

GAHC010161812011



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

Case No. : WP(C)/6326/2011

PHANIDHAR CHOUDHURY
SON OF LATE PITO RAM CHOUDHURY, R/O KUNDHLNAGAR,
SARUMATARIA HENGRABARI, DISPUR, GUWAHATI-6, P.S. DISPUR, DIST.
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP.BY SECRETARY TO THE GOVT.OF ASSAM, MINISTRY OF
CORPORATION, DISPUR, GUWAHATI.

2:THE ASSAM CO-OPERATIVE APEX BANK LTD.
REP. BY THE CHAIRMAN
BOARD OF DIRECTORS

3:THE MANAGING DIRECTOR

HEAD OFFICE
THE ASSAM CO-OPERATIVE APEX BANK LTD.
PANBAZAR
GUWAHATI-1.

4:THE BRANCH MANAGER

THE ASSAM CO-OPERATIVE APEX BANK
SILPUKHURI BRANCH
GUWAHATI

Advocate for the Petitioner : MR.S KATAKI

Advocate for the Respondent : MR. P. N. GOSWAMI
: MR. S. S. ROY

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 09-05-2023

Heard Mr. S. Kataki, the learned counsel appearing on behalf of the petitioner and Mr. S. S. Roy, the learned Standing counsel appearing on behalf of the respondent No.1. I have also heard Mr. P. N. Goswami, the learned Standing counsel of Assam Cooperative Apex Bank Ltd. who represents the respondent Nos. 2, 3 and 4.

2. The petitioner before this Court has filed the instant writ petition challenging Clause-2 of the Staff Circular No.49/2010 dated 17.08.2010 on the ground that the said Clause violates the mandate of Article 14 of the Constitution of India inasmuch as there is no reasonable classification for not granting the petitioner the enhanced pay for the period from 01.01.2004 to 31.12.2007.

3. The case of the petitioner herein is that he joined the respondent No.2 Bank on 01.08.1970 and thereupon was transferred to several branches of the Bank and finally the petitioner joined the Silpukhuri Branch on 29.06.1998 as Branch Manager and retired from service w.e.f. 31.12.2007. It is the further case of the petitioner that pursuant to the Assam Services (Revision of Pay) Rules, 2010 (for short "the Rules of 2010") which was brought into force w.e.f. 01.01.2006, the respondent No.2 Bank had also in its Board Meeting dated 27.07.2010 resolved that the revised Pay Scale for the employees/officers of the Bank be declared as per the formula adopted by the Government of Assam with

suitable modifications as and where necessary as per the details given in the said Resolution. On the basis of the said Meeting of the Board of Directors on 27.07.2010, the Staff Circular No.49/2010 dated 17.08.2010 (hereinafter referred to as the "impugned Circular") was issued. The petitioner herein having retired on 31.12.2007 is aggrieved by Clause-2 of the said impugned Circular. The same being relevant is reproduced hereinunder:

"2. Arrear in respect of Retired/to be Retired Employees:

In respect of employees who retired during the period from 01.01.2004 to 30.04.2010, no arrear shall be paid. In respect of employees who retired during the period from 01.05.2010 and after, arrears shall be credited to their Bank account in a single installment after adjustment of interim relief, other allowances, expenditures on car maintenance etc."

4. A perusal of the said Clause reveals that the said Clause is in respect to those employees who retired during the period from 01.01.2004 to 30.04.2010. It has been mandated in terms with the said Clause that in respect to such employees no arrear shall be paid. However, in respect of employees, who retired during the period from 01.05.2010 and after, arrears shall be credited to their Bank Account in a single installment after adjustment of interim relief, other allowances, expenditures on car maintenance etc. The reason why the benefit has been given to those employees who retired after 01.05.2010 can be seen from a perusal of Clause-1 of the said impugned Circular which is reproduced hereinunder:

"1. Date of effect and payment of arrear:

The revised pay structure shall be effective from 01.05.2010 but the revised pay for the employees shall be notionally fixed as on 31.12.2005. Arrear amount

with effect from 01.05.2010 shall be paid in a single installment through respective bank accounts of the employees. Interim relief, other allowances, (as circulated vide Staff Circular No.2 of 2002 dtd. 31.01.2002) expenditures on car maintenance paid to the employees with effect from 01.05.2010 shall be recovered from the arrear amount so released.”

5. A perusal of the said Clause-1 would show that the revised pay structure shall be effective from 01.05.2010. However, the salary of such person would be notionally revised as on 31.12.2005. It is further seen that the arrear amount in question is only taken into consideration for the period from 01.05.2010 though the salary is notionally revised from 31.12.2005. Therefore, the arrear salary as has been stated in Clause-1 of the impugned Circular has to be taken to mean for the period from 01.05.2010.

6. This court further finds it relevant to take note of another Clause which is Clause-3 of the impugned Circular which is reproduced hereinunder:

“3. Fixation in the Revised pay scale and Grade Pay thereon have been done with reference to the pre-revised pay scale in which the employee was actually drawing pay as on 31.12.2005.”

7. A perusal of Clause-3 will show that the fixation in the revised pay scale and the grade pay thereof has to be done with reference to the pre-revised pay scale in which the employee was actually drawing pay as on 31.12.2005. Therefore, the conjoint reading of Clause 1, 2 and 3 would therefore show that neither the existing nor any person who retired w.e.f. 01.01.2004 to 30.04.2010 would be entitled to any arrears on account of salary till 30.04.2010 although their salary would be notionally fixed w.e.f. 31.12.2005.

8. At this stage, this Court finds it relevant to take note of the submissions

made by Mr. S. Kataki, the learned counsel appearing on behalf of the petitioner that a perusal of the Minutes of the Meeting of the Board of the respondent No.2 Bank more particularly, the Board Meeting dated 27.07.2010 would show that they have adopted the pay scale for its employees as was given by the Government of Assam in the Rules of 2010. The learned counsel has also referred to a judgment of the Coordinate Bench of this Court in the case of ***All Assam Retired Officers, Teachers and Employees Committee & Others Vs. The State of Assam & Others*** reported in **2016 (4) GLT 85**.

9. It is the specific case of the petitioner that the said judgment in the case of ***All Assam Retired Officers, Teachers and Employees Committee (supra)*** was rendered in respect to the Rules of 2010 and as in the Board's Meeting dated 27.07.2010, the said Rules of 2010 was adopted by the respondent No.2 Bank, the said judgment would be squarely applicable to the instant case.

10. At this stage, this Court also finds it relevant to take note of the submissions of Mr. P. N. Goswami, the learned Standing counsel for the respondent Nos. 2, 3 and 4 who submits that pursuant to the said judgment in the case of ***All Assam Retired Officers, Teachers and Employees Committee (supra)***, an appeal was preferred by the State of Assam which was registered and numbered as Writ Appeal No.148/2017. The learned Standing counsel further submitted that when the judgment of the Supreme Court in the case of ***State of Punjab & Others Vs. Amar Nath Goyal and Others*** reported in **(2005) 6 SCC 754** was placed before the Division Bench of this Court and upon finding that the said judgment was not placed before the Coordinate Bench of this Court, liberty was given to the State to file a review application by bringing into the notice of the Coordinate Bench the judgment of the Supreme Court in ***Amar***

Nath Goyal (supra). Mr. P. N. Goswami, the learned Standing further submitted that the review application being filed was however dismissed vide an order dated 14.03.2023 by a Coordinate Bench of this Court and the State at present is contemplating to file an appeal.

11. Be that as it may, this Court upon perusal of the judgment in the case of **All Assam Retired Officers, Teachers and Employees Committee (supra)**, the Rules of 2010 as well as the impugned Circular sees a fundamental distinction between the Rules of 2010 with the impugned Circular. The Rules of 2010 have been given retrospective operation from 01.01.2006 as could be seen from Rule 1(b) of the Rules of 2010. However, in the instant case, as could be seen from the impugned Circular that the impugned Circular was applicable from 01.05.2010.

12. It further appears that there is a fundamental distinction between Clause 42.A of the Report of the Financial Commission and Clause 2 of the impugned Circular in as much as Clause 42.A did not give the benefits of arrear to those employees who retired during the period from 01.01.2006 to 31.03.2009 whereas the same benefit was given to the existing employees. However, the facts of the instant case as already stated that the employees who retired from 01.01.2004 to 30.04.2010 as well as those existing employees who worked during that period have not been granted the benefits of any arrear salary prior to 01.05.2010.

13. This Court at this stage finds it relevant to refer to the judgment of the Supreme Court in the case of **Regional Manger & Another Vs. Pawan Kumar Dubey reported in (1976) 3 SCC 334** more particularly paragraph No.7 which is quoted hereinbelow:

“7. We think that the principles involved in applying Article 311(2) having been

sufficiently explained in Shamsher Singh case it should no longer be possible to urge that Sughar Singh case could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

14. A perusal of the above paragraph quoted would make it clear that an additional fact or a different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. Therefore, taking into account the fundamental distinction between the case in ***All Assam Retired Officers, Teachers and Employees Committee (supra)*** and the present case, this Court is of the opinion that the said ratio cannot be applied to the facts of the instant case.

15. Now, coming to the facts of the instant case and upon a perusal of Clause 1 and 2 of the impugned Circular dated 17.08.2010, it would be seen that the respondent No.2 Bank has not created any unreasonable classification insofar as the granting of benefits for revision of pay scale between the retired employees during the period from 01.01.2004 to 30.04.2010 and those existing employees after 01.05.2010. This Court further taking note of the judgment in the case of ***State of Punjab Vs. Amar Nath Goyal (supra)*** and more particularly paragraph

No.28 wherein it has been held that the State has the power to take a conscious stand depending upon the consequential financial burden to apply the benefits of the revised pay scale. Therefore, the scope of judicial review in respect to the challenge to the impugned Circular on the touchstone of the declared law is very limited unless and until a case of violation of Article 14 has been made out. Nothing could be shown or could be discerned from a perusal of the materials on record which would show that the Clause 2 of the impugned Circular violates the mandate of Article 14 of the Constitution. Consequently, this Court therefore holds that Clause 2 is not in violation of Article 14 of the Constitution and accordingly, no interference is called for.

16. Before parting with the records, this Court put a specific query upon the learned Standing counsel for the respondent No.2 Bank as to what are the retiral benefits which an employee gets from the respondent No.2 Bank. The learned Standing counsel with all fairness submitted that a retired employee of the respondent No.2 Bank would be entitled to provident fund, gratuity as well as leave encashment. He further submitted that leave encashment is given on the basis of the last drawn wages. Accordingly, this Court is of the opinion that upon a conjoint reading of Clause 1 & 2 and as the petitioner had retired on 31.12.2007, his last drawn wages has to be calculated in terms with Clause 1 thereby fixing it notionally w.e.f. 31.12.2005.

17. Accordingly, this Court therefore without interfering with Clause 2 of the impugned Circular disposes of the writ petition with a direction to the respondent No.2 Bank to grant the benefits, if not already granted, the leave encashment by notionally fixing the last drawn wages of the petitioner in terms with Clause 1 of the impugned Circular. The same may be done within 3 (three)

months from the date a certified copy of the instant judgment is served upon the respondent No.3.

18. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant