

GAHC010128182022



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

Case No. : WP(C)/4338/2022

MRINMOYEE SARMA
W/O- RANJAN ADHIKARY,
R/O- HOUSE NO- 6,
TOOSTI NILOY APARTMENT,
FLAT NO- C/2,
PUB SARANIA,
CHANDMARI, KAMRUP (M), GUWAHATI-781003

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
DEPARTMENT OF FINANCE (TAXATION), ASSAM CIVIL SECRETARIAT,
DISPUR, GUWAHATI-06

2:THE CHIEF SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE (TAXATION)
ASSAM CIVIL SECRETARIAT
DISPUR
GUWAHATI-06

3:THE ADDL. CHIEF SECRETARY

GOVT. OF ASSAM
DEPARTMENT OF FINANCE (TAXATION)
ASSAM CIVIL SECRETARIAT
DISPUR
GUWAHATI-06

4:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM

DEPARTMENT OF FINANCE
ASSAM CIVIL SECRETARIAT
DISPUR
GUWAHATI-06

5:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI-0

Advocate for the Petitioner : Mr. K. Goswami, Senior Advocate
: Mr. A. Sandilya, Advocate

Advocates for the Respondents : Mr. B. Choudhury,
Standing counsel for Respondent Nos. 1 & 5
: Mr. R. Borpujari,
Standing counsel for Finance Department

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 29-03-2023

Heard Mr. K. Goswami, the learned Senior counsel assisted by Mr. A. Sandilya, Advocate appearing on behalf of the petitioner and Mr. B. Choudhury, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 5. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the respondent Nos. 2, 3 and 4.

2. The case of the petitioner is that the petitioner was appointed on 07.05.1997 temporarily on probation as the Inspector of Taxes in the regular scale of pay plus other allowances admissible from time to time under the Rules

w.e.f. the date of joining at the Assam Administrative Staff College, Khanapara, Guwahati.

3. Subsequent thereto, on 30.05.2014, the services of the petitioner was confirmed in the cadre of Inspector of Taxes without prejudice to her seniority w.e.f. 05.02.2014 against the existing permanent vacancy. Thereupon, on 17.12.2016, the petitioner was promoted and appointed temporarily as the Superintendent of Taxes until further orders under Regulation 4(d) of the Assam Public Service Commission (Limitation of Function) Regulation, 1951 in the Pay Band-4 of Rs.12,000-Rs.40,000/- with Grade Pay of Rs.5,400/- plus other allowances. The petitioner joined her promotional post on 19.12.2016. The petitioner during the pendency of the instant writ petition retired on 30.06.2022.

4. The case of the petitioner herein is that the Government of Assam had introduced the Modified Assured Career Progression Scheme (MACPS) dated 06.07.2017. In terms with the said scheme, it shall include grant of financial upgradation three times in the entire service period which is on completion of 10 years, 20 years and 30 years to those employees who do not get one regular promotion within the first 10 years or two regular promotion/ACPS benefit within 20 years or three promotion/ACPS benefit within 30 years of regular service. There is an illustration given in Clause B(iv) of the Modified Assured Career Progression Scheme (MACPS) notification dated 06.07.2017 which would clearly show that if the length of service is 10 years and there is no promotion/ACPS benefit/MACPS benefit availed, then the person concerned would be entitled to one increment. However, if there has been a promotion within the period of this 10 years or had taken ACPS benefit/MACPS benefit, then the employee would not be entitled to any increment. In the case of 20

years of service, if there has been no promotion/ACPS benefit/MACPS benefit, then the entitlement would be for two increments. However, if there is one promotion/ACPS benefit/MACPS benefit availed, then the entitlement would be for further one increment. The illustration at para B(iv) being relevant which is in a tabular form is extracted hereinunder:

Service length from date of joining	No. of promotion/ACPS benefit/MACP benefit availed	Entitled benefit that can be granted
10 years	A None	1 increment
	B One	None
20 years	A None	2 Increments
	B One	1 Increment
	C Two	None
30 years	A None	3 Increments
	B One	2 Increments
	C Two	1 Increment
	D Three	None

5. It appears on record that the petitioner's entry into the Government service was on 15.05.1997 and her total length of service as on 01.01.2018 was 20 years 5 months 17 days. The petitioner got only one promotion to the post of Superintendent of Taxes on 17.12.2017. However, the petitioner had not received one increment which she is otherwise entitled to in terms with the notification dated 06.07.2017. It is because of the said, the petitioner is before this Court.

6. The petitioner has also enclosed a notification dated 24.03.2021 to the

writ petition wherein a person who was appointed as the Superintendent of Taxes on the same date on which the petitioner was appointed as the Inspector of Taxes have been granted one Financial Upgradation after taking into account that he had got a promotion on 29.01.2020. The learned counsel for the petitioner therefore has submitted that the action of the respondents in not granting the financial benefit which have otherwise been granted to others violates the mandate of Article 14 of the Constitution. It appears on record that this Court had issued notice on 28.06.2022. While issuing notice, this Court also made it clear that pending disposal of the writ petition, there shall be no bar in considering the case of the petitioner.

7. It appears on record that the respondents have not filed their affidavit. Although, the matter came up on 19.09.2022 and again on 31.10.2022. It is relevant to take note of that on 19.09.2022, the learned Standing counsel for the Finance Department had submitted that the proposal for financial upgradation pertaining to the petitioner has been returned to the Department seeking certain clarifications and therefore sought that the matter be taken up after the puja recess of 2022 so that he can update the status of the proposal.

8. Today, when the matter has been taken up, Mr. B. Choudhury, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 5 submits that the said respondents have again submitted the proposal which was again returned back by the Finance (PRU) Department. Further to that the respondent Nos.1 and 5 have again submitted the said proposal.

9. I have heard the learned counsels for the parties and have perused the materials on record. As already observed hereinabove the entitlement of the petitioner in terms with the notification dated 06.07.2017 was to one financial

upgradation taking into account that the petitioner has already got a promotion on 17.12.2016. The petitioner in the meantime during the pendency of the present writ petition had retired on 30.06.2022 and as on her date of retirement she had rendered service of 25 years 1 month 15 days. This Court finds no reason why the respondent authorities should withhold the financial upgradation to the petitioner from the date of her entitlement in terms with the notification dated 06.07.2017.

10. Further to that, as the petitioner has already retired w.e.f. 01.07.2022, it is also required that on the basis of the said financial upgradation to which the petitioner has been held to be entitled by this Court and there is the necessity for consequential directions to the respondent authorities to re-fix the pension of the petitioner by taking into account the said financial upgradation. It is the opinion of this Court that such consequential directions are necessary for the ends of justice.

11. Mr. B. Choudhury, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 5 has submitted that in the meantime the Finance (PRU) Department has sent the format by which the proposal has to be sent and the said respondent Nos. 1 and 5 are in the process of sending such proposal in that manner so directed by the Finance (PRU) Department.

12. Taking into account the same, this Court therefore disposes of the writ petition with the following directions.

(i) The petitioner would be entitled to a financial upgradation w.e.f. 01.01.2018 in terms with the Notification dated 06.07.2017.

(ii) The respondent Nos. 1 and 5 are directed to coordinate with

Finance (PRU) Department, Government of Assam so that the petitioner get the arrears accruing on account of the financial upgradation so directed hereinabove expeditiously. This Court grants 3 (three) months time from the date a certified copy of the instant order is served upon the Commissioner of Taxes, Assam-respondent No.5.

(iii) The respondent Nos. 1 and 5 are further directed to re-fix the pension proposal of the petitioner by taking into account the financial upgradation so granted herein and submit the same to the concerned authorities so that the financial upgradation so granted herein, the benefit of which the petitioner gets in computation of her pension. The said exercise shall also be completed at the earliest and within 3 (three) months from the date the certified copy of the instant order is served upon the respondent No.5.

13. In the facts of the instant case, this Court is not inclined to impose costs.

JUDGE

Comparing Assistant