

GAHC010119572015



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

Case No. : WP(C)/4751/2015

HEMENDRA NATH THAKUR
S/O- LT. UPENDRA NATH THAKUR, R/O- RUKMINIGAON, NEAR TANGRA
SATRA, KHANAPARA, GHY- 22, DIST.- KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS,
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
TRANSPORT DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR OF INLAND WATER TRANSPORT ASSAM
ULUBARI GHY- 7.

3:THE SECY. TO THE GOVT. OF ASSAM FINANCE DEPTT.
DISPUR GHY- 6.

4:THE ACCOUNTANT GENERAL AandE ASSAM MAIDAMGAON
BELTOLA GUWAHATI DIST.- KAMRUP M ASSAM

Advocate for the Petitioner : MR.R SARMA
Advocate for the Respondent : SC, FINANCE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

19.06.2024

ORDER

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Ms. M. D. Borah, learned standing counsel, Transport Department, appearing on behalf of respondents No. 1 & 2; and Mr. R. Borpujari, learned standing counsel,

Finance Department, appearing on behalf of respondent No. 3. None has appeared on behalf of respondent No. 4.

2. The petitioner by way of instituting the present proceeding, has prayed for a direction upon the respondent authorities for stepping up of his pay in comparison to that of his juniors and thereafter, for re-fixation of his pension and pensionary benefits along with the release of the amounts now becoming due to him.

3. The facts as requisite for adjudication of the issue arising in the present proceeding, is briefly noted hereinbelow:

The petitioner was initially appointed as a Sub-Engineer on 22.09.1969 under the Inland Water Transport Department, Assam. The petitioner who had a Graduate degree qualification in Engineering, was considered for promotion to the post of Assistant Engineer and he was so promoted on 08.04.1981. Thereafter, he was promoted to the post of Assistant Executive Engineer on 06.08.1986 and finally, he was promoted to the post of Executive Engineer on 31.03.1993. The petitioner retired from his service on attaining the age of superannuation on 31.12.2004.

It is the contention of the petitioner that persons promoted to the cadre of Assistant Engineer after his such promotion, were being authorized their respective pay and allowances at a higher stage than that what was being

authorized to him. Accordingly, the petitioner, being aggrieved; approached the Director, Inland Water Transport Department, Assam, by way of preferring a representation, dated 30.11.1993. In the said representation, the petitioner highlighted that he being promoted to the post of Assistant Engineer on 08.04.1981; persons subsequently promoted to the said cadre of Assistant Engineer on 01.01.1982, 02.05.1982, and in the year 1984, were being authorized pay and allowances at a higher stage than what was being drawn by him. The said representation of the petitioner was so forwarded by the Director, Inland Water Transport Department, Assam, to the Government for consideration. Although a process was initiated for considering the grievance raised by the petitioner, the same having not been taken to its logical conclusion; the petitioner had approached this Court by instituting a writ petition being WP(c)1468/2008 and this Court, vide order, dated 25.03.2011, on considering the issues arising in the proceeding; had remanded the matter to the respondent authorities for considering the claim of the petitioner for re-fixation of his pay in reference to the pay drawn by his juniors in the cadres of Assistant Engineer and above. After passing of the order, dated 25.03.2011, the petitioner had approached the respondent authorities for consideration of his case in terms of the directions passed by this Court and the petitioner vide a RTI reply, dated 09.09.2013, was informed that the case of the petitioner for re-fixation of his pay was under active consideration. Even after lapse of a considerable period of time, no steps having been taken, the present proceeding has been so instituted by the petitioner, herein.

4. Reiterating the facts as narrated hereinabove; Mr. Chakraborty, learned counsel for the petitioner, has submitted that the petitioner, admittedly, being

promoted to the cadre of Assistant Engineer before the persons who were identified by him to be juniors in the cadre of Assistant Engineer on account of their such promotion being so effected after the promotion was effected in the case of the petitioner, herein, has submitted that although an anomaly with regard to the fixation of pay in respect of the petitioner, herein, having come on record; the respondent authorities had not taken any steps for the purpose of removing the said anomaly as noticed in the matter.

5. Mr. Chakraborty, learned counsel, by referring to a comparative statement of the petitioner and his juniors to the cadre of Assistant Engineer and above, as available at Annexure-3 to the affidavit-in-opposition filed by the authorities in the Inland Water Transport Department, Assam, has submitted that a perusal of the same would reveal that an anomaly exists with regard to the fixation of pay of the petitioner in the cadre of Assistant Engineer and above in comparison to that as authorized to his juniors in the cadres of Assistant Engineer and above and the same was called to be remedied by the respondents by stepping up of the pay of the petitioner, herein.

6. The petitioner has identified Sri A. K. Deka, Sri Ratan Singh, and Md. Samjidur Rahman, as his juniors, in the cadres of Assistant Engineer and above, for the purpose of demonstrating the anomaly in the fixation of his pay in the cadre of Assistant Engineer and above.

7. In the above premises; Mr. Chakraborty, learned counsel, has contended that appropriate directions is called upon to be issued by this Court upon the

respondent authorities to step-up the pay of the petitioner, herein, in comparison to that of the persons named-above, with effect from the date they were so promoted to the cadre of Assistant Engineer and thereafter, to re-fix the pay of the petitioner in the cadre of Assistant Engineer, Assistant Executive Engineer and Executive Engineer, and to release to him, the arrears of pay so occasioning. It was further prayed that on the fixation of his pay in comparison to that of his juniors, the pension and pensionary benefits being drawn by the petitioner, herein, would also be directed to be so revised.

8. Ms. Borah, learned standing counsel, Transport Department, Assam, has submitted that the grievance of the petitioner was forwarded to the Finance (Estt-A) Department, Government of Assam, for their approval. However, the Finance Department regretted its inability to the proposed equalization of pay of the petitioner as seniority of the persons so identified, could not be ascertained.

9. Mr. Borpujari, learned standing counsel, Finance Department, has contended that the petitioner being promoted to the post of Assistant Engineer by invoking a special provision in this connection as mandated in the provisions of the Rules holding the field in respect of persons in the cadre of Sub-Engineer, having a graduate qualification degree in Engineering; the petitioner's case for equalization and/or stepping-up of his pay would not be permissible in terms of the Office Memorandum, dated 10.09.1997, wherein, under Clause 2(iii), it has been provided that when a junior Government servant is promoted to a higher post, prior to his senior as per special rules and/or special orders, he cannot claim equalization of pay with his junior who in fact was senior to him in the

feeder cadre.

10. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

11. The facts as arising in the present proceeding, as noticed hereinabove, are not in dispute. The petitioner, admittedly, was junior to Sri A. K. Deka, Sri Ratan Singh, and Md. Samjidur Rahman in the cadre of Sub-Engineer. Thereafter, the petitioner having a graduate qualification degree in Engineering, as a special case, was promoted to the post of Assistant Engineer thereby superceding his said seniors in the cadre of Sub-Engineer on 08.04.1981. The said seniors to the petitioner in the cadre of Assistant Engineer were promoted to the cadre of Assistant Engineer, on 18.06.1984, 04.01.1982 and 30.05.1982, respectively. Accordingly, the persons senior to the petitioner in the cadre of Sub-Engineer having had a longer stay in the said cadre prior to their promotion to the cadre of Assistant Engineer and having drawn their pay and allowances at a higher stage in the cadre of Sub-Engineer; on their promotion to the cadre of Assistant Engineer, naturally, their pay came to be fixed at a higher stage than that was so drawn by the petitioner, herein, on his such promotion to the cadre of Assistant Engineer on 08.04.1981, and it is to be now examined as to whether on account of the said position, an anomaly had occasioned requiring the stepping-up pay of the petitioner with that of his juniors.

12. Mr. Chakraborty, learned counsel for the petitioner, in support of his submissions, has placed reliance on the decisions of the Hon'ble Supreme Court

in the case of ***Union of India & ors. v. P. Jagdish & ors.***, reported in ***(1997) 3 SCC 176*** and in the case of ***Calcutta Municipal Corporation & anr. v. Sujit Baran Mukherjee & ors.***, reported in ***(1997) 3 SCC 463***.

13. In the case of ***P. Jagdish & ors.***(supra), the Hon'ble Supreme Court with regard to the issue of stepping-up of the pay of a senior with that of the pay of his junior, had proceeded to frame the following questions:

“5. The question for consideration, therefore, would be:

(1) Whether the respondents who had not been posted against the identified posts carrying a special pay of Rs 35 per month can even claim fixation of their pay with Rs 35 per month in the cadre of Senior Clerk even on notional basis.

(2) Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks.”

14. Thereafter, on considering the issue as arising in the matter with regard to the said questions so framed, the following conclusions were drawn:

“6. So far as the first question is concerned, it is to be seen that a special pay of Rs 35 per month is attached to certain identified posts in the category of Senior Clerks and, therefore, only those who would be posted against those identified posts can claim the said special pay. The respondents who had already been promoted to the higher category of Head Clerks cannot claim that special pay even on notional basis merely because their juniors in the cadre of Senior Clerks were given that special pay on being posted against those identified posts carrying the special pay. It is an additional pay attached to the post and only any incumbent who occupies the post can claim the same. The claim of the respondents on this score, therefore, is not sustainable in law and the Tribunal has rightly rejected the said claim of the respondents.

7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs 35 per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to

remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of a Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% [sic Rs 35 as] special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it would be applicable only prospectively from the date of the promotion and the fixation of the scale, stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not be any order as to costs."

15. A perusal of the conclusions as drawn in the matter by the Hon'ble Supreme Court, would reveal that under the provisions of the Fundamental Rules, to remove the anomaly of a Government servant promoted or appointed to a higher post earlier and drawing a lower pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to a higher post, the principle of stepping-up of pay is

applied. Accordingly, it was held that in such cases; the pay of the senior officer in the higher post, is required to be stepped up to a figure equal to the pay as fixed for the junior officer in the hierarchy. The stepping up of pay was required to be done with effect from the date of promotion or appointment of the junior officer.

16. In the facts of the present case; the petitioner is admittedly junior to the persons who have been named hereinabove in the cadre of Sub-Engineer and was so promoted to the cadre of Assistant Engineer by reckoning his graduate degree qualification in Engineering ahead of his said seniors. Accordingly, the facts in the present case being distinguishable from that involved in the case of ***P. Jagdish & ors.***(supra); the ratio of the said decision in the case of ***P. Jagdish & ors.***(supra) would not further the case of the petitioner in the present proceeding.

17. Likewise, the Hon'ble Supreme Court in the case of ***Sujit Baran Mukherjee & ors.***(supra) also, involved facts similar to the one as involved in the case of ***P. Jagdish & ors.***(supra) and accordingly, the said decision would also not, in the considered view of this Court, advance the case of the petitioner, herein.

18. At this stage, reference is made to a decision of the Hon'ble Supreme Court in the case of ***Government of A. P. & ors. v. M. Pandurang & ors.,*** reported in ***(1996) 7 SCC 11***. In the said decision, the Hon'ble Supreme Court had held that if some juniors, by circumstances of the length of service, were

drawing higher scale of pay; parity cannot be claimed by the seniors on that basis. Such a conclusion was arrived at by the Hon'ble Supreme Court in the said case by referring to an earlier decision of the Hon'ble Supreme Court in the case of ***State of A.P. v. G. Sreenivasa Rao***, reported in **(1989) 2 SCC 290**. In the said case also, the Court had noted that one of the candidates involved, was drawing higher scale of pay due to the length of his service in the feeder cadre and accordingly, it would be a grant of special pay under Rule 22(a)(i) of the Fundamental Rules to the candidate in the higher promotion grade and that would not be a ground to grant parity of scale of pay to the seniors working in the cadre.

19. The observations on the issue of the Hon'ble Supreme Court in the above-noted case, being relevant, is extracted hereinbelow:

“6. The controversy raised in this case is covered by the decision of this Court in State of A.P. v. G. Sreenivasa Rao. Therein, this Court held that if some juniors, by the circumstance of the length of service, were drawing higher scale of pay, parity cannot be claimed by the seniors on that basis. Therefore, Article 39(A) has no application to such a situation. The same ratio applies to the facts in this case. As stated earlier, one of the juniors had been granted selection grade scale of pay, by necessary consequence, he would draw higher scale of pay, though he happened to be junior to others. Another candidate was drawing higher scale of pay due to length of service in the feeder cadre. It would be grant of special pay under Rule 22(a)(i) of the Fundamental Rules for the purpose of that candidate in the higher promotional post. That would not be a ground to grant parity of scale of pay to the seniors working in the cadre.”

20. Applying the observations of the decision of the Hon'ble Supreme Court in the case of ***M. Pandurang & ors.***(supra), to the facts of the present case; it is seen that the persons identified as junior to the petitioner and drawing higher scale of pay in the cadre of Assistant Engineer in comparison to the pay drawn by the petitioner, herein, having been so authorized the higher scale of pay on account of their longer length of service in the feeder cadre; the petitioner

would not be entitled to claim equalization of his pay and/or stepping-up of his pay with that of his said juniors in the cadre of Assistant Engineer, who admittedly were seniors to him in the feeder cadre of Sub-Engineer.

21. In view of the above conclusion and more particularly, in view of the decision of the Hon'ble Supreme Court in the case of ***M. Pandurang & ors.*** (supra); this Court is of the considered view that the contentions raised by the petitioner in the matter for the purpose of stepping-up of his pay, does not merit acceptance and accordingly, the writ petition is held to be devoid of any merit and consequently, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant