने इलेक्शन कमिशन से भी आग्रह किया है। वे बड़े कंप्यूज थे। हमने उनसे भी आग्रह किया है कि आप भी क्लियर कंट गाइडलाइन बनाइए आप ऐसा मत कीजिए। ताकि बाद की व्यवस्था ठीक की जा सके। आप एक बार बैठ कर इसकी तैयारी कीजिए, ताकि हम इन लोगों को भी रिलीफ दे पाएं।	यू.जी.सी. ने विशेषज्ञ समिति की शिफारिश पर फैसला लिया , इस सन्दर्भ में अंतिम फैसला लोक सभा / राज्य सभा सचिवालय ले।

By Speed Post/etnail

ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI - 110 001

No. 287/PSC/2/2021-Coord/4666

Dated: 14th December, 2021

To,

Sh. Munish Kumar Tewari,
Additional Director,
Lok Sabha Secretariat,
Parliament House/ Annexe Extension,
New Delhi - 110001

Subject: Queries raised by the Joint Parliamentary Committee on Office of Profit, Lok Sabha-replies thereof.

Sir,

At the hearing held on 07.12.2021, the Committee desired to have the response of Election Commission on the following queries:-

1. Whether, any university professor/lecturer is eligible to contest elections?
2. Whether, Election Commission provides any list of categories of persons, who are ineligible to contest elections?
3. Whether, an MP being university professor/lecturer is attracted to the provisions of Office of Profit under the Government and hence liable to be disqualified?

In view of the above, I am directed to place herewith the response to the above-mentioned queries as follows:

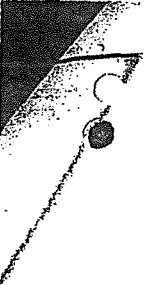
Q1. Whether, any university professor/lecturer is eligible to contest elections?

University Professors/ Lecturers are not a homogenous group and their eligibility for contesting election depends upon status of the university (private, aided, State, Centre etc.) and the nature of employment (part, full, honorary, emeritus etc.). Therefore, the response would be contingent upon the facts of a particular case at hand and no generic response either in the affirmative or negative can be provided.

Few judicial pronouncements concerning office of profit involving the university professors/ lecturers are available:-

In the case of *Shambudayal Sharma vs. MCD & Ors.* [WP(C) No. 2686/2011], the issue was whether the position of Associate Professor in Law Centre-II of Faculty of Law, University of Delhi was an office of profit under the Government which created a bar on

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16/12
CO. CS-I (CA) (JCOF)



such persons from contesting MCD Elections. The Hon'ble Delhi High Court vide judgment dated 03.10.2011 held that the said position was not an office of profit and made the following observations:

"The purport of such disqualification is that there should be no conflict between the duties and interest of an elected representative and to see that such an elected member can freely and fearlessly carry out his duties without being subjected to any kind of Governmental pressure, thereby implying that if such an elected person is holding an office which brings him remuneration and if the Government has a voice in his functions in that office, there is every likelihood of such person succumbing to the wishes of the Government [...] The counsel for the petitioner has neither made any attempt to demonstrate as to how employment of respondent no.4 in the Delhi University affects her functioning as member of MCD nor, inspite of the respondent no.4 for the last four years being both, a lecturer in Delhi University and a Councillor, are there any pleadings as to how it has affected her functioning as Councillor."

"[...] the qualification for appointment, the scales of pay and conditions of service are regulated by the University Ordinances even though scales of pay are subject to approval of Central Government; that Delhi University is an autonomous statutory body though funded by Government; that the scheme of Ordinances of Delhi University do not leave any role for the Government to play in the fixation of scales of pay or abolition of posts and grades of University appointed teachers because the University does not have to obtain approval of the Government."

"Moreover, it cannot be lost sight of that higher education though earlier largely in public domain, in recent past has witnessed private participation also and thus merely because the Delhi University in the present case was established by the Government would not qualify the employees of the Delhi University as the Government employees. There is thus no merit in the petition; the same is dismissed."

In *Satrucharla Chandrasekar Raju vs. Vyricherla Pradeep Kumar Dev & Ors.* [AIR 1992 SC 1959], the Hon'ble Supreme Court while holding that the appellant teacher who was working under the Integrated Tribal Development Agency was not holding an office of profit, made the following observations:-

"22. [...] It is from this point of view that the right to appoint and right to remove the holder of the office in many cases becomes an important and decisive test. The source of payment for the office may also be taken into consideration but is not always a decisive factor. Likewise the control exercised by the Government may be one of the tests but as mentioned above that by itself is not a decisive test."

In *Hansraj Jeevraj Mehta vs. Indubhai B. Amin & Ors.* [1952 ELR P.171], the Election Tribunal while holding the Vice-Chancellor of Baroda University as holding an office of profit under the Government of Bombay, observed as follows:-

"11. [...] If a Government can appoint a person to an office or can continue a person in that office or can at their discretion revoke that appointment it follows an irresistible inference that the person would be under an obligation to the Government irrespective of the fact that his salary is drawn from source other than Government. In fact such a person would be indebted to the Government for an office of profit, and this would certainly affect his independence vis-a-vis the Government in the Legislature. This is exactly what is sought to be prevented by article 103(1)(a). It appears to the Tribunal that the power of Government to appoint a person to an office of profit or to continue him in that office or to revoke the appointment at their discretion is a very important factor and the person in such a case can surely be said to hold an office of profit under that Government."

In *Biharilal Dobray v. Roshan Lal Dobray* [AIR 1984 SC 385], the Hon'ble Supreme Court had an occasion to consider whether the post of Assistant Teacher in a Basic Primary School was an office of profit under the State Government or not. The Hon'ble Court held that the said post was an office of profit and made the following observations:

"18. It is seen that all officers mentioned in column 3 and column 4 of the above Schedule are either the State Government or officers appointed by the State Government. The said officers are all officers of the Government Department who hold the posts in the Board ex officio, that is, by virtue of the corresponding post held by them under the Government. The rules provide for the procedure to be followed in disciplinary proceedings and the punishments that may be imposed when an employee is found guilty of any act of misconduct. Rule 5 of the said rules provides for an appeal against any order imposing punishment to the prescribed authority. The procedure laid down in civil Services (Classification, Control and Appeal) Rules as applicable to servants of the Uttar Pradesh Government is required to be followed as far as possible in the case of the employees of the U.P. Board of Basic Education. The funds of the Board mainly come from the contribution made by the State Government. The school in question is not a privately sponsored institution which is recognised by the Board. The Statement of Objects and Reasons attached to the Bill which was passed as the Act clearly says that the Act was passed in order to enable the State government to take over the administration of schools imparting primary education which were being run by the local authorities into its own hands. Even though the representatives of local authorities are associated in the administration of such schools after the Act was passed, the final control of the schools is vested in the Government and such control is exercised by it through the Director and Deputy Director of Basic Education (Member Secretary) and other District Basic Education Officers appointed by the Government."

"20. We are of the view that the present case is governed by the principles laid down by the judgment of this Court in *State of Gujarat and Ors. v. Raman LalKeshavLalSoni and Ors.* [(1983) 2 SCC 33]. The functions of the employees of the Board are in connection with the affairs of the State. The expenditure of the Board is largely met out of the monies contributed by the State Government to its funds. The teachers and other employees are to be appointed in accordance with the rules by officers who are themselves appointed by the Government. The disciplinary proceedings in respect of the employees are subject to the final decision of the State Government or other Government officers, as the case may be. This Court, as mentioned earlier, held in *Divya Prakash v. Kutar Chand Rana and Ors.* [1975] 2 SCR 749, that the officers of the Board of School Education constituted under Himachal Pradesh Board of School Education Act, 1968 which was a body corporate having perpetual succession and a common seal held their offices under the government although in that particular case it was held that the office was not an office of profit as the person concerned was working in an honorary capacity. We have gone through the Himachal Pradesh Board of School Education Act, 1968 and we find that the provisions of that Act are almost similar in pattern to the provisions of the Act with which we are concerned in this case."

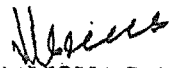
Q2. Whether, Election Commission provides any list of categories of persons, who are ineligible to contest elections.

The Commission does not provide any list of categories of persons who are qualified or disqualified to contest election.

Q3. Whether, an MP being university professor/lecturer is attracted to the provisions of office of profit under the Government and hence liable to be disqualified.

Any matter with respect to 'Office of Profit' is considered by the Commission only when a reference is received under Article 103, in cases of Member of Parliament from Hon'ble President or under Article 192, in cases of MLAs, from Governor of the State/UT concerned. Determination of office of profit has been envisaged in the Constitution as a quasi-judicial function of the Election Commission. Therefore, any response would be in the nature of giving a pre-determined opinion on a subject matter which requires application of judicial mind by the Commission as per the facts of each individual case at hand.

Yours faithfully,


(A. MONA SREENIVAS)
DIRECTOR

By e-mail/post

Election Commission of India
Nirvachan Sadan Asoka Road, New Delhi 110001

No.287/PSC/2/2021-Coord /4431

Date: 7th March, 2022

To

Sh. Uttam Chand Bharadwaj,
Additional Director, Lok Sabha Secretariat, Committee Branch-II
Parliament House/Annexe Extension,
New Delhi-110001

Subject: Queries raised during the oral evidence of the representatives of the Election Commission of India in connection with the requests of Prof. Manoj Kumar Jha, Shri Rakesh Kumar Sinha, MP (RS) and Dr. Sukanta Majumdar, MP(LS) regarding drawing of Salary/Allowance by Teacher/Professor of Universities on being elected/nominated as Member of Parliament on 07.12.2021-reg.

Sir,

I am directed to refer to your letter no. LAFEAS-CB1103/7/2021-CB-II dated 21st February, 2022, and to furnish following comments w.r.t clarifications sought.

Sl.No.	Clarification Sought	Response
1.	The position in case of each of the private, aided, State and Central University in regards to the eligibility of University Professors/Lecturers for contesting elections,; and	The eligibility for university professors/lecturers for contesting election will depend on the following a. Whether the office held by them is an office of profit under the government As per Article 102(1)(a) & 191(1)(a) of the Constitution, the 'disqualification on grounds of office of profit is attracted to those office of profit which are under the government'. Therefore, professors/lecturers of private universities are outside the scope of such disqualification. With regard to the professors/ lecturers working in Central, State or Government Aided universities, the scope of

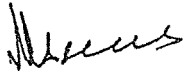
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		<p>disqualification on grounds of holding an office of profit will on case-to-case basis. The Hon'ble Supreme Court & High Courts in a catena of judgments have held that the test for determining whether an office is an office of profit under the government will depend on the following tests- (i) whether the Government has the power to appoint the holder of the said office; (ii) whether the Government has the power to dismiss the holder of the said office; (iii) whether the Government has the power to take disciplinary action against the holder of the said office; (iv) whether the Government has any financial control over the said office; (v) whether the holder of the said office is exercising any executive power of the Government.</p> <p>b. Whether the office is exempted from disqualification under a statutory law With respect to the Members of Parliament, the relevant statutory law is the Parliament. (Prevention of Disqualification) Act, 1959. With respect to the Members of State Legislatures, the States have framed their own 'removal of disqualification/prevention of disqualification' Acts.</p> <p>Thus, the eligibility of university professors/ lecturers^s working in Central, State or Government Aided Universities will depend on case-to-case basis and a generic response cannot be provided.</p>
2.	The impact of the nature of employment (part, full, honorary, emeritus etc) on the eligibility of University Professors/lecturers for contesting elections.	The relevant statutory laws, as mentioned above, provide for whether the holder of an office of profit will be subject to disqualification. For instance, the Gujarat Legislative Assembly Members (Removal of Disqualifications) Act, 1960 & the

		<p>Maharashtra Legislature Members (Removal of Disqualification) Act, 1956 state that "The office of part-time professors or lecturers in a Government college" are exempted from disqualification on grounds of office of profit.</p> <p>Therefore, the impact of nature of employment in determining the eligibility to contest election will again depend on case to case basis and no generic response can be provided.</p>
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Further clarifications may be sought from M/o Law, Justice & Legislative.

Yours faithfully,


(A. MONA SREENIVAS)
DIRECTOR

Copy to:- I. Secretary, Legislative Department, M/o Law & Justice, Shastri Bhawan, New Delh

~~ANNEXURE~~

Most Immediate

F.No.17(1)/2020-Leg.III
Government of India
Ministry of Law and Justice
Legislative Department

ShastriBhawan, New Delhi
Dated the 5th April, 2022

Office Memorandum

Sub.: Request of Profg. Manoj Kumar Jha, MP (RS, Shri Rakesh Sinha, Nominated MP(RS) and Dr. Sukanta Majumdar, MP(LS) regarding drawing of salary/allowances by Teacher/Professor of Universities on being elected/nominated as Member of Parliament- reg.

The undersigned is directed to refer to the Lok Sabha Secretariat OM No. LAFEAS-CB.II28/04/2021-CB II dated the 21st March, 2022 on the above mentioned subject and to forward herewith the consolidated opinion of both the Department of Legal Affairs and the Legislative Department in the matter.

Encl: A/a

(Signature)
05/04/22
(Vinay Kumar Mishra)
Deputy Legislative Counsel
Ph: 2338 4065

The Lok Sabha Secretariat (Committee Branch-II),
(Joint Committee on Offices of Profit)
[Kind Attn: Uttam Chand Bharadwaj, Additional Director]
G-013, B- Block, Parliament House Annexe Extension Building,
New Delhi- 01

F.No. 17(1)/2020-Leg-III
Ministry of Law & Justice
Legislative Department
Leg.III Section

Subject: Reference regarding drawing of salary/ allowances by Teacher/Professor of Universities on being elected /nominated as Member of Parliament- reg.

Lok Sabha Secretariat *vide* OM No. LAFEAS-CB.II28/04/2021-CB II dated the 21st March, 2022 has forwarded the replies of the Election Commission and the Ministry of Education in respect of the queries that had remained unanswered during the sitting of the Joint Committee on 7.12.2021 seeking a consolidated comments of the Ministry of Law and Justice (Legislative Department and the Department of Legal Affairs).

2. The Department of Legal Affairs has examined the present reference and stated as under:-

"..... It may be recalled that, on earlier occasion, we have examined the subject matter in detail ...wherein we have arrived at a conclusion that the salary, allowances and pension of Members of Parliament is governed by the Salary, Allowances and Pension of Members of Parliament Act, 1954 and there is no exception provided for drawing the same from some other authority as long as the person holds the office of the M.P. (whether elected or nominated). The word 'shall' used in the Section-3 of the Act is mandatory in nature and taking salary from any other source, except as provided under the Act, may be against the intention and scheme of the legislature. Any interpretation of the Act, other than above will be against the intention of the Act and will not with the purpose to suppress public mischief and promote public justice.

Now, with regard to the comments/replies provided by the Secretariat, it is observed that there appears no substantial input for our concern which may lead reconsideration of our earlier opinion. However, with regard to the input of Ministry

of Education/UGC at Serial No. 1 of the questionnaire, we have to state that only first option suggested by them appears legally tenable which is in consonance of our view on the subject matter. As such, we reiterate our earlier opinion and we have no further comments to offer."

3. In this regard, it may be pertinent to mention here that a consolidated opinion of both the Department of Legal Affairs and the Legislative Department in the matter was forwarded to the Lok Sabha on 14th December 2020. Now, the matter has been examined by the Legislative Department in the light of the replies of the Election Commission and the Department of Higher Education.

4. To the Questionnaires provided by the Committee Secretariat to the Department of Higher Education, that Department at Sl.No.8 and 9 has categorically stated that:

"Professors of Universities are not considered as Government Servant. Hon'ble Courts in the country have reiterated this in many judgements"

5. According to the Election Commission, the eligibility of University Professors to contest elections will depend on case - to case basis and a generic response can not be provided.

6. It may be mentioned that the JCOP (Sixteenth Lok Sabha, Fourth Report) in the matter of Dr. Anupam Hazra, Assistant Professor, Visva Bharti University concluded that 'Office' of Assistant Professor does not disqualify him as an MP as Visva Bharti University is not an Office "under Government". Similarly, in the matter of Dr. Manmohan Singh, JCOP (Sixteenth Lok Sabha, Eleventh Report) opined that the 'Office' of Jawaharlal Nehru Chair Professor does not fall within the purview of "Government", and therefore, acceptance of JN Chair professorship of Punjab University by him may not attract the angle of 'Office of Profit'.

7. In view of the above, it is to be determined as to whether an 'Office' is one under the 'Government of India', or under the 'Government of a State' in order to decide an 'Office of Profit' for disqualifying a person as Member of Parliament.



सत्यमेव जयते

THE
SALARY, ALLOWANCES AND PENSION OF
MEMBERS OF PARLIAMENT ACT, 1954
AND RULES MADE THEREUNDER

(As amended up to April, 2020)

RAJYA SABHA SECRETARIAT

New Delhi

January, 2021

Chapter I
THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF
PARLIAMENT ACT, 1954
(No. 30 of 1954)

[As Amended by Acts Nos. 9 of 1955, 55 of 1958, 26 of 1964, 25 of 1969, 29 of 1972, 65 of 1974, 48 of 1975, 105 of 1976, 33 of 1977, 27 of 1979, 21 of 1981, 35 of 1982, 61 of 1982, 22 of 1983, 74 of 1985, 60 of 1988, 30 of 1989, 3 of 1993, 48 of 1993, 18 of 1995, 28 of 1998, 16 of 1999, 17 of 2000, 46 of 2001, 34 of 2002, 9 of 2004, 40 of 2006, 37 of 2010, 13 of 2018 (The Finance Act, 2018) and 19 of 2020].

[22nd May, 1954]

An Act to provide for the ¹[Salary, Allowances and Pension]
of Members of Parliament

Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the ^{1a}[Salary, Allowances and Pension] of Members of Parliament Act, 1954.

(2) It shall come into force on the first day of June, 1954.

2. Definition.—In this Act,—

(a) 'Committee' means a Committee of either House of Parliament, and includes a Joint Committee of both Houses;

²[(aa) "Dependent" means any of the following relatives of a deceased member, namely:—

- (i) a minor legitimate son, and an unmarried legitimate daughter and a widowed mother; or
- (ii) if wholly dependent on the earnings of the member at the time of his death, a son or a daughter who has attained the age of eighteen years and who is infirm; or
- (iii) if wholly or in part dependent on the earnings of the member at the time of his death, --
 - (a) a parent; or
 - (b) a minor brother or an unmarried sister; or
 - (c) a widowed daughter-in-law; or
 - (d) a minor child of a pre-deceased son; or
 - (e) a minor child of a pre-deceased daughter where no parent of the child is alive; or
 - (f) the paternal grandparent if no parent of the member is alive; or
 - (g) such other person as may be specified by the rules made under section 9 by the Joint Committee.]

¹Substituted by Act 105 of 1976 – effective from 9.9.1976.

^{1a}Substituted by Act 105 of 1976 – effective from 9.9.1976

²Ins. by Act 9 of 2004 effective from 9-1-2004.

(i) where such new member is a member of the Council of States elected in a biennial election, or nominated, to that House, the period beginning with the date of publication of the notification in the Official Gazette notifying his name under section 71 of the Representation of the People Act, 1951; or

(ii) where such new member is a member of the House of the People elected in a general election held for the purpose of constituting a new House of the People, the period beginning with the date of publication of the notification of the Election Commission under section 73 of the said Act; or

(iii) where such new member is a member of either House of Parliament elected in a by-election to that House or a member nominated to the House of the People, the period beginning with the date of his election referred to in section 67A of the said Act, or as the case may be, the date of his nomination;

and ending with, in each case, the date on which his seat becomes vacant.]

3. Salaries and Daily Allowances.—³(1) A member shall be entitled to receive ^{3a}[a salary, at the rate of ^{3b} [one lakh rupees] per mensem] during the whole of his term of office ^{3c}[and subject to any rules made under this Act]. ^{3d}[an allowance at the rate of two thousand rupees for each day] during any period of residence on duty.

^{3e}[(1A) Notwithstanding anything contained in the sub-section (1), the salary payable to Members of Parliament under sub-section (1) shall be reduced by thirty per cent. for a period of one year commencing from the 1st April, 2020, to meet the exigencies arising out of Corona Virus (COVID-19) pandemic.]

^{3f}[Provided that no member shall be entitled to the aforesaid allowance unless he signs the register, maintained for this purpose by the Secretariat of the House of the People or, as the case may be, Council of States, on all the days (except intervening holidays for which no such signing is required) of the session of the House for which the allowance is claimed.]

^{3b} [Provided further that the rates of salary specified in this section shall be applicable from the 18th day of May, 2009.]

^{3h}[(2) The salary and daily allowance of members shall be increased after every five years commencing from 1st April, 2023 on the basis of Cost Inflation Index provided under clause (v) of *Explanation* to section 48 of the Income-tax Act, 1961.]

4. Travelling Allowance.—(1) There shall be paid to each member in respect of every journey performed by him ⁴[in India] for the purpose of attending a session of a House of Parliament or a meeting of a Committee or for the purpose of attending to any other business connected with his duties as a member, from his usual place of residence to the place where the session or the meeting is to be held or the other business is to be transacted and for the return journey from such place to his usual place of residence—

³ Inserted by Act 13 of 2018 (The Finance Act, 2018) – effective from 01-04-2018

^{3a} Substituted by Act 37 of 2010 – effective from 01-10-2010.

^{3b} Substituted by Act 13 of 2018 (The Finance Act, 2018) – effective from 01-04-2018

^{3c} Substituted by Act 55 of 1958 – effective from 01-06-1954.

^{3d} Substituted by Act 37 of 2010 – effective from 01-10-2010.

^{3e} Inserted by Act 19 of 2020 – effective from 01-04-2020.

^{3f} Inserted by Act 48 of 1993 – effective from 09-06-1993.

^{3g} Substituted by Act 37 of 2010 – effective from 01-10-2010.

^{3h} Inserted by Act 13 of 2018 (The Finance Act, 2018) – effective from 01-04-2018.

⁴ Inserted by Act 55 of 1958 – effective from 01-04-1955.



THE CONSTITUTION OF INDIA

[As on 9th September, 2020]

2020

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
LEGISLATIVE DEPARTMENT

thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

¹[(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, ²[shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.]]

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

106. Salaries and allowances of members.—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

108. Joint sitting of both Houses in certain cases.—(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has elapsed by reason of a dissolution of the House of the People, notify

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 21 to read as below:—

“(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be those of that House, and of its members and committees, at the commencement of sec. 21 of the Constitution (Forty-second) Amendment Act, 1976, and as may be evolved by such House of Parliament from time to time.” (date of enforcement yet to be notified).

2. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 15 for certain words (w.e.f. 20-6-1979).

APPENDIX-I

**EXTRACTS OF MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE
ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON WEDNESDAY, 20TH
NOVEMBER, 2019**

The Committee met on Wednesday, 20th November, 2019 from 1500 hrs. to 1615 hrs. in Committee Room 'D', First Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Dr. Manoj Rajoria
3. Smt. Aparajita Sarangi
4. Shri Mahendra Singh Solanky
5. Shri Shyam Singh Yadav

RAJYA SABHA

6. Shri Vijayasai Reddy

REPRESENTATIVES OF THE MINISTRIES

Ministry of Animal Husbandry, Dairying and Fisheries

S. No.	Name	Designation
1.	Shri Atul Chaturvedi	Secretary
2.	Dr. O. P. Chaudhary	Joint Secretary
3.	Dr. Sujit Kumar Dutta	Deputy Commissioner (AW)

- | | | |
|----|------------------|--|
| 4. | Dr. Neelam Bala | Secretary, Animal Welfare Board of India |
| 5. | Shri Prachi Jain | Assistant Secretary, Animal Welfare Board of India |

MINISTRY OF LAW AND JUSTICE
(i) Department of Legal Affairs

S. No.	Name	Designation
1.	Shri Anoop Kumar Mendiratta	Law Secretary
2.	Shri S.R. Mishra	Additional Secretary
3.	Shri R.S. Verma	Additional Secretary
4.	Shri Ajay Goyal	Joint Secretary
5.	Shri Vijay Verma	Additional Secretary
6.	Dr. Rajiv Mani	Joint Secretary & Legal Adviser
7.	Dr. Anuj Rathi Rana	Joint Secretary & Legal Adviser

(ii) Legislative Department

S. No.	Name	Designation
1.	Shri K. Biswal	Additional Secretary
2.	Ms. Veena Kothavale	Joint Secretary & Legislative Counsel
3.	Shri R.S. Jayakrishnan	Deputy Legislative Counsel

SECRETARIAT

1. Shri B.Srinivasa Prabhu - Joint Secretary
2. Shri Kusal Sarkar - Director
3. Shri Munish Kumar Rewari - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) ** ** *

4-5. ** ** ** ** ** ** ** ** **

6. The Committee, thereafter, took up Memorandum No.4, the fourth agenda regarding request of Prof. Manoj Kumar Jha and Shri Rakesh Kumar Sinha, Members of Parliament, Rajya Sabha seeking clarification regarding drawing of Salary / Allowances by Teacher / Professor of University of Delhi and simultaneously on being elected / nominated as Member of Parliament. Both the Members of Parliament are teaching in Delhi University and are drawing salary from the University. They want to draw allowances from the Parliament of India. In this regard, the representative of the Ministry of Law and Justice (Department of Legal Affairs) has stated that Hon. Members would attract disqualification if the post of Professor is capable of yielding a profit or pecuniary gain even though actual obtaining of monetary gain is not availed by Hon. Members. However, the Hon. Chairperson opined that drawing salary from one office and allowances from another may raise propriety issue, even though University has been interpreted as not a Government Department. Hence, the matter needs further clarity. He therefore, asked the representatives of both the departments to furnish a considered and common opinion in the matter.

The Committee then adjourned.

** Matter not related with this report.

EXTRACTS OF MINUTES OF THE FIFTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON THURSDAY, 19TH NOVEMBER, 2020

The Committee met on Thursday, 19th November, 2020 from 1500 hrs. to 1600 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Shri. Vijay Kumar Hansdak
3. Shri L. S. Tejasvi Surya

RAJYA SABHA

4. Dr. Sasmit Patra
5. Shri V. Vijayasai Reddy

SECRETARIAT

1. Smt. B. Visala - Director
2. Shri Raj Kumar Chaudhary - Under Secretary

LIST OF REPRESENTATIVES

MINISTRY OF LAW AND JUSTICE

(i) Department of Legal Affairs

1. Shri Anoop Kumar Mendiratta - Secretary
2. Shri S. R. Mishra - Additional Secretary

3. Dr. Rajiv Mani - Joint Secretary and Legal Advisor

(ii) Legislative Department

1. Dr. G. Narayana Raju - Secretary

2. Shri Vinay Kumar Mishra - Deputy Legislative Counsel

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) and informed all that due to outbreak of COVID-19 pandemic, there would be no manual reporting of the proceedings of the Committee and requested all to introduce themselves each time before speaking.

4. The Committee then took up the first agenda pertaining to requests of Prof. Manoj Kumar Jha and Shri Rakesh Sinha, Members of Parliament (RS), seeking clarification regarding drawing of Salary/Allowances by Teacher/ Professor of University of Delhi on being elected/nominated as Member of Parliament. The Secretary, Legislative Department, Ministry of Law and Justice, stated that the Department of Legal Affairs and the Legislative Department had submitted their respective views to the Committee. However, these are being re-examined as Committee had directed the Ministry to give a single and unambiguous opinion, regarding the issue, in view of different reasons given by both the departments for same conclusion.

The Secretary further added that in the meantime one more issue relating to Dr. Sukanta Majumdar, Member of Parliament, Lok Sabha involving same issue was also referred to the Ministry. Now as per Committee's direction these issues are being dealt together and file is under consideration to furnish an authoritative opinion on the issue. The Hon'ble Chairperson directed that the final views of the Ministry will be discussed in the next sitting of the Committee.

5. The Secretary, Department of Legal Affairs requested the Hon'ble Committee to also summon the representatives of University Grants Commission and Ministry of Education for oral evidence to have their views on few of the intrinsic issues to know the ground realities.

The Hon'ble Chairperson acceded to the request and directed that representatives of Delhi University may also be associated but at the first instance their comments/views may be obtained. The Hon'ble Chairperson further directed that in similar way, comments/views of the University of Gour Banga, Malda may also be

obtained to invite their representatives as well for tendering oral evidence at a later stage.

6-7 ** ** ** ** ** **

8. The Committee expressed their satisfaction over the clear opinions given by the Ministry and approved draft Memorandum No. 6. While concluding the discussion of the day the Hon'ble Chairperson in connection with agenda 1 & 2 emphasised that all the stakeholders in these two issues must first furnish their replies in writing, prior to appearing before the Committee and asked Ministry to coordinate with the Secretariat in seeking the requisite information. The Secretary, Department of Legal Affairs assured the Committee to extend the assistance.

A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

The Committee then adjourned.

** Matter not related with this report

EXTRACTS OF MINUTES OF THE NINTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON TUESDAY, 27TH JULY, 2021

The Committee met on Tuesday, 27th July, 2021 from 1500 hrs. to 1615 hrs. in Committee Room no. '1', Block 'A', First Floor, Parliament House Annexe Extn. New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Vijay Kumar Hansdak
3. Dr. Manoj Rajoria
4. Smt. Aparajita Sarangi
5. Shri Mahendra Singh Solanky
6. Shri Shyam Singh Yadav

RAJYA SABHA

7. Dr. Sasmit Patra
8. Shri Mahesh Poddar
9. Ms. Dola Sen
10. Shri Hardwar Dubey

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF LAW AND JUSTICE

(iii) Department of Legal Affairs

S. No.	Name	Designation
1.	Shri Anoop Kumar Mendiratta	Secretary
2.	Dr. Rajiv Mani	Joint Secretary & Legal Adviser

(iv) Legislative Department

S. No.	Name	Designation
1.	Shri K. R. Saji Kumar	Joint Secretary & Legislative Counsel
2.	Shri Vinay Kumar Mishra	Deputy Legislative Counsel

SECRETARIAT

1. Smt. Suman Arora - Joint Secretary
2. Shri Munish Kumar Rewari - Additional Director
3. Smt. Manjinder Pubbi - Under Secretary

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting.

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs). The Chairperson then offered his condolences on the untimely demise of the former Secretary, Legislative Department, Dr. G. Narayana Raju, due to COVID-19.

The Chairperson also reminded all present in the sitting that there would be no manual reporting of the proceedings of the Committee and requested them to introduce themselves each time before speaking.

4. The Committee then took up the first agenda pertaining to the requests of Prof. Manoj Kumar Jha, Shri Rakesh Kumar Sinha, MP (RS) and Dr. Sukanta Majumdar, MP (LS) seeking clarifications regarding drawing of Salary/Allowances by Teacher/Professor of Universities on being elected/nominated as Member of Parliament. In this connection, the Secretary, Department of Legal Affairs while referring to the Article 106 of the Constitution of India and Section 3 of the Salary Allowances and Pension of Members of Parliament Act, 1954, submitted that these specific constitutional provisions, being amply clear, leaves no scope for applicability of other administrative guidelines. The UGC guidelines being only administrative in nature leave it to the discretion of the Committee to decide, if the member could draw their Salary and Allowances from the alternate source.

He further mentioned the relevant clauses of Sec 8 of Salary Allowances and Pension of Members of Parliament Act, 1954, dealing with provisions relating to the Pension which makes it clear that salary and allowances must be drawn from the same source to earn entitlement to the pension.

The representative from the Legislative department further drew attention to the Judgement of Andhra Pradesh High Court in Venkata Ramana Reddy vs. Government of Andhra Pradesh wherein the Hon'ble High Court had held that under Article 171 of Constitution of India, one cannot exercise the duties as a legislator as well as a teacher. The Department had substantiated their views with this Judgement in the case of a Member who was teaching in Vishwabharti University, a Central University, in the Fourth report, 16th Lok Sabha.

5. The Members then deliberated upon the various related aspects of the issue like freedom to choose the institution for drawing the Salary and Allowances, Pension benefits and entitlement for the same in case of drawing Salary & Allowances from two different places, rationale of putting restrictions over teaching/researching by a member of Parliament vis a vis other government and non government occupations/assignments, pros & cons of allowing Members of Parliament to choose institution of their choice for drawing Salary & Allowances and its consequential effect on the post retirement benefits, right/ privilege of president nominated Rajya Sabha Members to choose vis a vis elected representatives and the need to have fixed guidelines to bring certainty to issue.

6. In view of the multifaceted approach needed to examine the issue, the Committee unanimously agreed that to have a comprehensive and a considered view on this issue, the views of University Grants Commission, Ministry of Education,

Election Commission and Delhi University must also be heard in person to form a considered opinion on the issue. The Committee also decided that the three petitioner MPs may also be called to give them opportunity to put forth their grievances and take on the issue.

7. ** ** ** ** **

[A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.]

The Committee then adjourned.

** Matter not related with this report.

APPENDIX IV

LOK SABHA SECRETARIAT
COMMITTEE BRANCH-II

MINUTES OF THE TWELFTH SITTING OF THE JOINT COMMITTEE ON OFFICES
OF PROFIT (17TH LOK SABHA) HELD ON TUESDAY, 7TH DECEMBER, 2021

The Committee met on Tuesday, 7th December, 2021 from 1500 hrs. to 1700 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Shri Behanan Benny
3. Shri Vijay Kumar Hansdak
4. Dr. Manoj Rajoria
5. Shri Mahendra Singh Solanky
6. Shri Balashowry Vallabhaneni
7. Shri Shyam Singh Yadav

RAJYA SABHA

8. Shri Mahesh Poddar
9. Shri V. Vijayasai Reddy

REPRESENTATIVES OF THE MINISTRIES

(A) Ministry of Law and Justice

(I) Department of Legal Affairs

S. No.	Name	Designation
1.	Shri Anoop Kumar Mendiratta	Secretary
2	Dr. Rajiv Mani	Joint Secretary & Legal Adviser
3	Shri Mahendra Khandelwal	Sr. Government Advocate

(II) Legislative Department

S. No.	Name	Designation
1	Shri K. Biswal	Additional Secretary
2	Shri K. R. Saji Kumar	Joint Secretary & Legislative Counsel

(B) Election Commission of India

S. No.	Name	Designation
1.	Sh. Chandra Bhushan Kumar	Deputy Election Commissioner
2.	Shri Vijay Kumar Pandey	Director

(C) Ministry of Education

Department of Higher Education

S. No.	Name	Designation
1.	Shri K. Sanjay Murthy	Secretary
2.	Shri Vineet Joshi	Addl. Secretary
3.	Ms. Kamini Chauhan Ratan	Joint Secretary
4.	Shri Mrutyunjay Behera	Economic Advisor (HE)

(D) University Grants Commission

S. No.	Name	Designation
1	Shri. Rajnish Jain	Secretary
2	Dr. Surender Singh	Joint Secretary
3	Dr. N. Gupukumar	Joint Secretary

(E) University of Delhi

S. No.	Name	Designation
1	Shri Yogesh Singh	<i>Vice-Chancellor</i>
2	Dr. Vikas Gupta	Registrar
3.	Shri Girish Ranjan	Finance Officer
4	Dr. Rohan Rai	Joint Registrar

SECRETARIAT

1. Smt. Suman Arora - Joint Secretary
2. Shri Munish Kumar Rewari - Additional Director
3. Smt. Manjinder Pubbi - Under Secretary

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting that has been convened to take Oral evidence of the representatives of the Election Commission of India (ECI), Ministry of Education (Department of Higher Education), University Grants Commission (UGC), University of Delhi and the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) in connection with the requests of Prof. Manoj Kumar Jha, MP (RS), Shri Rakesh Kumar Sinha, nominated MP (RS) and Dr. Sukanta Majumdar, MP(LS) seeking clarification regarding drawing of Salary/Allowances by the Teachers/Professors of Universities on being elected/nominated as Member of Parliament. The issue needs to be examined in the following respect:-

(i) The reasons behind treating University Professors differently from other professions in matter of contesting Elections, as prospective candidate coming from many other professions are not allowed to contest without resigning.

(ii) Views of Election Commission of India about the entire gamut of disqualification on the ground of Office of Profit.

(iii) The availability of any past precedent with ECI in the matter where the membership/contesting rights of any Member of Parliament, who are also serving as University Professors has ever been questioned or incurred disqualification.

(iv) Clarifications regarding the Audit objections in the year 1995 as communicated by the University Grants Commission in their reply, which were raised in respect of

admissibility of increment and seniority of Teachers/ Professors who were elected to Parliament/State Legislature.

(v) Implications of UGC Circulars dated 10th September 1974 and 6th March 1987 in respect of the Audit objections of 1995. The Hon'ble Chairperson also sought to know about the differences in the position of nominated *vis-a-vis* elected representatives of Parliament in matter of their choice of drawing allowances or salary from a particular place.

3.0. Thereafter, the Chairperson welcomed the representatives of the **Election Commission of India (ECI) along with the representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs).**

3.1 The Hon'ble Chairperson then reminded all present in the sitting to introduce themselves each time before speaking in the absence of manual reporting of the proceedings of the Committee.

4.0 The Committee then deliberated upon the agenda of the day and asked the **representatives of the Election Commission of India (ECI)** to brief the Committee about all the important aspects relating to disqualification of Members of Parliament under Article 102(a) of Constitution of India, on the ground of Office of Profit. The Hon'ble Chairperson desired to be apprised about the reasons behind treating University Professors differently from other professions in matter of contesting Elections, as prospective candidates coming from many other professions are not allowed to contest elections without resigning and views of ECI about the entire gamut of disqualification on the ground of Office of Profit. The Committee specifically asked for the availability of any past precedent in the matter where the membership/contesting rights of any Member of Parliament, who is also serving as University Professors, has ever been questioned or incurred disqualification.

4.1 The Committee wished to be apprised about the qualifying criteria being used by the ECI since the commencement of Parliamentary Elections/Assembly Elections. The representatives of ECI briefed the Committee that the Commission examines each matter on the case to case basis and broadly follows five Principles, as laid down by the Hon'ble Supreme Court in the case of Mr. Umarao Singh Dhabariya Versus

Yashwant Singh Nahar in 1970. He informed that there is no precedent related to disqualification of any MP who has been University Professor.

4.2 The Committee also deliberated upon the issue of competency of ECI to act *suo motu*, position of University Professors *vis-a-vis* other Government employees in matter of contesting Elections, Guidelines of Election Commission regarding the contesting rights of candidates from different professions, extent of discretionary powers of Returning Officer of any District to allow or disallow any applicant from contesting Elections etc..

5. The Committee was not satisfied with the replies of the ECI representatives and expressed their strong discontent over the inability of witnesses to respond to the satisfaction of the Committee and asked them to furnish their replies in a week's time. The Chairperson then thanked the ECI representatives for the discussion.

The witnesses, the Election Commission of India, then withdrew.

The witnesses of Ministry of Education (Department of Higher Education), University Grants Commission (UGC) and University of Delhi were then called in to tender their oral evidence.

6. The Chairperson then welcomed the representatives of the **Ministry of Education (Department of Higher Education), University Grants Commission and the University of Delhi** and informed them about the agenda on the anvil. The Hon'ble Chairperson asked the representatives to brief the Committee about the Audit objections in the year 1995, which were raised in respect of admissibility of increment and seniority of Teachers who were elected to Parliament/State Legislature, whose period of absence was treated as extraordinary leave and accordingly, Pay and Allowances were held inadmissible. The Committee also sought to understand the implications of twin Circulars of UGC dated 10th September 1974 and 6th March 1987 in respect of the Audit objections. The Hon'ble Chairperson also sought to know about the differences in the position of nominated *vis-a-vis*

elected representatives of Parliament in matter of their choice of drawing allowances or salary from a particular place.

7.0 As regards the Audit objections, the Secretary, UGC clarified that the relevant Audit objection was, whether increment or seniority is to be maintained for teachers on extraordinary leave, Pay and Allowances are not admissible to teachers availing extraordinary leave on their being elected to the Parliament/ State legislature as the same is neither justified nor correct. But the Commission decided that if a teacher is considered on duty then teacher can draw salary and can also draw allowances from wherever he wishes to.

7.1 **The Secretary, Department of Higher Education, Ministry of Education** stated that as per UGC deliberations these MPs may continue to discharge their duties as University Professors/Teacher, as the case may be, for the periods he is not functioning as MP. The Secretary, UGC further explained that based on the recommendations of the Committee which was constituted by the UGC to settle this issue, UGC has recommended that the teacher of Universities or colleges may draw their salary from the University and Allowances from the Parliament but the matter of drawing/paying Allowances may ultimately be decided by the respective Secretariats of Lok Sabha / Rajya Sabha, Therefore, the Members whether, elected/nominated can continue to teach and when Parliament is sitting, may be treated on duty.

8.0 The Committee further deliberated on issues like rationale for allowing an MP to serve two full time positions of an MP as well as a University Professor, category of professionals/employees to be allowed to serve two full time positions, competency of UGC and EC to decide in matter of MPs as to which category of professionals/ employees to be allowed to serve at two full time positions, is special privilege to Teachers/ Professors violative of article. 19 of the Constitution of India and also an infringement upon the Right to Education of students under article 21A, checks and balances, in place to ensure observance of teaching responsibility with due diligence by MPs who are also University Professors .

8.1 The Secretary , **Department of Legal Affairs** apprised the Committee that if the UGC Act/relevant Act so permits then the UGC is well within its rights to decide and take decision. The Committee, however, directed the Ministry of Law and Justice to look into the matter and

examine if this is legally and procedurally correct on part of organisation like UGC and ECI to decide upon the matters pertaining to MPs.

9. The Hon'ble Chairperson while concluding discussion asked Secretary, Department of Higher Education to furnish information on various queries, that remained unanswered within three weeks time in consultation with UGC and DU and other stakeholders.

The witnesses then withdrew.

The Committee then adjourned.

[A copy of the verbatim proceedings of the sitting of the Committee has been kept on record]

APPENDIX-V

LOK SABHA SECRETARIAT
COMMITTEE BRANCH-II

MINUTES OF THE SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON TUESDAY, 5TH April, 2022

The Committee sat on Tuesday, 5th April, 2022 from 1500 hrs. to 1600 hrs. in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Satya Pal Singh - *Chairperson*

MEMBERS

LOK SABHA

2. Shri Behanan Benny
3. Shri Vijay Kumar Hansdak
4. Shri Balashowry Vallabbhaneni

RAJYA SABHA

5. Dr. Sasmit Patra
6. Shri Mahesh Poddar
7. Ms. Dola Sen
8. Shri Hardwar Dubey

Representatives Of The Ministries

(A) Ministry of Law and Justice

(I) Department of Legal Affairs

S. No.	Name	Designation
1.	Dr. Rajiv Mani	Additional Secretary

(II) Legislative Department

S. No.	Name	Designation
1.	Shri K. R. Saji Kumar	Joint Secretary & Legislative Counsel
2.	Shri Vinay Kumar Mishra	Deputy Legislative Counsel

SECRETARIAT

1.	Smt. Suman Arora	-	Joint Secretary
2.	Shri Sundar Prasad Das	-	Director
3.	Shri Uttam Chand Bharadwaj	-	Additional Director

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting and apprised them about the agenda that is to take oral evidence of the representatives of the Ministry of Law and Justice (the Department of Legal Affairs and the Legislative Department) in connection with the requests of Prof. Manoj Kumar Jha, MP (RS), Shri Rakesh Kumar Sinha, nominated MP (RS) and Dr. Sukanta Majumdar, MP(LS) seeking clarification regarding drawing of Salary/Allowances by the Teachers/Professors of Universities on being elected/nominated as Member of Parliament.

The witnesses of the Ministry of Law and Justice (the Legislative Department and the Department of Legal Affairs) were then ushered in.

3. Thereafter, the Chairperson welcomed the representatives of the **Ministry of Law and Justice (the Legislative Department and the Department of Legal Affairs).**

4. The Committee then deliberated upon the agenda. Hon'ble Chairperson asked the representatives of the Ministry of Law and Justice (the Legislative Department and the

Department of Legal Affairs) to clearly apprise the Committee as to whether a Member of Parliament can draw salary from the University and allowances from the Parliament. The representative from the Department of Legal Affairs deposed before the Committee that the provisions of the Article 106 of the Constitution of India and Section 3 of the Members of Parliament (Salary, Allowances, and Pension) Act, 1954, govern the mandate of drawing salary and allowance by a Member of Parliament. Both of these provide that a Member of Parliament **shall** be entitled to draw salary and allowances from the Parliament. The use of word 'shall' specifically mentioned in Article 106 of the Constitution of India and in Section 3 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 conveys that a Member can not draw salary and allowances from any other source unless and until permitted by a specific provision in the law. There is no bar on the Member of Parliament on drawing allowances from Parliament as it is permitted by law. However, as per law, the salary component should also be drawn from one source.

5. The representative from the Legislative Department added that Section 3 of the relevant Act provides that a Member shall be **entitled** to receive a salary, meaning thereby that he has a right to receive the salary, implying that the law cannot prevent a Member of Parliament from receiving salary. As a matter of fact even the Committee (JCOP) may not decide, if the Member of Parliament would receive salary from one source or the other.

6. The Committee after having heard the views of the representatives of Ministry of Law and Justice (the Department of Legal Affairs and the Legislative Department) was of the unanimous view that matters pertaining to the salary and allowances are not in the actual domain of this Committee. This is in the exclusive domain of the Parliament and the University Grants Commission to decide, from where the salary and allowance are to be drawn by a Member of Parliament, who also happens to be a University Professor/ lecturer. The Committee as per their mandate examine cases where the

LOK SABHA SECRETARIAT
COMMITTEE BRANCH-II

MINUTES OF THE SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (17TH LOK SABHA) HELD ON THURSDAY, 4TH August, 2022

The Committee sat on Thursday, 4th August, 2022 from 1500 hrs. to 1530 hrs. in Committee Room No. '3', First Floor, Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. Satya Pal Singh - Chairperson

MEMBERS

LOK SABHA

2. Shri Benny Behanan
3. Dr. Manoj Rajoria
4. Shri Shyam Singh Yadav

RAJYA SABHA

5. Ms. Dola Sen

SECRETARIAT

1. Smt. Suman Arora - Joint Secretary
2. Shri Sundar Prasad Das - Director

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting and apprised them about the agenda that is to consider and adopt the draft Eighth Report pertaining to the requests of Prof. Manoj Kumar Jha, MP (RS), Shri Rakesh Sinha, nominated MP (RS) and Dr. Sukanta Majumdar, MP(LS) seeking clarification regarding drawing of

Salary/Allowances by the Teachers/Professors of Universities on being elected/nominated as Member of Parliament.

3. The Committee then considered and adopted the Eighth Report without any modification.

4. The Committee also authorised the Chairperson to finalise and present the same to Parliament.

5. A copy of the verbatim proceedings of the sitting of the Committee has been kept in record.

The Committee then adjourned.

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