

GAHC010155262020



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

Case No. : WP(C)/4716/2020

HEMANTA BARMAN
S/O LATE HANGSHA NATH BARMAN,
VILLAGE DAKHIN GAON, PO KAHILIPARA, PS DISPUR DIST KAMRUP M
ASSAM 781019
PRESENTLY SERVING AS SUPTD OF SERICULTURE, ABHAYAPURI, BIJNI
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM HANDLOOM, TEXTILES AND SERICULTURE DEPARTMENT,
ASSAM, DISPUR GUWAHATI 781006

2:THE DIRECTOR OF SERICULTURE
ASSAM
KHANAPARA
GUWAHATI 781022

3:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON
BELTOLA
GUWAHATI ASSAM

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
ASSAM DISPUR GUWAHATI 781036

5:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF SERICULTURE
KARBI ANGLONG AUTONOMOUS DISTRICT

6:THE ADDITIONAL DIRECTOR

SERICULTURE
KARBI ANGLONG
AUTONOMOUS DISTRICT DHIPHU

Advocate for the Petitioner : MR. R BORO

Advocate for the Respondent : SC, HANDLOOM AND TEXTILE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 24.06.2024

Heard Mr. A. Boruah, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel for the Handloom, Textile and Sericulture Department representing the respondents no. 1 & 2 and Mr. R. K. Talukdar, learned counsel appearing for the Accountant General, Assam representing the respondent no. 3; Mr. P. Naik, learned Standing Counsel for the Finance Department representing the respondent no. 4 as well as Ms. S. Kemprai, learned Standing Counsel appearing for the KAAC, representing the respondent no. 5 & 6.

2. The petitioner, by way of instituting the present proceedings has prayed for stepping up of his pay with that of his juniors in the cadre of Superintendent of Sericulture.

3. As projected in the writ petition, the petitioner was initially appointed

as Cocoon Marketing Inspector and he had joined his services on 07.08.1991. Thereafter, w.e.f. 02.07.2004, the petitioner was promoted to the post of Extension Officer, Sericulture and was posted at Hamreng. During his such posting at Hamreng, the case of the petitioner was considered for promotion to the next higher grade of Superintendent of Sericulture, vide an order dated 26.02.2016. The name of the petitioner figured at Serial no. 14 of the said list and he was on such promotion, posted as Superintendent of Sericulture, Abhayapuri, against an existing vacancy.

4. It is seen that in pursuance to the order of his promotion dated 26.02.2016, the Addl. Director of Sericulture, KAAC, had required the Joint Secretary, Sericulture, KAAC to release the petitioner from the services of the said Council, however, on account of the announcement of the elections to the State Legislative Assembly, 2016 and the imposition of the Model Code of Conduct, the petitioner could not be released by the Council authorities and accordingly, he could not avail his promotion. On conclusion of the elections, the authorities of the autonomous council, vide an order dated 06.05.2016, proceeded to release the petitioner from the services of the council to enable him to join against his promoted post. Accordingly, the petitioner joined against his promotional post on being released by the authorities of the said council on 12.05.2016.

5. It is seen that after the joining of the petitioner against his promotional post, the Government of Assam had notified the Revision of

Pay (ROP), 2017, revising the pay of its employee. The fitment benefits as now due to the petitioner on account of the Revision of Pay brought into operation by the provisions of the said ROP, 2017 was not authorized to him, inasmuch as, he had not completed his 3(three) months of service as of July, 2016. On account of the denial to the petitioner of one annual increment on account of the said fitment benefits, the pay of the petitioner came to be so fixed at a lower stage than that of his juniors in the cadre of 'Superintendent'.

6. It is to be noted that the juniors of the petitioner in the cadre of 'Superintendent' were also his juniors in the feeder cadre of 'Extension Officer'. The fixation at the lower stage of the pay scale coming into operation on account of the denial of the said fitment benefit of the petitioner had resulted in the pay of the petitioner to be suppressed even in his further promotional cadre i.e. the cadre of 'Assistant Director'. The petitioner accordingly has instituted the present proceedings, praying for stepping up of his pay to that of his juniors and for release of the consequential benefits as due to him.

7. On perusal of the materials brought on record and upon hearing the learned counsel for the parties in the matter, this Court finds that the anomaly with regard to the fixation of pay in respect of the petitioner on the coming into force of the provisions of the ROP, 2017 had so occasioned on account of the delayed joining by the petitioner against the promotional post. As noticed herein above, the petitioner was so promoted to the cadre

of Superintendent of Sericulture, vide an order dated 26.02.2016, but he could not join against his promotional post as he was not released by the KAAC. The petitioner, on being subsequently released by the KAAC authorities could join against his promotional post only on 12.05.2016 and accordingly, he having not completed the 3(three) months of service in the pay scale coming into operation, as of July, 2016, one additional increment as due to him on account of the fitment benefit was not extended to the petitioner.

8. In view of the said position, it is hereby directed that the Secretary to the Handloom & Textile, Sericulture Department would now take appropriate steps to give retrospective effect to the joining of the petitioner in the cadre of Superintendent of Sericulture, to the date the order of promotion i.e. 26.02.2016 and/or on a date when the juniors to the petitioner had joined the said services.

9. In view of the said position, the Secretary to the Government of Assam, Handloom & Textile, Sericulture Department is directed to issue order(s) giving retrospective effect to the joining of the petitioner against the promotional post of Superintendent of Sericulture. Such retrospective effect to the date of joining of the petitioner against the said post be so given w.e.f., the date of the notification dated 26.02.2016, promoting the petitioner to the cadre of the Superintendent of Sericulture and or, with effect from the date when persons junior to the petitioner, figuring in the said order had so assumed the charge of the promotional post.

10. On granting retrospective effect to the date of joining of the petitioner against the promotional post of Superintendent of Sericulture, his arrears of pay so occasioning shall be released to the petitioner. The date of joining of the petitioner against the promotional post now being given a retrospective effect, the petitioner would be given the fitment benefits in terms of the ROP, 2017.

11. The above steps being taken i.e., giving retrospective effect to the date of joining and also authorizing to him fitment benefits in terms of the ROP, 2017, the pay of the petitioner would be refixed as the Superintendent of Sericulture and the arrears so computed on account of the said benefits given to the petitioner shall be so released to the petitioner.

12. The pay of the petitioner in the cadre of Superintendent of Sericulture being revised, consequently, the pay of the petitioner in the cadre of Assistant Director, Sericulture be also revised and the arrears so working out on being computed be released to the petitioner.

13. The arrears of pay now accruing to the petitioner on account of the said revision of his pay in the cadre of Superintendent of Sericulture and the Assistant Director, Sericulture would be now computed and released to the petitioner within a period of 3(three) months from the date of receipt of a certified copy of this order.

14. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant