

GAHC010221672021



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

Case No. : WP(C)/7131/2021

RUPJOUTEY DAS@ RUPJYOTI DAS BHUYAN
W/O- SRI KHANINDRA NATH BHUYAN, R/O- VILLAGE DAHATI, P.O-
BARPETA, DIST-BARPETA, ASSAM, PIN-781301

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HOME
AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-06

2:THE SECRETARY
TO THE GOVT. OF ASSAM
POLITICAL (B) DEPARTMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06ASSAM

4:THE MEMBER
FOREIGNERS TRIBUNAL-II
BARPETA
DIST- BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 05.10.2023

Heard Mr. I.H. Saikia, learned counsel for the petitioner. Also heard Mr. S.R. Baruah, learned Govt. Advocate appearing for respondent nos.1 and 2, Mr. R. Borpujari, learned standing counsel for the respondent no.3, and Mr. G. Sarma, learned standing counsel for the respondent no.4.

2. The petitioner is a Copyist in the establishment of the Member, Foreigner's Tribunal-II, Barpeta against a fixed pay of Rs.3,500/- per month w.e.f. 12.09.2008. The disbursement of salary of the petitioner was stopped earlier in point of time, which led her to file WP(C) 652/2012 and this Court along with other similar matters, by an order dated 14.12.2012, directed the concerned respondent authorities to pay current as well as arrear salary to the petitioner. It is projected that despite retention of the post of Copyist from time to time, the petitioners were not given the appropriate scale of pay and accordingly, as the petitioner has completed more than 10 years of continuous service in the establishment of respondent no.4, the present writ petition has been filed under Article 226 of the Constitution of India for implementing the judgment dated 08.06.2017, passed by this Court in the case of *The State of Assam v. Upen Das & Ors., (2017) 4 GLT 493*.

3. The learned counsel for the petitioner has submitted that despite communication dated 21.06.2019 by the Political (B) Department, the name of the petitioner was not forwarded by the respondent no.4 and therefore, her name was not been approved for granting minimum pay of scale as per the

mandate of the case of *Upen Das (supra)*.

4. The learned Govt. Advocate has referred to the affidavit-in-opposition filed by the respondent no.1 to project that at the relevant time, the name of the petitioner was not forwarded by the respondent no.4 and therefore, her name could not be considered in the proposal for granting the minimum pay of scale.

5. The learned standing counsel for the Finance Department has also referred to the stand taken in the affidavit-in-opposition filed by the respondent no.3 and it is submitted that at the relevant point of time when the proposals were invited for sending the names of persons who had rendered 10 or more years of service as Muster Roll, Work Charged, Fixed Pay and Casual Workers, the name of the petitioner was not forwarded. It is further submitted that the decision of the case of *Upen Das (supra)* was a *judgment in personam* and cannot be construed as a *judgment in rem* so as to extend the benefit of minimum pay of scale of any Muster Roll, Work Charged, Fixed Pay and Casual Workers or other similarly situated employees as and when they have completed 10 years of service. It is submitted that as per his understanding, the administrative exercise to grant of the decision of *Upen Das (supra)* to the Muster Roll, Work Charged, Fixed Pay and Casual Workers, which was initiated by the Finance (EC-II) Department vide communication dated 09.10.2017 was a one time exercise and that unless there is a Govt. policy, the said benefit cannot be extended to the petitioner.

6. By referring to the decision rendered by the Supreme Court of India in the case of *State of Punjab & Ors. v. Jagjit Singh & Ors., (2017) 1 SCC 148*, which was referred to in the case of *Upen Das (supra)*, the learned standing counsel for the Finance Department has submitted that in the said case, a

finding returned by the Supreme Court of India that there should be a parity in pay and that it was on the basis of the principles of equal pay for equal work, the said decision was rendered and the onus was on the person claiming parity to establish that he was rendering same service, which was being rendered by the other employee against whom parity was claimed.

7. In this regard, the Court is of the considered opinion that the State respondents had nowhere denied that the persons who are working as Copyist in the establishment of different Foreigner's Tribunal, they were not at all given the benefit of minimum scale of pay. It is also not the case of the respondents that persons in the category of Copyist, in other establishments also get a minimum scale of pay. Therefore, if in the establishment of Foreigner's Tribunal in the State of Assam, if any one person who is working as Copyist is granted the benefit of a minimum scale of pay, the requirement of the petitioner to prove that she was rendering similar service would not arise. It is not the case of the petitioner that although the petitioner is working as a Copyist, she should be granted minimum pay scale similar to that of some other class of employee. Therefore, this is not a case where it would be the burden of the petitioner to prove that she was rendering service similar to the one against whom parity is claimed because the petitioner is claiming entitlement to minimum scale of pay, which is otherwise allowable to a Copyist in the establishment of the Foreigner's Tribunal in the State.

8. In respect of the point raised by the learned standing counsel for the Finance Department that there was no universal application of the criteria of a cut off date of 10 years of service which would entitle a person to the benefit of minimum scale of pay as allowed in the case of *Upen Das (supra)*. In this regard, the Court is of the considered opinion that in the decision of the case of

Upen Das (supra), it refers to the benefit be extended to those persons who had rendered 10 years of service at that point of time. In the said case, this Court did not pass a general order to command the respondents to extend the benefit to all the persons who are similarly situated. Nonetheless, the benefit was extended by the Govt. of Assam to all the Muster Roll, Work Charged, Fixed Pay and Casual Workers, who at that relevant time had completed 10 years of service. Therefore, once the State Govt. takes a decision to extend the benefit of minimum scale of pay to all the employees who at that point of time had completed 10 years of service, the denial of such benefit to others who had completed 10 years of service after the said period would create iniquitous situation which would further create two different classes of persons having 10 years of service at different point of time but getting different scale of pay merely because the other class of persons completed 10 years of service after 31.10.2017.

9. In the affidavit-in-opposition filed by the respondent no.3, a copy of the communication bearing no. FEC(II) 4/2014/356 dated 09.10.2017, issued by the Commissioner & Secretary to the Govt. of Assam, Finance Department is annexed. Although in the said letter, the particulars were invited not later than 31.10.2017, but the said communication cannot be read as if granting of minimum scale of pay to the Muster Roll, Work Charged, Fixed Pay and Casual Workers etc. was only a one time exercise and thereafter, the said exercise was withdrawn or revoked or cancelled. Therefore, the Court is inclined to negate the submission made by the learned standing counsel for the Finance Department and *qua* the petitioner, the Court is inclined to hold that as some of the other similarly situated Copyist in the establishment of Foreigner's Tribunal in Assam have been granted the minimum scale of pay by following the ratio

laid down in the case of *Upen Das (supra)*, the petitioner is also found entitled to the same benefit.

10. Accordingly, this writ petition stands allowed by directing the respondent authorities, jointly and severally, specifically to the respondent no.2 to send the proposal to the Finance Department for extending the minimum scale of pay to the petitioner within an outer period of 2 (two) months, which includes time for inter departmental communication and thereafter, the respondent no.2 shall forward the proposal to the Finance Department for approval and sanction in terms of this order. The benefit of minimum scale of pay should be provided to the petitioner within an outer period of 4 (four) months from today. Liberty is granted to the respondents to seek extension of time to comply with this order by showing good, sufficient and genuine cause.

11. This writ petition was filed on 14.12.2021 and therefore, the financial benefit should accrue to the petitioner from 14.12.2021, i.e. the day she had approached this Court.

12. The petitioner shall serve a certified copy of this order on the respondent no.2 within a week from today.

13. In the meanwhile, the learned standing counsel for the respondents shall also send a downloaded copy to the authorities as an advance information.

JUDGE

Comparing Assistant