

GAHC010066812021



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

**Case No. : WP(C)/2509/2021**

BHARATI DEVI  
D/O. LT. TANKESWAR SARMA, R/O. DR. S. K. BHUYAN ROAD, GUWAHATI-  
781001.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
TO BE REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,  
DEPTT. OF HIGHER EDUCATION, DISPUR, GUWAHATI-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM

DEPTT. OF PERSONNEL  
DISPUR  
GUWAHATI-06.

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM  
KAHILIPARA  
GUWAHATI-19.

4:THE PRINCIPAL

BRM GOVT. LAW COLLEGE  
PANJABARI  
GUWAHATI-781037.

5:THE DY. SECRETARY

DEPTT. OF HIGHER EDUCATION  
GOVT. OF ASSAM.

6:THE COMMISSIONER AND SECRETARY  
DEPARTMENT OF FINANCE  
GOVT. OF ASSAM  
DISPUR  
GUWAHATI-

**Advocate for the Petitioner** : DR. B AHMED, MR. P D NAIR,MR P D NAYAK,MR. M P SARMA,MS D MAHANTA,MR A CHETIA,MS. L DAS,MR. A BORO,MR A CHAKRABORTY,MR. U K NAIR,MR. A K AZAD

**Advocate for the Respondent** : SC, HIGHER EDU, MR. K GOGOI, SC, HIGHER EDUCATION

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**ORDER**

**18.09.2024**

Heard Shri PD Nair, learned counsel for the petitioner. Also heard Shri K. Gogoi, learned Standing Counsel, Higher Education Department.

2. Considering the subject matter and as agreed to by the learned counsel for the parties, the writ petition is taken up for disposal at the admission stage.

3. There is a chequered history, including history of litigation in this case. The issue is with regard to the regularization of the services of the petitioner as Full Time Lecturer of the B. R. M. Government Law College and consequently, the arrears of pay involved. The petitioner had earlier approached this Court by filing WP(C)/3305/2009 and WP(C)/4213/2009, which were disposed of by a common judgment and order dated 02.01.2017. This Court had directed for taking immediate steps for regularizing the services of the petitioner. As no steps were taken in spite of the order of this Court, the petitioner had instituted a contempt case, whereafter an order dated 02.04.2018 was passed, regularizing her service w.e.f. 01.01.2013. The petitioner has retired in the

meantime on 01.01.2018. It also appears that the Department had preferred a writ appeal, which was however dismissed on the grounds of delay.

4. Subsequent to the order of this Court, an order of regularization was passed on 02.04.2018 in which there was an observation for payment of the arrears with effect from 01.01.2013 in the UGC scale of pay. However, the payment has not been made on the said UGC scale, but on the State scale which is lower.

5. Shri Nair, learned counsel for the petitioner has submitted that the question of being eligible to get the salary in the UGC scale was concluded on passing of the order dated 02.04.2018, which had clearly mentioned the said scale. It is submitted that the order was not modified at any subsequent point of time and therefore the Department could not take a different stand in the present proceeding regarding the aspect of qualification to be entitled to such scale. He has also drawn the attention of this Court to certain observations / recordings by this Court in the earlier proceedings, on the aspect of qualification to be entitled to the UGC scale of pay. He has also drawn the attention of this Court to the order dated 18.02.2022 passed in this proceeding, whereby this Court had made it clear that irrespective of the fact of acceptance of the arrears in the State scale of pay, the issue of the claim for receiving the arrears in the UGC scale would still be left open for adjudication.

6. *Per contra*, Shri Gogoi, learned Standing Counsel, Higher Education Department has submitted that payment of arrears which was the subject matter of the order dated 02.01.2017 have actually been made. It is submitted that the said order dated 02.01.2017 was only on the aspect of regularization of the services of the petitioner and payment of the arrears is a consequent thereof. It is submitted that the order dated 02.04.2018 was issued in haste in

view of the contempt petition filed by the petitioner *qua* the judgment and order dated 02.01.2017 passed in WP(C)/3305/2009. It is submitted that observation regarding UGC scale in the notification dated 02.04.2018 was inadvertently given and because of the said error, no liability can be saddled with the Department. It is submitted that the decision to pay the arrears in the State scale to the petitioner is after due application of mind. It is submitted that to be eligible to get the scale under the UGC, the incumbent is required to have the fulfill the mandatory criteria which include securing at least 55% in the Master's Examination with NET/SLET or Ph.D. and these requirements are relevant since the year 1987. He submits that it is not in dispute that the petitioner does not meet any of the aforesaid eligibility criteria.

7. As regards the submissions made that the issue was discussed by this Court in earlier proceedings, the learned Standing Counsel has clarified that the reference to the same was only in the form of submissions made on behalf of the petitioner and cannot be construed to be any findings of the Court.

8. Rival contentions advanced have been duly considered.

9. To adjudicate the issue raised regarding a claim for arrears in the UGC scale, it would be required to carefully examine the direction of this Court contained in the judgment and order dated 02.01.2017. For any reference, the operative part of the judgment is extracted hereinbelow:

*“17. Keeping in parity with the judgment dated 27.06.2006, passed by this Court in Civil Rule No. 885/1998, it is, therefore, ordered that the State respondents, more particularly, the respondent No. 1, namely, The Commissioner, Department of Education, the respondent No. 2, namely, the Secretary to the Govt. of Assam,*

*Department of Personnel, the Respondent No. 3, namely, the Director of Higher Education, Assam, and the respondent No. 5, namely, the Principal, B.R. Medhi, Govt. Law College, would cause immediate steps to be taken for regularization of the petitioner's service as Lecturer of B.R. Medhi Government Law College, Guwahati. Consequently, W.P.(C) No. 3305/2009 and W.P.(C) No. 4213/2009 filed by the petitioner, Smt. Bharati Devi stands allowed."*

10. The said direction is pertaining only to the aspect of regularizing the services of the petitioner in the BRM Government Law College and accordingly the said writ petitions were allowed. Though, it appears that there was a delay in implementation of the order which was done only after filing of a contempt case, the regularization order dated 02.04.2018 had however mentioned the entitlement of the arrears in the UGC scale of pay. It is the contention of the petitioner that a right had accrued to her from the said order which was not even modified at a later point of time.

11. It however transpires from the materials on record including the affidavit-in-opposition that while passing the order of regularization dated 02.04.2018, the mention of the UGC scale was an inadvertent error which was done without verifying the eligibility of the petitioner for such UGC scale. While regularization of service is one aspect of the matter, the entitlement to a particular scale of pay is a separate aspect which is required to be examined from the point of view of eligibility. Admittedly, the petitioner does not meet any of the criteria for being entitled to UGC scale of pay. As pointed out, to be entitled to such scale, an incumbent is required to secure at least 55% in the Master's Examination with NET/SLET or Ph.D.

12. This Court has also noted that the petitioner has been paid the arrears in

the State scale of pay which is not disputed.

13. In view of the above, this Court is of the considered opinion that the claim to arrears in the UGC scale of pay cannot be held to be justified. Accordingly the writ petition is held to be without merits and the same is dismissed.

**JUDGE**

**Comparing Assistant**