

GAHC010099332018



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

Case No. : WA/223/2018

SMT MINAKSHI BARUAH
W/O SRI JAYANTA KUMAR BAILUNG, LECTURER IN ELECTRICAL
ENGINEERING, DIBRUGARH POLYTECHNIC, LAHOWAL, DIBRUGARH,
PERMANENT RESIDENT OF VILLAGE DAIJAN GAON, PO BEHEATING, PS
BARBARUA, DIST DIBBRUGARH, ASSAM , 786010

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI -781006

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR, GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATIONAL (TECHNICAL) DEPARTMENT
DISPUR, GUWAHATI-06

4:THE DEPUTY SECRETARY
TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION(TECHNICAL) DEPARTMENT
DISPUR,GUWAHATI-06

5:THE DIRECTOR OF TECHNICAL EDUCATION, ASSAM
KAHILIPARA
GUWAHATI-781019

6:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM FINANCE DEPARTMENT ,DISPUR
GUWAHATI-0

For the Appellant : Mr. R. Sarma, Advocate.
Mrs. S.D. Saikia, Advocate.

For respondents : Mr. N. Das, Government Advocate, Assam for respondent No.1.
Mr. S. Das, Standing Counsel, Higher Education Department, for respondent Nos.2 to 5.
Mr. A. Chaliha, Standing Counsel, Finance Department for respondent No.6.

– BEFORE –

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

12.04.2023

This intra-Court writ appeal is directed against the judgment/final order dated 12.04.2018 passed by the learned Single Bench, whereby the writ petition, WP(C) No.128/2015, filed by the appellant/writ petitioner for laying a claim for grant of Senior Scale in the post of Lecturer with effect from 13.07.2000 instead of 16.06.2006, was dismissed.

2. The appellant was appointed as Lecturer in Electrical Engineering in Dibrugarh Polytechnic with regular scale of pay with effect from 13.07.1994.

3. Learned counsel for the appellant drew the Court's attention to the Government Office Memorandum dated 20.05.2004 pertaining to placement of lecturers in Senior Scale and urged that the appellant/petitioner had completed 6(six) years of service in terms of this Office Memorandum.

4. He drew the Court's attention to the certificates annexed as Annexure 5 and 6 with the writ petition and urged that a perusal of these certificates would clearly establish that the appellant had duly undertaken 8(eight) weeks' training in terms of Clause F(ii) of the Office Memorandum dated 20.05.2004 and thus, she is definitely

entitled to receive Senior Scale with effect from the date she completed 6(six) years of service i.e. 13.07.2000.

5. Per contra, the learned counsel for the respondents urged that the entitlement of a lecturer for grant of Senior Scale in terms of the Office Memorandum dated 20.05.2004 was not automatic upon completion of 6(six) years of service. Clause F(ii) of the Office Memorandum dated 20.05.2004 clearly stipulated a mandatory requirement that the aspirant should have undergone 8(eight) weeks compulsory training in aggregate and that such training programme should be of comparable quality and duration as may be specified or approved by the AICTE.

6. Learned counsel for the respondents submitted that the certificate (Annexure-5) which the appellant/petitioner has placed on record was issued by the proprietor of a private firm M/s Electrical and Mechanical Engineer's Company, Dibrugarh. This certificate does not fulfil the requirement of Clause F(ii) of the Office Memorandum dated 20.05.2004 and, hence, the same could not have been given the equivalence with the training course required under the Office Memorandum dated 20.05.2004. He further submitted that even if both these certificates [Annexure 5 and 6] are considered, the aggregate period of training does not come to 8(eight) weeks. On these submissions, he implored this Court to affirm the decision of the learned Single Bench and dismiss the appeal.

7. We have considered the submissions advanced at Bar and also have gone through the impugned final order/judgment and the materials placed on record.

8. Vide order dated 10.05.2010, the appellant/petitioner was declined Senior Scale w.e.f. 13.07.2000 in terms of the O.M. dated 20.05.2004, whereupon she approached this Court through writ petition No.128/2015 filed in the year 2015 and that is after a gross delay of 5 years. There is nothing on record to indicate that the petitioner approached the competent authority for raising a grievance against the delayed grant Senior Scale w.e.f. 16.06.2006 and denial of such benefit w.e.f. 13.07.2000.

If at all, the appellant/petitioner was aggrieved by the delay in grant of Senior Scale, then she would be expected to raise a protest immediately after receiving the order dated 10.05.2010.

Rather, we are of the opinion that if at all the petitioner had completed the mandatory training of 8 (eight) weeks prior to the year 2000, and was in possession of valid/ compliant training certificates, the, upon the introduction of the scheme of Selection Scale vide Office Memorandum dated 20.05.2004 she would have immediately approached the authorities with the prayer to be afforded the benefit of Senior Scale Pay w.e.f. 13.07.2000.

9. It thus manifest that the appellant/writ petitioner herself was not sure about the certificates [Annexures 5 and 6] being compliant with the requirements of the Office Memorandum dated 20.05.2004 and thus, she kept silent for almost 5(five) years after receiving the grant of Lecturer Senior Scale vide order dated 10.05.2010.

The writ petition came to be filed in the year 2015. It may be reiterated that the appellant/petitioner never approached the authorities raising a concern that she had been wrongly denied the benefit of Lecturer Senior Scale from an earlier date despite her entitlement.

That apart, upon a bare perusal of the training certificate, Annexure 5, upon which the appellant/petitioner has placed reliance so as to claim benefit of 4 (four) weeks training, we are of the firm opinion that the contents of the certificate do not give any indication that the same is compliant of the requirement of Clause F(ii) of the Office Memorandum dated 20.05.2004. The certificate was issued by a private firm and hence by no means the same can be held to be fulfilling the requirements of the Office Memorandum dated 20.05.2004 i.e. equivalence with an AICTE training course .

10. Consequently, we are of the firm opinion that the appellant was not entitled to receive the benefit of Lecturer Senior Scale from 13.07.2000. That apart, the writ petition, WP(C) No.128/2015 filed by the petitioner also suffers from latches and

unexplained delay and thus, the same was rightly rejected by the learned Single Bench vide final order/judgment dated 12.04.2018 which does not suffer from any infirmity warranting interference.

Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant