

GAHC010173352016



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

Case No. : WP(C)/5305/2016

ARUN KR. SHARMA
S/O. LT. TARUN CHANDRA SHARMA, R/O. WARD NO.1, JYOTI NAGAR,
PATHASALA, DIST. BARPETA, ASSAM, PIN-781325.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT., HAVING HIS OFFICE AT DISPUR, GHY.-781006, DIST. KAMRUPM,
ASSAM.

2:THE SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
HAVING HIS OFFICE AT DISPUR
GHY.-781006
DIST. KAMRUP M
ASSAM.

3:THE DIRECTOR

HIGHER EDUCATION
ASSAM
HAVING HIS OFFICE AT KAHILIPARA
GHY.-781019
DIST. KAMRUP M
ASSAM.

4:THE BAJALI COLLEGE

PATHSALA SITUATED UNDER P.O. PATHSALA
PIN-781325

DIST. BARPETA
ASSAM REP. BY ITS PRINCIPAL-CUM-SECRETARY OF THE GOVERNING
BODY

Advocate for the Petitioner : MR.A C BORBORA

Advocate for the Respondent : MR H DAS

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

27.03.2023

Heard Mr. M. Smith, the learned counsel for the petitioner and Mr. K. Gogoi, the learned counsel appearing on behalf of the Higher Education Department as well as Mr. H. Das, the learned counsel appearing on behalf of the Bajali College, Pathsala, the respondent No.4.

2. It is the case of the petitioner that pursuant to an advertisement dated 31.05.1999, issued by the Principal, Bajali College, Pathsala, the petitioner having the qualification of Master of Arts (English), participated in the selection process and was recommended by the Selection Committee for his appointment to the post of Lecturer of English. Pursuant thereto, the Governing Body of the Bajali College, Pathsala, i.e. the respondent No.4 vide resolution No.6 dated 01.05.2000, appointed the petitioner. The Director of Higher Education, Assam vide an order dated 01.08.2000, approved the appointment of the petitioner subject to two conditions; firstly, the appointment of the petitioner was made subject to clearance of NET/SLET and till such clearance he would be treated as probationer and secondly, the petitioner would draw salary at the

minimum scale of Rs.8,000/- per month and other allowances as per the Rules. However, no incremental benefit would be allowed during such probation period. The petitioner accordingly joined to the post of Lecturer of English in Bajali College, Pathsala on 02.08.2000.

3. It further appears that subsequently one Sri Ram Naresh Sarma, the Vice-Principal and Head of the Department of English of Bajali College, Pathsala who was on lien for the period of two years with effect from 01.07.1999 to 30.06.2001, did neither join his post in the College in time and nor applied for extension of lien and as such the Governing Body of Bajali College adopted Resolution No.9 dated 17.08.2002 to terminate his service. On the same date vide Resolution No.10, the Governing Body of Bajali College, Pathsala appointed the petitioner as Lecturer of English in the College on 02.08.2000 against the lien vacancy of Sri Ram Naresh Sarma on regular basis. The said resolutions were duly forwarded by the Principal, Bajali College, Pathsala vide letter dated 02.09.2002 to the Director of Higher Education and pursuant to which an order dated 27.11.2002 was issued by the Director of Higher Education thereby approving the above resolutions and appointing the petitioner on regular basis against the vacant post arising in the College due to the release of Sri Ram Naresh Sarma. However, the said regular appointment of the petitioner was again subjected to two conditions which were similar to the conditions as set out in the order dated 01.08.2000 by the Director of Higher Education. The petitioner thereupon, vide a communication dated 03.07.2003, requested the Director of Higher Education to regularize the service of the petitioner w.e.f. 01.07.2001, i.e. immediately after the lien of Sri Ram Naresh Sarma had expired which is 30.06.2001.

4. The Director of Higher Education vide an order dated 10.07.2003 approved the regularization of the services of the petitioner w.e.f. 01.07.2001 thereby modifying the earlier orders dated 27.11.2002 and 18.02.2003 which were also ordered to be kept in abeyance. It may be relevant to mention herein that the orders dated 27.11.2002 and 18.02.2003, the conditions of clearing the NET/SLET were imposed upon the petitioner.

5. The record further reveals that the petitioner was paid increment w.e.f. 01.07.2002 after completion of one year regular service by the petitioner as Lecturer of English in Bajali College, Pathsala reckoning 01.07.2001 as the date of joining by the petitioner in regular service and thereafter he was extended the benefit of increment on per annum basis. The pay scale of the petitioner was also revised as per the UGC regulations on 30.06.2010 in pursuance of the petitioner's submission of Form 1(vii) on 13.08.2010 which was duly signed by the Drawing & Disbursal Officer, i.e., the Principal of Bajali College, Pathsala.

6. The petitioner received a communication on 11.08.2011 issued by the Principal of Bajali College, Pathsala wherein a reference was made to a communication issued by the Director of Higher Education, Assam dated 29.07.2011. It was mentioned in the said communication dated 11.08.2011 that the incremental benefit of salary cannot be given to the petitioner from the month of July, 2011 until the validity of the order dated 10.07.2003 is settled from the Director of Higher Education's end.

7. It is relevant to take note of that vide the communication dated 29.07.2011, the Director of Higher Education requested the Principal of Bajali College, Pathsala to submit circular/order issued by the Government

allowing regular scale of pay without clearing NET/SLET/M. Phil/ Ph.D as was allowed in the case of the petitioner by granting him the UGC scale of pay by preparing IPC with effect from 01.01.2006 with incremental benefit though the petitioner has not cleared the NET/SLET/M. Phil/ Ph.D. Further to that, the Principal of Bajali College, Pathsala was show caused as to why the disciplinary action should not be initiated against him for his irregular activities in connection with allowing regular scale of pay to Lecturer (the petitioner herein) contrary to the Government prescribed norms.

8. It is relevant to mention as could be seen from the perusal of the writ petition that in pursuance of the communication dated 29.07.2011, the Principal of Bajali College, Pathsala on 31.12.2015 had clarified as regards the Office Order dated 10.07.2003 with reference to the communication dated 29.07.2011.

9. It further appears that the petitioner had also submitted another representation to the Minister of Education Department on 04.02.2016. Being aggrieved by the actions of the Director of Higher Education, the instant petition was filed by the petitioner on 31.08.2016 challenging the communication dated 11.08.2011 and seeking a direction upon the respondent authorities to release the annual increment due to the petitioner w.e.f. July, 2011 along with all other consequential benefits admissible to the petitioner.

10. This Court vide an order dated 08.09.2016 issued notice. It reveals from the record that the Director of Higher Education had filed an affidavit on 21.03.2017. In terms with the said affidavit it was the specific stand of the Director of Higher Education that the clearance of NET/SLET is

mandatory as per the UGC Regulations, 2000 in respect to those persons who have joined in the service after 24.12.1998. It was further mentioned as the petitioner was appointed after 24.12.1998, the petitioner will have to clear NET/SLET/M.Phil/Ph.D as the case may be as per the UGC Guidelines and till the clearance of the above mentioned eligibility criteria, the petitioner will be given the fixed salary without incremental benefit.

11. The respondent No.4 had filed his affidavit on 20.04.2019. In paragraph No.6 of the said affidavit, it has been mentioned that the petitioner was awarded Ph.D degree by the Magadh University, Bodhgaya on 13.08.2014 and thus fulfilled the criteria for getting regular UGC scale of pay (in lieu of NET/SLET). It was also mentioned that the matter of granting regular UGC scale of pay to the petitioner has been pending in the Office of the Director of Higher Education vide File No.G(B)/AC withdrawal/376/2014 and the petitioner has not been given the regular UGC scale of pay till date.

12. This Court has perused the materials on record and also heard the learned counsel for the parties at length. Admittedly, the petitioner was appointed after 24.12.1998. In terms with the UGC notification which relates to pay scale, minimum qualification for appointment of teachers in Universities and Colleges and other measures for the Maintenance of Standard 1998, it is the mandate as per Clause 4.41 that for the post of Lecturer, the person has to have good academic record with at least 55% marks or an equivalent grade of B in 7 points scale with letter grade O, A, B, C, D, E & F in the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from a foreign university. It has also been mandated that besides fulfilling the said qualifications the

candidate should have cleared the National Eligibility Test (NET) for Lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

13. It, however, surprises this Court to take note of the contents of paragraph No.6 of the affidavit filed by the respondent No.4 whereby it has been mentioned that the petitioner was awarded the Ph.D degree on 13.08.2014. If that be so, why the petitioner did not mention about the same in the writ petition which was filed on 31.08.2016 or as to why in the communication dated 31.12.2015 issued by the Principal of Bajali College, Pathsala, i.e. the respondent No.4, there is not a single mention that the petitioner had obtained a Ph.D degree.

14. Be that as it may, one aspect of the matter is clear that if the petitioner has a Ph.D degree from a recognized University, the petitioner would be entitled to the due increment as sought for in the writ petition. This Court, therefore, taking note of the fact that there was no mention of the Ph.D degree by the petitioner in his writ petition and it is only the respondent No.4 who had by way of an affidavit stated that on 13.8.2014, the said Ph.D degree was awarded to the petitioner, this Court is of the opinion that the interest of justice would be met by disposing of the writ petition with a direction to the Director of Higher Education to verify as regards the authenticity of the Ph.D degree obtained by the petitioner on 13.08.2014 as stated by the respondent No.4 in his affidavit. It is further directed that in the circumstance, it is found that the petitioner's Ph.D degree is authentic and is in accordance with UGC Regulations, then in that regard, the Director of Higher Education shall grant the petitioner the increment to which he would be entitled to from the date of the said Ph.D

degree awarded to the petitioner.

15. The petitioner herein is directed to submit a certified copy of the instant order along with the credentials of his Ph.D degree dated 13.08.2014 to the Director of Higher Education within a period of 30 (thirty) days from today and thereupon, the Director of Higher Education shall take appropriate steps for necessary verification as required either through its own Office or through the High Powered Committee and thereupon if it is found that the petitioner's Ph.D degree is authentic, the petitioner be granted the benefit of increment from the date of the said Ph.D degree awarded to him.

16. The said exercise be completed by the Director of Higher Education within a period of 2 (two) months from the date the credentials of the Ph.D degree as well as the certified copy of the instant order is served upon the Director of Higher Education. The Director of Higher Education or the High Powered Committee as the case may be would have the authority to call for such other documents from the petitioner as deemed necessary for carrying out the verification.

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

JUDGE

Comparing Assistant