

GAHC010014802016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2708/2016

SMT. ANJU SHARMA
W/O. SRI DILIP KR. PANDEY, D/O. SRI R.B. RAI SHARMA, R/O. WARD NO.3,
MARIANI TOWN, JORHAT, PIN-785634.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION DEPTT., DISPUR, GHY.-06.

2:THE COMMISSIONER and SECY.
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-06.

3:THE DIRECTOR

HIGHER EDUCATION
ASSAM
DISPUR
GHY.-06.

4:THE GOVERNING BODY OF MARIANI COLLEGE

MARIANI TOWN
JORHAT
REP. BY ITS SECRETARY.

5:THE PRINCIPAL and SECRETARY

MARIANI COLLEGE

MARIANI TOWN
JORHAT.

6:THE UGC

REP. BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110001

Advocate for the Petitioner : MS.A TALUKDAR

Advocate for the Respondent : MR. N J KHATANIAR (R 1 & 3)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 27.03.2023

Heard Mr.J. Das, the learned counsel appearing on behalf of the petitioner. Mr. K. Gogoi, the learned counsel appears on behalf of the Higher Education Department and Mr. A. Chamuah, the learned counsel appears for the University Grants Commission.

2. The case of the petitioner herein is that the petitioner had passed her M.A. in English by securing 56.81% marks in M.A. and as such claims that she has the requisite norms of U.G.C. i.e. 55% marks. Pursuant to an advertisement dated 18/08/1997 issued by the Mariani College, the petitioner applied for the post of Lecturer in English and gave interview on 10/09/1997 before the Selection Board. She was duly selected for the said post. The Governing Body of the said College thereafter issued a letter dated 15/10/1997 to the petitioner intimating that the petitioner was appointed as a Lecturer in the Department of English purely on temporary(adhoc basis) at a consolidated fixed pay of Rs.1,000/- per month. The petitioner thereafter joined on 16/10/1997.

3. It further transpires from the records that one Sri Binod Kumar Gogoi who was the Lecturer of Mariani College in English retired on 03/10/2012. Upon his retirement, a vacant sanctioned post came into existence. The Director of Higher Education, Assam thereupon issued a communication dated 10/10/2012 to the Principal of Mariani College intimating that there is a revision in the Government O.M. No. B(2) H.97/2003/98 dated 17/07/2004 clause 4(b) to regularise the services of non-sanctioned teachers against valid sanctioned post in the particular department, if the teachers concerned have been selected by observing all procedures i.e. advertisement, selection, Governing Body resolution and appointment etc. It was further mentioned in the said letter that from the records, it could be learnt that the petitioner was working as a Lecturer in the Department of English since 16/10/1997 against non-sanctioned post. Under such circumstances, the Principal, Mariani College was directed to take necessary steps for regularisation of the services of the petitioner, if she has been appointed against non-sanctioned post after observing all necessary formalities. It further appears on record that on 10/1/2014, the petitioner's services were regularised with immediate effect subject to the terms and conditions mentioned in the said order. Clauses 2, 3, 4 and 5 of the said order of regularisation dated 10/1/2014 being relevant are extracted herein under :

“2. The proposed regularization is governed as per provision made vide O.M. No.B(2) H.97/2003/98 dated 17/07/2004.

3. The incumbent working under non-sanctioned post & who is adjusted against vacant sanctioned post will be required to qualify NET/SLET or Ph.D. within 2(two) years from the date of formal approval of appointment failing which HIS/HER/THEIR SERVICES WOULD BE DISCONITNUED AS PER GOVT. O.M. No. B(2) H.97/2003/98 dated 17/07/2004 AND THE COLLEGE AUTHORITY HAVE TO INFORM THE DIRECTOR OF HIGHER EDUCATION, ASSAM FORTHWITH.

4. The adjusted Assistant professor (s) will be entitled to get UGC's basic pay of Rs.8,000/-(Rupees Eight thousand) only from the date of approval of Director of Higher Education, Assam as per condition No. 4 of Govt. letter No. AHE.92/2009/Pt.II/26 dated 30-10-2010.

5. The Teachers who have not yet acquired full UGC's norms will be required to qualify in NET/SLET/Ph.D within 2(two) years as per provision of Clause 4(d) as laid down under O.M. No.B(2) H.97/2003/98 dated 17/07/2004, otherwise their services would be discontinued and till then they will be entitled to get basic pay as admissible only from the date of approval by the Director, Higher Education, Assam. The Director, Higher Education, Assam must ensure that if the teacher acquires the required qualification within the time limit fixed in the O.M. dated 17/07/2004."

4. The petitioner accepted the said regularisation order without any demurrer. Subsequent thereto on 7th February 2014, the Commissioner and Secretary to the Government of Assam, Higher Education Department had issued an Office Memorandum wherein there was the reference made to the provisions of Section 4(3) of the Assam Venture and Educational Institutions(Provincialisation of Services) Act, 2011 and the decision to consider the Assistant Professors/Librarians who were appointed by the College Authority/Governing Body of the colleges between 24/10/1998 to 30/01/2000 as qualified exempting them from entry M.Phil/NET/SLET/Ph.D qualification if they were otherwise qualified as per the UGC qualification required. At this stage, it may be relevant herein to mention that the said Act, i.e. Assam Venture and Educational Institutions(Provincialisation of Service) Act, 2011 was subsequently held to be ultra virus by this Court by a judgment and order dated 23/9/2016 in W.P.(C) No.3190/2012

5. It further appears from the records that the petitioner kept on requesting the President as well as the Director of Higher Education for the U.G.C. scale of

pay and the same having not been given to her, the petitioner has approached this Court by way of this writ petition with a limited prayer thereby seeking a direction upon the respondents to pay the U.G.C. scale of pay for the post of Assistant Professor to the petitioner from the date of regularisation of service i.e. 10/1/2014 to the petitioner along with all admissible allowances. At this stage, this Court finds it relevant to take note of that there is no challenge to the condition Nos. 3, 4 as well as 5 of the regularisation order dated 10/1/2014.

6. It further appears that the respondent No. 3 i.e. the Director of Higher Education have filed two affidavits. The first of such affidavit is dated 20/3/2019 wherein there was reference to an Office Memorandum dated 17/7/2004 wherein it has been mentioned that the teachers working against non-sanctioned post who would be adjusted against vacant sanctioned post will be required to qualify in the NET/SLET within two years, if they do not possess the same already. It was further mentioned that the said Office Memorandum had also clarified that if those teachers do not possess the same within the stipulated time, their services would be discontinued and till then they will be entitled to basic pay only from the date of approval of the Director of Higher Education. Reference was also made to the judgment and order dated 23/9/2016 passed by this Court in W.P.(C) No. 3190/2012, whereby the Assam Venture Educational Institutions(Provincialisation of Services) Act, 2011 amended in 2012 and 2013 was declared to be unconstitutional. It was mentioned that by Section 24 of the Assam Educational (Provincialisation of and Re-organization of Educational Institutions) Act, 2017, all orders, Rules and Notification issued under the Act of 2011 were repealed for which the Office Memorandum dated 7/2/2014 could not have been considered by the Director of Health Education.

It was further stated that the petitioner had no requisite norms for appointment to the post of Assistant Professor as per the U.G.C. guidelines and orders issued thereunder and the requisite norms for appointment of Assistant Professor in the Degree College on or after 1/1/1989 is 55% in Master Degree level. Further to that, it was also mentioned that the petitioner herein was appointed on 15/10/1997 by the Secretary of the Governing Body and at that time the required UGC norms was 55% in Master Degree with NET/SLET/M. Phil/Ph. D. degree and as the petitioner did not fulfill the required condition of NET/SLET/M.Phil/Ph. D. degree, hence the claim for regular UGC scale of pay is not tenable in the eyes of law.

7. Subsequent thereto the Director of Higher Education have filed another affidavit. In the said affidavit, it was mentioned that the petitioner was appointed as a lecturer in Mariani College in English Department by the College Authority in 1997 against non-sanctioned post purely on temporary (ad hoc basis). The Office Memorandum issued on 17/7/2004 by the Higher Education Department was a one time measure for which steps for regularising the services of lecturers working in non-sanctioned posts in different deficit grant-in-aid colleges was taken by way of adjustment. This one time measure was intended to address the grievances of a specific group of lecturers under specific terms and conditions laid down in the Office memorandum dated 17/7/2004. It was mentioned that the terms and conditions laid down in the Office Memorandum dated 17/7/2004 were mandatory in nature. Further to that, it was mentioned that the petitioner's services were regularised by an order dated 10/1/2014 incorporating various terms and conditions. It was mentioned that as the order of regularisation was conditional which was accepted by the petitioner, the petitioner did not have the requisite UGC norms at the time of her

regularisation, hence her services were regularised at a fixed pay of Rs. 8,000/- per month and the conditions for clearance of NET/SLET is in conformity with the UGC guidelines and therefore the petitioner is not entitled to get the regular UGC pay scale.

8. I have perused the materials on record and heard the learned counsel for the parties.

9. The learned counsel appearing on behalf of the petitioner submitted that there are certain steps being taken by the Higher Education Department as regards the exemption of conditions NET/SLET/M. Phil/Ph. D. degree to a section of college teachers appointed before 24/12/1998 in provincialised colleges of Assam and there was a request made to the Director of Higher Education to furnish details of such Assistant Teachers of provincialised colleges of Assam for further action in terms with the communication dated 4/9/2019. The learned counsel further submitted that the Director of Higher Education thereupon vide a communication dated 4/11/2019 have requested the Principals of all provincialised colleges to submit details of the Assistant Professors working before 24/12/1998 against sanctioned posts at fixed pay @ Rs. 8000/- regarding exemption of the conditions of NET/SLET/M. Phil/Ph. D. degree within 30th November, 2019. The learned counsel for the petitioner further submits that in pursuance to the same, the Principal of Mariani College has forwarded the name of the petitioner.

10. On the other hand, Mr. K. Gogoi, the learned counsel appearing on behalf of the Higher Education Department had submitted that the regularisation order of the petitioner was conditional. It was the requirement that the petitioner has to qualify NET/SLET or obtained a Ph.d. degree within the time stipulated in her

regularisation order. The petitioner having not qualified NET/SLET or has Ph.d degree cannot be entitled to the UGC norms. He further referred to the communication dated 4/11/2019 issued by the Director of Higher Education wherein it was specifically mentioned about Assistant Professors working from before 24/12/1998 against sanctioned post and as the petitioner admittedly was not appointed against a non sanctioned post, the question of petitioner getting any benefit from the recent decision of the Government does not arise.

11. A perusal of the order dated 10/1/2014 by which the petitioner's services were regularised against the sanctioned post is a conditional order wherein it is mandated that the petitioner has to qualify for NET/SLET or has a Ph.d degree within two years from the date of their formal date of approval. There is no challenge to the conditions which have been mentioned in the order dated 10/1/2014. Under such circumstances, till the said conditions remain in the order of regularisation dated 10/1/2014, the question of the petitioner getting the UGC scale of pay does not arise unless and until the petitioner qualifies for NET/SLET or has the Ph.d degree. Consequently, this Court does not find any merit in the instant writ petition for which the same stands dismissed.

JUDGE

Comparing Assistant