

GAHC010039702020



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

Case No. : WP(C)/1292/2020

BIPUL DUTTA
S/O SHRI MUKHESWAT DUTTA, P/R VILL-BEZGAON, P.O.- BARUA
BAMUNGAON, DIST-GOLAGHAT, ASSAM, PIN-785621

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM (CTM) AND HIGHER EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE PRINCIPAL
THE PRINCE OF WALES INSTITUTE OF ENGINEERING AND TECHNOLOGY
JORHAT
P.O. AND DIST-JORHAT
PIN-785001

4:THE COMMISSIONER AND SECRETARY
DEPTT. OF FINANCE
GOVT. OF ASSAM
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

08.02.2023

Heard Mr. A. R. Sikdar, the learned counsel for the petitioner and Mr. K. Gogoi, the learned counsel appearing on behalf of the respondent Nos. 1 to 3 and Mr. R. Borpujari, the learned counsel appearing on behalf of the respondent No.4.

2. The instant writ petitioner has been filed by the petitioner seeking a writ in the nature of certiorari for setting aside and quashing the order dated 29.05.2019 issued under the authority of the Additional Chief Secretary to the Government of Assam, Higher Education (Technical) Department and for a writ in the nature of mandamus directing and commanding the respondents to grant AICTE (All India Council of Technical Education) pay scale to the petitioner with effect from the date of joining as Assistant Project Engineer under the Community Polytechnic Scheme with effect from 20.11.1992; to pay the arrear salary for the period with effect from the date of joining on 20.11.1992 till the date of transfer and posting in the post of Lecturer in terms with the order dated 23.08.2003 after deducting the salary received by the petitioner as per the State pay scale and to grant the financial benefit of career advancement under the AICTE pay revision scheme provided under Clause 8 & 9 of the AICTE notification dated 30.12.1999.

3. The brief facts of the instant case is that the Government of Assam in its Education Department had issued a communication dated 28.02.1987

whereby the sanction of the Governor of Assam was conveyed to the creation of various temporary posts for Nagaon Polytechnic under the Community Polytechnics Scheme in the scale of pay shown against each plus other allowances as admissible under Rules up to 28-02-1987 w.e.f. the date of entertainment or from the date of issue of this sanction whichever is later. In the similar manner, another communication was issued on 28.02.1987 for the creation of temporary posts for Silchar Polytechnic under the Community Polytechnics Scheme. Amongst, the various posts whereby the sanction was granted there were posts of the Project Engineer as well as the Assistant Project Engineer. It is relevant to take note of that for the post of Assistant Project Engineer the scale of pay was Rs. 1125-50-1375-EB-60-1975/- per month, provided the post is equivalent to the post of Lecturer (i) in status qualification and having the same mode of recruitment as in the case of Lecturer in Polytechnic.

4. It appears on record that the petitioner herein was appointed on the recommendation of Assam Public Service Commission (APSC) as an Assistant Project Engineer in the scale of pay of Rs.2275/- to Rs. 4450/- per month plus other allowances as admissible under the Rules and posted at Dibrugarh Polytechnic, Lahowal with effect from taking over the charge. It appears from the record that the post of the Assistant Project Engineer, Dibrugarh Polytechnic, Dibrugarh was abolished and the petitioner was appointed as the Lecturer in the Mechanical Engineering, Bongaigaon Polytechnic, Bongaigaon against the vacant post created vide Government Letter No.ETC.1/50/2020 dated 17.08.1988 with effect from the date of his joining vide an order dated 28.02.2003. Thereupon, the petitioner was again transferred vide a notification dated 20.11.2009 to the Prince of

Wales Institute, Jorhat. Thereupon, the petitioner has submitted a representation to the Additional Chief Secretary, Education (Higher and Technical Department), Government of Assam dated 27.08.2010 for regularization of his pay since joining as the Assistant Project Engineer at Dibrugarh Polytechnic, Dibrugarh on 20.11.1992 in the same line of a Lecturer Technical in Polytechnics. However, the respondent authorities having not acceded to the request made in the representation, the petitioner instituted a writ proceedings before this Court which was registered and numbered as WP(C) No.7111/2013. This Court, vide an order dated 06.02.2018, disposed of the writ petition directing the Principal Secretary to the Government of Assam in the Higher Education Department to give a consideration to the claim of the petitioner for AICTE scale of pay applicable to Lecturer (Technical) in the Polytechnics from the date of his initial appointment made in the year 1992 and pass a reasoned order thereof. It was further directed in the said order that the Principal Secretary shall take note of the conclusion arrived in the said order, meaning thereby that the notification of 02.02.1995 makes the scale of pay of Project Engineer same as that of HoD in a Polytechnic and by the communication of 08.06.2000, the AICTE scale of pay of HoD in the Polytechnic is made applicable in respect of the Project Engineers. It was further observed that by the same analogy, although the notification dated 02.02.1995 provides that the scale of pay of Assistant Project Engineers is same as that of Lecturer (Technical) of a Polytechnic, a similar consideration as the communication of 08.06.2000 be made also in respect of the Assistant Project Engineers. The said exercise was directed be completed within a period of three months from the date of receipt of the said order.

Thereupon, vide an order dated 29.05.2019, the Additional Chief Secretary to the Government of Assam (Technical) Department finding that the petitioner was not eligible for entitlement to the AITCE pay scale in the post of the Assistant Project Engineer rejected the claim of the petitioner for entitlement of the AITCE pay scale during his service as the Assistant Project Engineer. In the said order it was also mentioned that the petitioner upon joining the post of the Lecturer in Mechanical Engineering at Bongaigaon Polytechnic, Bongaigaon was allowed to avail the AITCE scale with effect from 13.03.2003. The said order passed by the Additional Chief Secretary to the Government of Assam (Technical) Department has been put to challenge as above mentioned and the petitioner has sought for various declaration as have already been noted herein above.

5. Mr. K. Gogoi, the learned counsel for the respondents submitted that the issue involved in the instant writ petition has already been decided by this Court in a similar case, i.e. in the case of ***Sri Biralal Doley vs. the State of Assam and Others*** passed on 24.01.2023 in WP(C) No.8471/2019. He submitted that this Court after taking into account the issue involved did not find any illegality in respect to the similar order being passed. He referred to paragraph Nos.12, 13 & 14 of the said judgment.

6. The learned counsel for the petitioner also submitted that the issue in the present case is substantially the same as in the case of ***Sri Biralal Doley*** (supra) where he was also the counsel for the petitioner therein.

7. This Court in the case of ***Sri Biralal Doley*** (supra) in paragraph Nos.12, 13 & 14 had held as under:

“12. The issue involved herein is as to whether the petitioner being appointed as the Assistant Project Engineer would be entitled to the

AICTE pay scale w.e.f. the date of his initial appointment taking into account that vide the notification No. FPC/16/99/27 dated 07.02.2000, the Government of Assam had extended the benefit of the AICTE pay scale to the faculty members of the Polytechnic Institutions w.e.f. 01.01.1996. This Court has perused the press release enclosed as Annexure-17 to the writ petition wherein it has been mentioned that in respect of Diploma Level Technical Institutions, it is only the teachers/Librarians/Physical Education Personnels in the Diploma Level Technical Institutions, who would be covered under the AICTE Act. As has already been mentioned that cadre strength of Diploma Level Technical Institutions consists of one Director/Principal, in addition to each Department having one Head of Department which includes one Lecturer and one Senior Lecturer. It further appears from the notification dated 07.02.2000 enclosed as Annexure-A to the affidavit filed by the Department of Finance whereby the UGC/AICTE pay scale to the Teachers of the Government Polytechnics of the State was extended w.e.f. 01.01.1996. In the said notification, the posts have been specifically mentioned to be the posts of Principal/Head of the Department, Professor/Lecturer (Selection Grade) (Non Tech.), Lecturer (Tech.) Senior Scale, Lecturer (Non Tech.) Senior Scale, Lecturer (Tech./Non Tech.). The petitioner admittedly had not been appointed as a Lecturer by its initial letter of appointment dated 25.03.1996. It was only when the post of Assistant Project Engineer in the Community Polytechnics scheme was abolished, the petitioner was adjusted and posted as a Lecturer of Mechanical Engineering Department at Prince of Wales Institute, Jorhat and thereby vide a notification dated 28.01.2013, w.e.f. 01.01.2007 and thereupon the petitioner admittedly had been granted the AICTE pay scale as a Lecturer.

13. Taking into consideration that the petitioner was never appointed as a Lecturer till the order dated 28.01.2013 whereby upon abolishing of

the post of the Assistant Project Engineer, the service of the petitioner was adjusted as a Lecturer, the question of the petitioner being granted the pay scale w.e.f. 25.03.1996 till 01.11.2007 do not arise in as much as the petitioner was appointed against a centrally sponsored scheme with the State scale of pay. Merely because of the fact that the qualifications, status and mode of recruitment being the same for both Lecturer and the post of Assistant Project Engineer would not entitle the petitioner to the pay parity with the AICTE pay scale taking into account that the petitioner was appointed on the basis of a centrally sponsored scheme which cannot be equated to the appointment to the post of a Lecturer in the Diploma Level Technical Institutions.

14. Under such circumstances, this Court does not find any illegality in the order dated 07.08.2019 passed by the Secretary to the Government of Assam, Higher Education (Technical) Department."

8. Taking into account that the issue involved in the instant case is similar to the issue involved in the case of ***Sri Biralal Doley*** (supra), this Court also do not find any merit to interfere with the order dated 29.05.2019 issued by the Additional Chief Secretary to the Government of Assam (Technical) Department.

9. Accordingly, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant