

GAHC010122182023



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

Case No. : WP(C)/3283/2023

JUNUMONI BHUYAN
D/O- SRI MAKHON BHUYAN, R/O- BAMUNPUKHRI, DEHINGIA GAON, P.O.
BAMUNPUKHRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT., DISPUR, GHY-06 (ASSAM)

2:THE COMMISSIONER AND SECRETARY
TO THE DEPTT. OF FINANCE
GOVT. OF ASSAM
GHY-06

3:DEPTT. OF SECONDARY EDUCATION
GOVT. OF ASSAM
REP. BY ITS DIRECTOR
KAHILIPARA
GUWAHATI

4:THE DEPUTY INSPECTOR OF SCHOOLS
JORHAT DISTRICT
JORHAT (ASSAM)

5:DIRECTORATE OF ELEMENTARY EDUCATION
GOVERNMENT OF ASSAM
REPRESENTED BY ITS DIRECTOR
KAHILIPARA
GUWAHATI-78101

Advocate for the Petitioner : MR. A M BARUAH

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
ORDER**

01.04.2024

Heard Mr. A.M. Baruah, learned counsel for the petitioner. Also heard Ms. D. Mushahary, learned Standing Counsel, Secondary Education Department and Mr. R. Borpujari, learned Standing Counsel, Finance Department for the respondent no.2.

2] This writ petition is filed by the petitioner being aggrieved that the benefits of financial up-gradation payable to the petitioner has not been granted as per the Assured Career Progression Scheme (ACPS) dated 25.05.2011. According to the petitioner, she has rendered 38 years of service in the post of Office Peon appointed under the Office of the Deputy Inspector of Schools, Jorhat. The petitioner was initially appointed on 02.02.1984 as an Office Peon and subsequently, was regularised as a Grade-IV employee with effect from 01.04.1985 and thereafter, continued her service till her superannuation on 30.04.2022. Learned counsel for the petitioner referring to the Scheme submits

that under the ACP Scheme of 2011, the benefits were to be given twice in the entire service period, first, after completion of 10 years of service and second, after completion of 24 years of service. Subsequently, the scheme was replaced by another scheme called the Modified Career Progression Scheme (MACP Scheme), 2017. The said scheme was brought into effect from 06.07.2017. The said Scheme was applicable to all regular State Government employees. As per the said scheme, after completion of 10 years an employee is entitled to one increment in the event no promotion is granted and after completion of 20 years 2 increments will be granted to that employee and after completion of 30 years 3 increments will be granted in case of no promotion. It is submitted by the learned counsel for the petitioner that the petitioner has completed more than 37 years as a regular Grade-IV employee (Office Peon) in the Office of the Deputy Inspector of Schools, Jorhat. She had not been granted a single promotion in her entire career and therefore, she is entitled to be granted the benefits as per the MACP Scheme. It is further submitted that the petitioner was granted one benefit in the year 2012 and allowed to draw financial up-gradation under the ACP Scheme of 2011. However, although the earlier scheme was replaced by the MACP Scheme of 2017, the benefit although accrued to the petitioner was not given by the Department under the said scheme.

3] Ms. D. Mushahary, learned Standing Counsel, Secondary Education

Department submits that she has not received any instructions and prays for further time to obtain the same.

4] Having heard the learned counsel for the parties and upon careful perusal of the writ petition, it is seen that the petitioner had filed representations before the Inspector of Schools, Jorhat as well as the Deputy Inspector of Schools, Jorhat, claiming the benefit of the MACP Scheme/ACP Scheme. However, those representations according to the writ petitioner have not been disposed of till date.

5] Under the ACP Scheme of 2011, the benefits of first financial application was to be granted after completion of 10 years and the second after completion of 24 years, if an employee does not get one regular promotion within first 10 years of regular service and/or 2 regular promotion within 24 years of regular service. According to the petitioner, she was granted the first financial up-gradation in the year 2012. Although she had rendered 37 years of regular service, the subsequent financial up-gradation either under the ACP Scheme of 2011 or MACP Scheme of 2017 was not granted. The relevant clauses of the MACP Scheme of 2017 are extracted below:

(B) Salient Features of the Scheme:

(i) MACP SCHEME would include grant of financial up-gradation three times in the entire service period viz. on completion of 10 years, 20 years and 30 years to those

employees who do not get one regular promotion within the first 10 years or two regular promotions/ACPS benefit within 20 years or three promotions/ACPS benefit within the 30 years of regular service.

(ii) The MACP SCHEME will provide only financial up-gradation and shall not entail any change in designation, place and nature of work and change in the seniority of the person concerned in the gradation list.

(iii) The financial up-gradation will involve grant of one increment in the PB of the employee without changing its GP. In case any employee is drawing the highest amount of the PB, he would be granted an increment and the PB for this purpose shall be deemed to have been extended to that extent.

(iv) The benefits under MACP should be granted on the following basis:-

Service length from date of joining	No of promotion/ACPS benefit/ MACP benefit availed	Entitled benefit that can be granted
10 years	A None B One	1 increment None
20 years	A None B One C Two	2 increments 1 increment None
30 years	A None B One C Two D Three	3 increments 2 increments 1 increment None

Note-1 : Date of effect for financial benefit shall be from 01.01.2017 as clarified in para (vii) below.

Note-2 : Service length will also include period of previous service as per Rule ix, x & xi.

....."

6] Further under Clause C (ii) the Screening Committee in the month of January every year is required to consider all the cases of Government servants who have completed 10 years of service/20 years of service/30 years of service in the previous calendar year. The list of such Government servants will be

prepared by the Head of the Departments in the month of December of the previous year and submitted to the Secretary for holding a meeting of the Screening Committee. The Committee will verify the length of service as on 1st of January of the year in which the meeting is held and will verify if there is any Departmental Proceeding/Criminal Case is contemplated or under process against the Government servants under consideration. It is also provided that the ACRs are not necessary for deciding the MACP Scheme benefits. Clause-IV provides that where the Government employees complete 10/20/30 years of service and have no Departmental Proceedings or criminal cases pending against them, they shall be shortlisted for the MACP Scheme.

7] Upon due consideration of the submissions made by the learned counsel for the petitioner and upon careful consideration of the pleadings including the relevant Schemes, it is seen that in her representations as well in the petition, it is stated that the petitioner has completed about 37 years of service and not a single promotion has been granted to her. She has only been granted the first the financial up-gradation. Under the MACP Scheme 2017, if she satisfies the norms, she would be entitled to two more financial up-gradations. The representations stated to have been filed before the Inspector of Schools, Jorhat and the Deputy Inspector of Schools, Jorhat have not been disposed of. The

learned Standing Counsel for the Education Department is also not in a position to appraise the status of the petitioner's claims before the Court Today.

8] Taking into account all these considerations, this Court is of the considered view that the matter need not be deferred for want of instructions on behalf of the Department. Accordingly, this Court considers it appropriate to dispose of the writ petition at this stage with a direction to the Secretary to the Government of Assam, School Education Department, Dispur to examine the claims of the petitioner, verify her claims and pass appropriate order in terms of the ACP Scheme of 2011 or MACP Scheme of 2017 as the case may be. The respondent authorities will call for all necessary papers from record relating to the writ petitioner and thereafter, pass necessary orders in respect of her claims for financial up-gradation. If the petitioner indeed was never promoted after rendering 37 years of regular service and if there are no criminal cases or Departmental Proceedings pending against the petitioner, then the petitioner shall be entitled to the balance 2 (two) financial up-gradations as per the MACP Scheme of 2017. The respondent authorities will examine this issue and pass appropriate speaking order in respect of the claims of the petitioner within a period of 60 (sixty) days from the date of receipt of a certified copy of this order. Any such speaking order that is passed, copies thereof shall be served on the writ petitioner. If the petitioner is found to be entitled to the financial up-

gradation then the same shall be released forthwith without further delay.

9] Accordingly, the writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant