

GAHC010274772019



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

Case No. : WP(C)/8471/2019

Sri Biralal Doley,

S/O Late Joygu Ram Doley,

Present Address-

Residential Campus,

Prince of Wales Institute Jorhat,

P.O. & Dist.- Jorhat, Pin- 785001.

Permanent Address-

Village- Tikri, P.O. Meramukh,

District- Lakhimpur, Assam

----- Petitioner

– *VERSUS* –

1. The State of Assam

represented by the Commissioner & Secretary
the Government of Assam (CTM) and Higher
Education Department, Dispur, Guwahati-6

2. The Director of Technical Education,

Assam, Kahilipara, Guwahati-19

3. The Principal,

The Prince of Wales Institute of Engineering
& Technology, Jorhat, P.O. & Dist.- Jorhat,

Pin-785001.

4. The Commissioner & Secretary
Department of Finance, Government of Assam, Dispur,
Guwahati

----- Respondents

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the Petitioner	: Mr. AR Sikdar, Advocate
Advocate for Respondent Nos. 1 to 3	: Mr. KC Gogoi, Advocate
Advocate for Respondent No. 4	: Mr. B Gogoi, Advocate
Date of hearing & Judgment	: 24th January, 2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. AR Sikdar, the learned counsel appearing on behalf of the petitioner and Mr. KC Gogoi, learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 and Mr. B Gogoi, learned counsel appearing on behalf of the respondent No. 4.

2. The instant writ petition has been filed by the petitioner seeking a writ of certiorari for setting aside and quashing the order dated 07.08.2019 issued by the Secretary to the Government of Assam, Higher Education (Technical) Department and for a writ of mandamus directing and commanding the

respondents to grant AICTE pay scale to the petitioner w.e.f. the date of joining as the Assistant Project Engineer (APE) under the Community Polytechnic on 08.04.1996; to pay the arrear salary w.e.f. the date of joining till November, 2007, i.e., the date of granting of the AICTE pay scale to the petitioner as well as to grant the financial benefit of the career advancement under the AICTE pay revision scheme provided under Clause 8 and 9 of the AICTE notification dated 30.12.1999 and after deduction of the salary received by him as per the State pay scale.

3. The brief facts of the instant case is that the Government of Assam in its Education Department had issued a communication dated 28.02.1987 whereby the sanction of the Governor of Assam was conveyed to the creation of various temporary posts for Nagaon Polytechnic under the Community Polytechnics Scheme in the scale of pay shown against each plus other allowances as admissible under Rules up to 28-02-1987 w.e.f. the date of entertainment or from the date of issue of this sanction whichever is later. In the similar manner, another communication was issued on 28.02.1987 for the creation of temporary posts for Silchar Polytechnic under the Community Polytechnics Scheme. Amongst, the various posts whereby the sanction was granted there were posts of the Project Engineer as well as the Assistant Project Engineer. It is relevant to take note of that for the post of Assistant Project Engineer the scale of pay was

Rs. 1125-50-1375-EB-60-1975/- per month, provided the post is equivalent to the post of Lecturer (i) in status qualification and having the same mode of recruitment as in the case of Lecturer in Polytechnic.

4. It appears on record that the petitioner herein was appointed on the recommendation of the Assam Public Service Commission (APSC) as the Assistant Project Engineer and posted at Silchar Polytechnic in the scale of pay of Rs. 2275-60-2395-90-2275-EB-100-3575-125-4450/- per month and other allowances as admissible under the Rules w.e.f. the date of taking over charge. It appears from the records that the post of Assistant Project Engineer was abolished and the petitioner was adjusted and posted as Lecturer of Mechanical Engineering Department at Prince of Wales Institute, Jorhat in the vacant post w.e.f. 01.01.2007 in the scale of pay of Rs. 15,600 – 39,100 with grade pay of 5,400 and other allowances as admissible. By the notification dated 28.01.2013, it was further made clear that the petitioner was allowed to draw his arrear salary w.e.f. 01.11.2007 subject to availability of the fund. The petitioner thereupon on 04.02.2013 joined as Lecturer in Mechanical Engineering Department at Prince of Wales Institute, Jorhat.

5. It appears from the records that the petitioner had instituted a writ petition before this Court, which was registered and numbered as WP(C) No. 6403/2013

wherein it was the case of the petitioner that the petitioner was entitled to the AICTE scale of pay w.e.f. the date of his initial appointment on 25.03.1996 for which the petitioner had submitted various representations before the Commissioner and Secretary to the Government of Assam, Education (CTM) Department on 21.09.2000, 25.06.2004 and 25.04.2005. However, the petitioner was not granted the benefit for which the writ petition was filed. This Court vide an order dated 17.05.2019 disposed of the said writ petition with a direction to the Principal Secretary to the Government of Assam, Education (CTM) Department to give a consideration to the claim of the petitioner for an AICTE scale of pay applicable to a Lecturer (Technical) in the Polytechnic from the date of his initial appointment and pass a reasoned order thereof. It was further directed that the Principal Secretary while taking into consideration the case of the petitioner should also take into account the directions passed by this Court in the order dated 06.02.2018 in WP(C) No. 7111/2013. Further to that, it was directed that the said exercise be carried out within a period of 3 (three) months from the date of receipt of the certified copy of the order. It appears from the records that on 07.08.2019, the Secretary to the Government of Assam, Higher Education (Technical) Department had passed a speaking order holding *inter alia* that as the petitioner was appointed directly to the post of Assistant Project Engineer (APE) in the State scale of pay till he was adjusted

and posted as Lecturer under the AICTE scale of pay, the petitioner was not found eligible to be considered for entitlement to AICTE scale of pay during his service as Assistant Project Engineer (APE).

6. Being aggrieved, the instant writ petition was filed. It appears from the records that this Court had issued notice on 25.11.2019. It further appears that the respondent No. 2 as well as the respondent No. 4 have filed respective affidavit-in-oppositions. In the affidavit-in-opposition filed by the respondent No. 2, i.e., Director of Technical Education apart from what has been stated hereinabove had stated that the Government of Assam had created both the posts of Project Engineer and Assistant Project Engineer for different Polytechnics under the State Scale of pay before implementation of the All India Council for Technical Education (AICTE) scale of pay in Assam in respect to the post of Lecturers and upwards in Polytechnics. It was mentioned that as per the creation letter, the post of Assistant Project Engineer (APE) is equivalent to the post of Lecturer in terms of qualifications as well as mode of recruitment. Further to that, it was mentioned that the action of the respondent authorities under no circumstances can be said to be discriminatory, unfair, injudicious, arbitrary and unreasonable towards the petitioner.

7. In the affidavit-in-opposition filed by the respondent No. 4, it was

mentioned that the benefits of the revised UGC/AICTE pay scales was extended to the technical and non-technical teachers of Government Polytechnics in the State w.e.f. 01.01.1996 vide the notification No. FPC.16/99/27 dated 07.02.2000. It was further mentioned that the claim of the petitioner was turned down in view of the fact that the post of Assistant Project Engineer (APE) was created for Silchar Polytechnic, Silchar in the State pay scale of Rs. 2275 – 4450/- per month and other allowances and the petitioner was temporarily appointed as Assistant Project Engineer (APE) till he was adjusted and posted as Lecturer under AICTE pay scale. In para 5 of the said affidavit, it was mentioned that the Finance (PRU) Department is concerned with pay scales as per the Assam Services (Revision of Pay) Rules and implementation of AICTE pay scales as per the requisite norms and regulations. It has been further mentioned that the Finance (PRU) Department had already extended the benefits of the AICTE pay scales to the faculty members of Polytechnic Institutions vide notification No. FPC.16/99/27 dated 07.02.2000 w.e.f. 01.01.1996. It was mentioned that it was upon the Administration Department, i.e., Higher Education (Technical) Department to decide the eligibility condition for the AICTE pay scales.

8. I have heard the learned counsel appearing on behalf of the parties.

9. Mr. AR Sikdar, the learned counsel appearing on behalf of the petitioner has

submitted that the notification dated 02.03.1995 issued by the Finance (PRU) Department of the Government of Assam makes it clear that for the post of Assistant Project Engineer, the incumbent would be entitled to a special pay of Rs. 100 in line of the Lecturer (Technical) of Polytechnics w.e.f. 25.03.1992. He further submits that even from the creation of the post, it would be seen that the scale of pay given to the Assistant Project Engineer is equivalent to the post of Lecturer (i) in the status qualification and having the same mode of recruitment as in the case of Lecturer in Polytechnics. He therefore, submitted that taking into account that the Lecturer of a technical institution at that relevant point of time was appointed by the Government on the basis of the recommendation made by the Assam Public Service Commission and the petitioner herein have also been appointed on the basis of the recommendation made by the Assam Public Service Commission and the qualification and the status being the same, the petitioner should also be given the AICTE pay scale which was made retrospectively applicable w.e.f. 01.01.1996 vide the notification dated 07.02.2000. He submitted that the impugned order on the face of it was bad as the said aspect of the matter was not taken into consideration by the authority concerned.

10. On the other hand, Mr. KC Gogoi, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 had submitted that though the qualifications

necessary for being appointed as an Assistant Project Engineer is equivalent to that of a Lecturer, the petitioner herein was only appointed as an Assistant Project Engineer but not as a Lecturer. He submitted that the petitioner was appointed as an Assistant Project Engineer in respect to a centrally sponsored scheme and as such, the question of granting the AICTE pay scale to the petitioner, who has been appointed as an Assistant Project Engineer do not arise. He submitted that a perusal of the impugned order would also clearly go to show that the Project Engineer otherwise would not have been entitled to save and except that they have been either transferred or promoted from the present posting as Lecturer or Head of the Department in the Polytechnics in question and as such, the said Project Engineers were entitle to the AICTE pay scale on the basis of their appointment in the technical institutions as Lecturers/Head of the Departments. He further drawing the attention to the press release of the AICTE enclosed as Annexure-17 to the writ petition submitted that the provisions of the said notification was only applicable to teachers/Librarians and Physical Education Personnels in Diploma Level Technical Institutions covered by the AICTE Act. Therefore, he has submitted that as the petitioner is not appointed as a personnel in the Diploma Level Technical Institution, as such, the AICTE revised pay scale could not have been extended to the petitioner. He further referred to clause 3.0 of the said press

release to show that the cadre structure in the Diploma Level Institution consist of one post of Director/Principal in addition each Department shall have one post of Head of the Department. Further to that, the cadre shall also include Lecturer and Senior Lecturer. Therefore, it is the submission of Mr. KC Gogoi, learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3 that the petitioner was not entitled to the AICTE pay scale on the basis of being appointed as an Assistant Project Engineer. He submitted that the moment the petitioner's post of Assistant Project Engineer was adjusted in the year 2013 as a Lecturer w.e.f. 2007, the petitioner has been granted the AICTE pay scale.

11. Mr. B Gogoi, learned counsel appearing on behalf of the Finance Department submits that the benefits of the AICTE pay scale to the faculty members of the Polytechnics Institutions vide notification No. FPC/16/99/27 dated 07.02.2000 w.e.f. 01.01.1996 had been extended. He further submitted that the Administration Department, i.e., Higher Education (Technical) Department is to decide the eligibility condition for the AICTE pay scale.

12. The issue involved herein is as to whether the petitioner being appointed as the Assistant Project Engineer would be entitled to the AICTE pay scale w.e.f. the date of his initial appointment taking into account that vide the notification No. FPC/16/99/27 dated 07.02.2000, the Government of Assam had extended

the benefit of the AICTE pay scale to the faculty members of the Polytechnic Institutions w.e.f. 01.01.1996. This Court has perused the press release enclosed as Annexure-17 to the writ petition wherein it has been mentioned that in respect of Diploma Level Technical Institutions, it is only the teachers/Librarians/Physical Education Personnels in the Diploma Level Technical Institutions, who would be covered under the AICTE Act. As has already been mentioned that cadre strength of Diploma Level Technical Institutions consists of one Director/Principal, in addition to each Department having one Head of Department which includes one Lecturer and one Senior Lecturer. It further appears from the notification dated 07.02.2000 enclosed as Annexure-A to the affidavit filed by the Department of Finance whereby the UGC/AICTE pay scale to the Teachers of the Government Polytechnics of the State was extended w.e.f. 01.01.1996. In the said notification, the posts have been specifically mentioned to be the posts of Principal/Head of the Department, Professor/Lecturer (Selection Grade) (Non Tech.), Lecturer (Tech.) Senior Scale, Lecturer (Non Tech.) Senior Scale, Lecturer (Tech./Non Tech.). The petitioner admittedly had not been appointed as a Lecturer by its initial letter of appointment dated 25.03.1996. It was only when the post of Assistant Project Engineer in the Community Polytechnics scheme was abolished, the petitioner was adjusted and posted as a Lecturer of Mechanical Engineering Department

at Prince of Wales Institute, Jorhat and thereby vide a notification dated 28.01.2013, w.e.f. 01.01.2007 and thereupon the petitioner admittedly had been granted the AICTE pay scale as a Lecturer.

13. Taking into consideration that the petitioner was never appointed as a Lecturer till the order dated 28.01.2013 whereby upon abolishing of the post of the Assistant Project Engineer, the service of the petitioner was adjusted as a Lecturer, the question of the petitioner being granted the pay scale w.e.f. 25.03.1996 till 01.11.2007 do not arise in as much as the petitioner was appointed against a centrally sponsored scheme with the State scale of pay. Merely because of the fact that the qualifications, status and mode of recruitment being the same for both Lecturer and the post of Assistant Project Engineer would not entitle the petitioner to the pay parity with the AICTE pay scale taking into account that the petitioner was appointed on the basis of a centrally sponsored scheme which cannot be equated to the appointment to the post of a Lecturer in the Diploma Level Technical Institutions.

14. Under such circumstances, this Court does not find any illegality in the order dated 07.08.2019 passed by the Secretary to the Government of Assam, Higher Education (Technical) Department.

15. In view of the above, as this Court does not find any merit in the instant

writ petition, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant