

GAHC010232912016



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

Case No. : WP(C)/5581/2016

ARINDAM ROY
S/O LT. PIJUSH KANTI ROY, R/O 2B-3C, PARIJAT APARTMENT, 3RD FLOOR,
AMBIKA PATTY, SILCHAR, DIST- CACHAR, ASSAM, PIN-788004

VERSUS

THE ASSAM UNIVERSITY and 5 ORS
REP. BY THE VICE CHANCELLOR, SILCHAR, CACHAR, ASSAM, PIN-788011

2:THE VICE CHANCELLOR
ASSAM UNIVERSITY
SILCHAR
CACHAR
ASSAM

3:THE REGISTRAR
ASSAM UNIVERSITY
SILCHAR
CACHAR
ASSAM

4:ASSTT. REGISTRAR
ESTABLISHMENT
ASSAM UNIVERSITY
SILCHAR
CACHAR
ASSAM

5:THE SECTION OFFICER
ESTABLISHMENT-II
ASSAM UNIVERSITY
SILCHAR

CACHAR
ASSAM

6:UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARGE
NEW DELHI-

Advocate for the Petitioner : MR.J LASKAR

Advocate for the Respondent :

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

ORDER

Date : 13.03.2023

Heard Mr. P.K. Roy, learned senior counsel assisted by Mr. S.K. Chakraborty, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned standing counsel for the respondent nos.1 to 5 and Ms. J. Gayan, learned counsel appearing on behalf of Mr. A. Chamuah, learned counsel for the respondent no.6.

2. The case of the petitioner, in brief, is that he had acquired his Post Graduate degree of Master of Engineering in Computer Science and Engineering in the year 2007 and he was selected for appointment as Lecturer in Assam University, Silchar, where he joined on 23.07.2007. It is projected that pursuant to notification under No. 1-32/2006-U.II/U.I(i), dated 31.12.2008, the Department of Higher Education, Ministry of Human Resource Development, Govt. of India introduced a scheme for revision of pay of teachers and equivalent cadres in universities and colleges and in clause-7(iii) thereof, it was provided that those possessing Post Graduate degree in a professional course

such as LL.M/M.Tech etc., recognized by the relevant Statutory Body/Council, shall also be entitled to 2 non-compounded advance increments at the entry level. Reference is also made to the UGC notification dated 30.06.2010, which was published in the official Gazette of India on 18.09.2010. In the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (for short 2010 regulation), similar prescription was made under clause-9.3 of clause-9.0, which provides for incentives for Ph.D./M.Phil and other higher qualification to take effect from 01.09.2008. Accordingly, it is projected that w.e.f. the date of 01.09.2008, the petitioner would be entitled to 2 non-compounded advance increments at the entry level and accordingly, the said benefit was granted to the petitioner and the petitioner, who was earlier getting the salary at the pay band of Rs.16,900/- was granted the pay band of Rs.24,000/-, and therefore, as the pay band was reduced to Rs.22,310/-, the petitioner has challenged the corrigendum dated 16.08.2016, issued by the Assistant Registrar, Establishment of Assam University, Silchar, whereby the pay band of the petitioner was revised to Rs.22,310/-. Accordingly, the petitioner has filed this writ petition under Article 226 of the Constitution of India.

3. The learned counsel for the petitioner has submitted that 2 (two) similarly situated persons are still getting the benefit of 2 non-compounded advance increments at the entry level, which was denied to the petitioner and upon his representation, those two persons, who were getting the benefit, were also denied the said increment.

4. The learned standing counsel for the respondent nos.1 to 5 has

referred to the stand taken in the affidavit-in-opposition filed on 01.12.2016 and has submitted that as the petitioner had acquired his Master degree in Engineering on 16.02.2008, which was prior to the date given effect to the 2010 regulation, where there was no provision for granting advance increment for holding Post Graduate degree. It is submitted that incentives are admissible for Post Graduate and Ph.D. degree holders, if such a degree was hold at the time of recruitment or subsequently acquired and it is submitted that the AICTE Regulations is applicable to the courses recognized/accredited by AICTE and that the Computer Science Department of the Assam University, Silchar does not fall within the scope and ambit of the AICTE Regulation. In this regard, it is submitted that the Department of Computer Science in Assam University is a science subject and is under the school of physical sciences and therefore, additional increment is not applicable to the petitioner as the petitioner is holding M.E. degree. Hence, it is submitted by the learned standing counsel for the respondent nos.1 to 5 that as the petitioner is working under UGC, advance increment applicable for AICTE teachers could not be applicable for the petitioner.

5. The learned standing counsel for the UGC has referred to the affidavit-in-opposition filed by the respondent no.6 and has submitted that as the petitioner had joined the post of Assistant Professor on 23.07.2007 and at that time, UGC notification of 1998 was applicable, where there was no provision for providing 2 advance increment for possessing Post Graduate degree and professional course at the entry level and that in the Gazette Notification dated 18.09.2010, in view of clause 9.0, the incentives for Ph.D./M.Phil and other higher qualification to take effect from 01.09.2008, the petitioner was not eligible for the said incentives.

6. It is noted that notwithstanding the contents of schedule for clause-6.8.0, which was notified in the Gazette of India on 18.09.2010, the relevant prescription of the UGC notification dated 18.09.2010 does not provide any cut-off date, prior to which the Post Graduate degree holders would not be qualified for 2 non-compounded advance increments at the entry level. The relevant clause of 9.0 to 9.3 are quoted below:

“9.0. Incentives for Ph.D./M.Phil. and other higher qualification to take effect from 01-09-2008.

9.1 Five non-compounded advance increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degree of Ph.D. awarded in a relevant discipline by the University following the process of admission, registration, course work and external evaluation as prescribed by the UGC.

9.2 M.Phil. Degree holders at the time of recruitment to the post of Assistant Professor shall be entitled to 2 non-compounded advance increments.

9.3 Those possessing Post-graduate degree in the professional course such as LL.M./M.Tech./M.Arch./ M.E./M.V.Sc./M.D. etc. recognized by the relevant statutory body/council, shall also be entitled to 2 non-compounded advance increments at the entry level.”

7. Although the consistent stand of the respondent nos.1 to 5 as well as the respondent no.6 is that when the petitioner had joined on 23.07.2007 as Assistant Professor, the UGC notification 1998 was in force, but the UGC notification 2010, which was published on 18.09.2010 does not prohibit an Assistant Professor with a Post Graduate degree to be disqualified for the purpose of incentives prescribed in clause-9.3. Rather, on a plain reading of clause-9.3, all those possessing Post Graduate degree in professional course, which includes M.E. would be entitled to 2 non-compounded advance

increments at the entry level. Therefore, as the incentives are to take effect from 01.09.2008, the respondent authorities would require to provide the benefit of such 2 non-compounded advance increments to the petitioner w.e.f. 01.09.2008. The said notification does not prescribe that Assistant Professors, who entered service while previous notification was in force, would be disentitled to incentives under the UGC notification dated 18.09.2010. The Court finds that the petitioner is able to make out a case for continuing his previous pay band by taking into effect the 2 non-compounded advance increments w.e.f. 01.09.2008.

8. In view of above, the submission of the learned standing counsel for the respondent nos.1 to 5 and respondent no.6 are not found sustainable, moreso because from the statement made in this writ petition, there is a positive assertion to the effect that at least 2 (two) similarly situated persons, namely, Saptarshi Paul and Bhagaban Swain have been given the benefit of 2 non-compounded advance increments at the entry level, whose date of joining is reflected in Annexure-7 of the writ petition as 27.10.2009 and 29.03.2010 respectively.

9. Accordingly, this writ petition stands allowed and the order no. 103/234/2007-Pers/11448-52 dated 27.06.2016, issued by the Assistant Registrar, Establishment, Assam University, Silchar (respondent no.4) is set aside.

10. Resultantly the authorities of respondent nos.1 to 4 shall undertake the exercise of recalculating the salary of the petitioner for 2 non-compounded advance increments in terms of clause-9.3 of the UGC notification dated 18.09.2010 and resultant financial benefit to the petitioner shall be provided

within a period of 2 (two) months from the date of receipt of certified copy of this order by the office of the respondent no.4.

11. With the above direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant