

GAHC010191362016



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

Case No. : WP(C)/4803/2016

JUNU DEVI and ANR.

D/O- LT. KAMAL SARMA, VILL.- BAHARI, P.O. and DIST.- BARPETA.

2: ARUP KUMAR DEKA

S/O- SRI DHARANIDHAR DEKA

VILL. and P.O.- KAROLAIGURI

DIST.- BARPETA

VERSUS

THE STATE OF ASSAM AND 4 ORS

REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPTT., DISPUR, GHY- 6, ASSAM.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

HAFLONG

DIMA HASAO

ASSAM

REP. BY ITS PRINCIPAL SECRETARY.

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM

KAHILIPARA

GHY- 19.

4:THE ADDL. DIRECTOR OF EDUCATION HILLS

ASSAM

HAFLONG.

5:THE PRINCIPAL

MAIBONG DEGREE COLLEGE

MAIBONG

DIMA HASAO

ASSAM

Advocate for the Petitioner : MR.R PHUKAN

Advocate for the Respondent : SC, HIGHER EDUCATION

Linked Case : WP(C)/4730/2016

PRANJIT SARMA
R/O VILL- BHAWANIPUR NAHATI
DIST. BARPETA
ASSAM
PIN - 781352.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

HAFLONG
REP. BY ITS PRINCIPAL SECRETARY
DIMA HASAO
ASSAM.
3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19.
4:THE ADDITIONAL DIRECTOR OF EDUCATION
HILLS
ASSAM HAFLONG.
5:THE PRINCIPAL

MAIBANG DEGREE COLLEGE
MAIBANG
DIMA HASAO
ASSAM.

Advocate for : MR.R ISLAM
Advocate for : appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/4489/2017

TAPAS JYOTI BARMAN
S/O. LT. SUDRARSHAN BARMAN
R/O. DARMIKHAL
DIST. CACHAR
ASSAM
PIN-788116.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY.-06.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

HAFLONG
REP. BY ITS PRINCIPAL SECRETARY
DIMA HASAO
ASSAM.
3:THE DIRECTOR

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GHY.-19.
4:THE ADDL. DIRECTOR

EDUCATION HILLS
ASSAM
HAFLONG.
5:THE PRINCIPAL

MAIBANG DEGREE COLLEGE
MAIBANG
DIMA HASAO
ASSAM.

Advocate for : MS.N SHYAMAL

Advocate for : SC
DIMA HASAO appearing for THE STATE OF ASSAM and 4 ORS.

Linked Case : WP(C)/4729/2016

PARTHAJIT BHATTACHARJEE
S/O LT. KALYAN KUMAR BHATTACHARJEE
R/O HOSPITAL ROAD
"PROGRESSIVE HEIGHT FLAT
" 4TH FLOOR
SILCHAR
DIST. CACHAR
ASSAM
PIN- 788005.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL

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REP. BY ITS PRINCIPAL SECRETARY
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3:THE DIRECTOR OF HIGHER EDUCATION

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KAHILIPARA
GUWAHATI -19.
4:THE ADDITIONAL DIRECTOR OF EDUCATION
HILLS
ASSAM
HAFLONG.
5:THE PRINCIPAL

MAIBANG DEGREE COLLEGE
MAIBANG
DIMA HASAO
ASSAM.

Advocate for : MR.R ISLAM
Advocate for : SC
DIMA HASAO appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner in WP(C) 4803/2016	: Mr. M. Nath, Senior Advocate.
	: Mr. A. Bhattacharjee, Advocate.
For the petitioner in WP(C) 4729/2016, WP(C) 4730/2016, and WP(C) 4489/2017	: Mr. U.K. Nair, Senior Advocate.
	: Mr. R. Islam, Advocate.
For State respondent Nos.1 and 3	: Mr. K. Gogoi, standing counsel.
For respondent Nos.2, 4 and 5	: Mr. A. Khanikar, standing counsel.
Date of hearing	: 02.05.2023.
Date of judgment	: 12.05.2023.

JUDGMENT AND ORDER

(CAV)

Heard Mr. M. Nath, learned senior counsel, assisted by Mr. A. Bhattacharjee, learned counsel for the petitioners in W.P.(C) 4803/2016, Mr. U.K. Nair, learned senior counsel, assisted by Mr. R. Islam, learned counsel for the petitioner in W.P.(C) 4729/2016, W.P.(C) 4730/2016, and W.P.(C) 4489/2017. Also heard Mr. K. Gogoi, learned standing counsel for the Higher Education Department, representing respondent nos. 1 and 3 and Mr. A. Khanikar, learned standing counsel for the N.C. Hills Autonomous Council, representing respondent nos. 2, 4 and 5.

2. By filing these writ petitions under Article 226 of the Constitution of India, the petitioners, who are currently working as Assistant Professors in Maibong Degree College have prayed for (i) setting aside and quashing the Office Memorandum (OM for short) dated 10.07.2015 issued by the Addl. Chief Secretary to the Govt. of Assam, Education (Higher)

Department; (ii) setting aside and quashing the letter dated 29.03.2016 by the respondent no.4 in so far it concerns the petitioners; and (iii) for directing the respondents to pay the annual increment to the petitioners including the selection grade pay.

Case of the petitioners and submission by the learned senior counsel for the petitioners:

3. The case of the petitioners is that they were respectively appointed as Lecturer in Maibong Degree College, then a venture college as follows:-

Sl.	Name and case no.	Date of order of appointment	Date of joining
1	Junu Devi WP(C) 4803/2016	21.02.2001	21.02.2001
2	Arup Kumar Deka WP(C) 4803/2016	05.01.2001	05.01.2001
3.	Pranjit Sarma WP(C) 4730/2016	22.02.2001	24.02.2001
4.	Parthajit Bhattacharjee WP(C) 4729/2016	07.02.2001	15.02.2001
5.	Tapas Jyoti Barman WP(C) 4489/2017	03.01.2000	05.01.2000

4. The case of the petitioners is that on the date they were appointed, they had the requisite educational qualification to be appointed as Lecturer. Thereafter, vide communication dated 29.09.2001, the Additional Director of Education (Hills), Assam, Haflong (respondent no. 4) had informed the Principal, Maibong Degree College (respondent no.5) that their college was brought under "deficit system of grant-in-aid" with effect from 01.04.2001. It is projected that in due course of time, vide letter dated 15.05.2004, by the

respondent no. 4 to the Principal, Maibong Degree College, the petitioners were given annual increment in their salary. It may be mentioned that although in para 16 of WP(C) 4489/2017, it has been stated that the petitioner, namely, Tapas Jyoti Barman had got annual increment, but no document to that effect has been annexed in his said writ petition.

5. Referring to the documents annexed to the writ petition, it has been submitted by the learned senior counsel for the petitioner that the petitioners were never put to notice that on their failure to successfully clear "National Eligibility Test" (NET for short), State Level Eligibility Test" (SLET for short) and/or "Doctor of Philosophy" (Ph.D. in short) within a time-frame, they would not become entitled to annual increment. It has also been submitted that at the time of entry of the petitioners in service, they had the requisite educational qualification for which the OMs dated 02.06.2004, 26.07.2004, 10.07.2015, etc. on requirement to clear NET/SLET/Ph.D. as a precondition for being granted annual increment could not be applied on the petitioners, which would have prospective application and could not have retrospective applicability.

6. It has also been submitted that the petitioners were granted annual increment vide order dated 15.05.2004 issued by the respondent no. 4 and the petitioners were also granted senior scale of pay vide order dated 20.02.2009 issued by the respondent no. 4. It was submitted that the respective services of the petitioners were confirmed by order dated 06.08.2007 and the service of the rest were confirmed by order dated 24.03.2016, both issued by the respondent no. 4. Thus, it has been submitted that as the service of the petitioners had been approved/ confirmed, the requirement of having

qualification of NET/SLET/ Ph.D. must be deemed to have been waived and the respondent authorities cannot deny annual increments to the petitioners and the said benefit should naturally follow. It has also been submitted that the requirement of clearing NET/SLET vide OMs dated 22.06.2004 and 26.07.2004 were kept in abeyance by order dated 28.12.2005, issued by the respondent no. 1, which has not been revoked.

7. It has been further submitted that despite there being a requirement to clear NET/SLET/Ph.D. as per the OMs referred to herein before, even in the subsequent employment process initiated upto the year 2003 the said qualification was not enforced. Accordingly, it has been submitted that it amounted to waiver of clearing NET/SLET/Ph.D. by the State.

8. Accordingly, it has been submitted that the impugned order dated 29.03.2016 issued by the respondent no. 4, which has the effect of denying annual increments to the petitioners is not sustainable on facts and in law.

Submissions made by the learned standing counsel for Higher Education (respondent nos.1 and 3):

9. It has been submitted that while the Maibong Degree College was a venture college, it had issued the appointment orders in favour of the petitioners as Lecturers at a fixed pay of Rs.1,500/- per month. By virtue of order dated 29.09.2001, the said college was taken over by the Government under "deficit system of grant-in-aid", it was with condition that "... *The appointment of incumbents holding the post of lecturers in the different Departments fulfilling the present U.G.C. norms for appointment as lecturers as shown in the statement-1 enclosed are hereby provisionally approved w.e.f.*

01.04.2001 against the sanctioned posts. ... All the lecturers must fulfill the required conditions as laid down by the U.G.C. for obtaining next higher scale under U.G.C. scheme in due time, otherwise they will not be allowed the above mentioned higher scale during their service period." Accordingly, it has been submitted that as the petitioners have accepted their transition under "deficit system of grant-in-aid" vide order dated 29.09.2001 and therefore, it is not open to the petitioners to wish away the conditions contained therein, requiring that the lecturers should clear NET/SLET/Ph.D. before being entitled to salary increment and higher scale of pay. It has been submitted that the UGC regulation/ notification regarding minimum qualification for the post of Assistant Professor/ Lecturer has been accepted by the State and therefore, it was possible for the State to enhance the minimum qualification but the State had no power to dilute it. In the said context, it has been submitted that the requirement of clearing NET/SLET/Ph.D. was suspended on misinterpretation and incorrect reading of the Government OM's and notifications, which would not bind the Government in view of the contents of the various OM's referred to by the learned senior counsel for the petitioners and the communication dated 29.09.2001, which have attained finality.

10. It has been submitted that at the time when the petitioners were appointed as lecturers in Maibong Degree College, the "The UGC Notification on Revision of Pay Scales, Minimum Qualification for the appointment of Teachers in Universities and Colleges and other measures for the Maintenance of Standards 1998" (hereinafter referred to as "UGC Regulation 1998" for brevity) was in force, and under Clause 4.4.1, it was prescribed that apart from other qualifications a candidate should have cleared NET for lecturers conducted by UGC, CSIR or similar test accredited by UGC. It is submitted by referring to the

affidavit-in-opposition filed by the respondent nos. 2, 4 and 5 in W.P.(C) 4729/2016, which is adopted in all these writ petitions, it has been submitted that the Office Memorandum no. B(2)H.408/99/41 dated 13.01.2000, would demonstrate that the Government of Assam, Education (Higher) Department had adopted the 1998 UGC Standards in Universities and Colleges and under para (1)(e) relating to "recruitment and qualifications", in respect of lecturer, it was prescribed as follows – "*Lecturer:- Good academic record with at least 55% of the marks or an equivalent grade at the Master's Degree Level, or any equivalent degree from any foreign University, besides clearing of the National Eligibility Test (NET).*". It has been submitted that under the said OM dated 13.01.2000, annual increment for non-NET cleared lecturers was not envisaged.

11. In support of his submissions, the learned standing counsel for the Higher Education Department has cited the following cases, viz., (i) *P. Suseela v. University Grants Commission & Ors.*, (2015) 8 SCC 129, (ii) *M.P. Palanisamy v. A. Krishnan*, (2009) 6 SCC 428, (iii) *Ms. Deepshikha Das v. The State of Assam & Ors.*, W.P.(C) 5636/2010, decided by this Court on 27.07.2017.

Submissions by the learned standing counsel for the respondent nos. 2, 4 and 5:

12. The learned standing counsel for the NC Hills Autonomous Council has relied on the affidavit-in-opposition filed by them and it has been submitted that he adopts the submissions made by the learned standing counsel for the Higher Education Department.

Reasons and decision:

13. From the contents of the OM dated 13.01.2000, referred herein before, there is no iota of doubt that the Government of Assam in the Education

(Higher) Department had adopted the UGC Regulation, 1998. On a conjoint reading of Clause 1(e) of the OM dated 13.01.2000 and Clause 4.4.1 of the UGC Regulation, 1998, it appears that the Government of Assam had prescribed the following qualification for a lecture, viz., "*Lecturer:- Good academic record with at least 55% of the marks or an equivalent grade at the Master's Degree Level, or any equivalent degree from any foreign University, besides clearing of the National Eligibility Test (NET).*" The provision requiring that to be appointed to the post of lecturer, a candidate must have cleared NET is found to be pre-existing than the date when the petitioners were appointed as lecturers.

14. The Court finds force in the submissions made by the learned standing counsel for the respondent nos. 1 and 3 that as the petitioners had accepted the communication dated 29.09.2001, bringing them under the "deficit system of grant-in-aid", which gave them benefit of being absorbed as Government servants, the petitioners are deemed to have accepted whatever terms and conditions that were attached to it. Therefore, it is not open to the petitioners to wish away the requirement of having cleared NET.

15. Moreover, it has been submitted at the Bar that with passage of time and under changed circumstances, the petitioners would now have to clear either NET or SLET, but with further requirement to also have acquired Ph.D. Degree as well. In this regard, we do not make any comment.

16. The petitioners cannot claim ignorance of subsequent OM's dated 02.06.2004, 26.07.2004, 10.07.2015, etc. regarding the requirement to clear NET/SLET/Ph.D. as a precondition for being granted annual increment. As UGC Regulation 1998 and subsequent clarifications and Regulations, in so far as it relates to minimum qualification of lecturers was adopted by the Government

of Assam in the Education (Higher) Department, it is not acceptable that the same cannot be applied on the petitioners.

17. The UGC Regulations, 1998 requiring minimum qualification is in the greater interest of the students for which the said Regulation must be allowed to prevail over the desire of the petitioners to claim annual pay increment and/or higher pay scale while they lack the requisite qualification.

18. A great stress was given to the order dated 28.12.2005, by the respondent no. 1 by which the requirement of clearing NET/SLET was kept in abeyance. In this regard, the Court is inclined to hold that the Deputy Secretary to the Govt. of Assam (respondent no. 1) was not vested with any power or authority to keep in abeyance the requirement of UGC Regulation, 1998 and OM's dated 02.06.2004, 26.07.2004, 10.07.2015, etc. regarding the requirement to clear NET/SLET/Ph.D. as a precondition for being granted annual increment. In this regard, we find support from the decision of the Supreme Court of India in the case of *P. Suseela (supra)*, where the UGC had granted exemption to persons holding Ph.D. Degree from the requirement to clear NET/SLET, the same being negated by the Central Government by holding that the decision of the Government was binding on the UGC. Therefore, when the Government of Assam, though the Secretary to the Govt. of Assam, Education (Higher) Department had prescribed vide OM dated 15.01.2000 that for appointment as lecturer, the candidate must have cleared NET as per UGC Regulations, the order dated 28.12.2005 by the respondent no. 1 cannot be allowed to prevail over the said UGC Regulation, 1998 and OM's dated 02.06.2004, 26.07.2004, 10.07.2015, etc. regarding the requirement to clear NET/SLET/Ph.D. as a precondition for being granted annual increment. The said letter dated

28.12.2005 by the respondent no. 1, would not confer any advantage to the petitioners.

19. Merely because the respondent authorities at one point of time started to give annual increment to the petitioners despite they did not clear NET/SLET/Ph.D. and/or did not initiate any action adverse to the interest of the petitioners, it cannot be said that the respondent authorities had waived the requirement of the petitioners to clear NET/SLET/Ph.D. to be given increment in pay or a higher pay scale. The OM's dated 02.06.2004, 26.07.2004, 10.07.2015 are reiteration of the decision of the Government that lecturers in Colleges should have cleared NET/SLET/Ph.D. so as to enable the existing lecturers in the State to earn annual increment and higher pay scale. It could not be demonstrated that principle of estoppel would operate against UGC Regulation, 1998, which has statutory force and consequence of failure to comply with the Regulation as prescribed under Section 14 of the University Grants Commission Act, 1956. We leave it at that.

20. Therefore, in light of the discussions above, this writ petition fails and the same is dismissed.

21. The interim order dated (i) 08.08.2016, in W.P.(C) 4729/2016; (ii) 08.08.2016, in W.P.(C) 4730/2016; 12.08.2016 in W.P.(C) 4803/2016, and (iii) 31.07.2017 in W.P.(C) 4489/2017, as extended from time to time stands vacated.

22. The parties are left to bear their own cost.

23. Before parting with the records, the Court hopes and trusts that if individually the petitioners approach the Government in the Education

(Higher) Department within an outer period of 45 (forty five) days from the date of this order to give them time to clear and/or acquire such qualification as prescribed, the respondent authorities shall take considerate view of the matter and by taking into account the long period of about 22 years time which the petitioners have spent as Lecturers, grant sufficient time/NOC to the petitioners to clear/ acquire the eligibility qualification to continue as Lecturer and to become eligible for annual pay increment and higher pay scale.

JUDGE

Comparing Assistant