

GAHC010165432019



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

Case No. : WP(C)/5148/2019

NABAMALLIKA BORA
W/O DR. GANESH BORAH, LECTURER (SENIOR SCALE) CIVIL
ENGINEERING, PRINCE OF WALES INSTITUTE OF ENGINEERING AND
TECHNOLOGY, R/O JORHAT ENGINEERING COLLEGE ROAD, NEAR
GREEN PARK, GARMUR, JORHAT, DIST. JORHAT, ASSAM, PIN-785007

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006, DIST. KAMRUP (M), ASSAM

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION (TECHNICAL)
DEPTT. DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION (TECHNICAL)
DEPTT. DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM

4:THE SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION (TECHNICAL)
DEPTT. DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM

5:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION (TECHNICAL)
DEPTT. DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM

6:THE DIRECTOR OF TECHNICAL EDUCATION ASSAM
KAHILIPARA
GUWAHATI-781019
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. R SARMA
Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : 07.02.2024

ORDER

Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department, appearing on behalf of the respondents.

2. The petitioner by way of instituting the present petition, has raised a grievance with regard to the action/inaction on the part of the respondent authorities in not authorizing to her the pay and allowances of Lecturer(senior scale) w.e.f. 12.02.2010 and consequently, the pay and allowances of Lecturer(selection grade) w.e.f. 12.02.2015.

3. The petitioner was initially appointed as a lecturer in the Prince of Wales Institute of Engineering and Technology, Jorhat, on adhoc basis vide a

Notification, dated 05.05.1990. The petitioner, thereafter, continued in her services on adhoc basis in terms of the directions that came to be passed by the respondent authorities from time to time in the matter. The Government of Assam in the Department of Education, vide Notification, dated 21.02.2004, proceeded to regularize the services of the petitioner w.e.f. 12.02.2004, in terms of the Cabinet decision for regularization of the services of persons like the petitioner. The petitioner, thereafter, with due permission from the departmental authorities, proceeded to prosecute her Master of Engineering(ME) course and on completion of the said course, was awarded her said degree in the year 2010. The petitioner having completed 6 years of service as Lecturer w.e.f. 12.02.2004, presented a claim before the respondent authorities for placing her in Lecturer(senior scale) w.e.f. 12.02.2010. The respondent authorities processed the matter and thereafter, issued a Notification, dated 12.11.2017, placing the petitioner in Lecturer(senior scale) w.e.f. 29.07.2016. The petitioner being aggrieved, had approached the respondent authorities for her placement in the Lecturer(senior scale) w.e.f. 12.02.2010 and the Lecturer(selection grade) w.e.f. 12.02.2015. The entreaties as made by the petitioner having not been considered by the respondent authorities, the petitioner has instituted this writ petition praying for relief.

4. The Government of Assam vide Office Memorandum, dated 20.05.2004, adopted the recommendations of the AICTE pertaining to the applicable eligibility criteria for recruitment as Lecturer as well as for implementation of Career Advancement Scheme for Lecturers of Polytechnic of the State. The provisions of the Office Memorandum, dated 20.05.2004, are attracted to the case of the petitioner and the relevant portion as requisite for adjudication of

the issues arising in the matter, are extracted hereinbelow:

“F. Lecturer(senior scale)

A lecturer will be eligible for placement as Lecturer(senior scale) through a process of selection if he/she has

(i) completed 6 years of service after regular appointment as a Lecturer with relaxation of 2 years for those with Ph.D and one year for those with M.Phil/ME/M.Tech.

(ii) participated in the orientation course/induction training and one refresher course or industrial training of aggregate duration of 8 weeks, or has undertaken other appropriate continuing education or training programmes of comparable quality and duration as may be specified or approved by the AICTE. Those with Ph.D degree would be exempted from these course/training requirements.

G. Lecturer(selection scale)

A senior Lecturer(senior scale) who has a Master's degree and 5 years experience as Senior Lecturer(senior scale) and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer(selection grade) subject to the recommendation of the selection committee.

II. In case any relaxation is to be given from the aforementioned terms and conditions considering the facts and circumstances of any individual cases it would be done only with concurrence of the Personnel Department and Finance Department, Govt. of Assam.”

5. A perusal of the provisions of Clause F of the Office Memorandum, dated 20.05.2004, reflects that to be eligible for placement in the post of Lecturer(senior scale), a Lecturer in addition to having the requisite years of service, must have participated in one orientation course/induction training and further, should have also attended one refresher course or industrial training of aggregate duration of 8 weeks. An alternative has also been provided requiring such Lecturers to undergo other appropriate continuing education or training programmes of comparable quality and duration as may be specified or approved by the AICTE.

6. The petitioner in support of her claim to be placed in the post of Lecturer(senior scale) submits that she satisfies all the requirements as provided for in Clause F of the Office Memorandum, dated 20.05.2004, and in support of the contention that she also specifically fulfills the requirements of F(ii) of the said Office Memorandum, dated 20.05.2004, refers to the Annexures-8, 8A, 8B and 8C of the writ petition. On a query made by this Court as to which of the Annexures pertain to the first part and which pertains to the second part of Clause F(ii) of the Office Memorandum, dated 20.05.2004; Mr. Sarma, learned counsel for the petitioner, submits that Annexure 8A pertains to fulfillment of opening requirement of Clause F(ii) i.e. participation in one orientation course/ induction training and Annexures 8, 8B and 8C pertain to the second part of the requirement of Clause F(ii) i.e. requirement of undergoing one refresher course or industrial training of aggregate duration of 8 weeks or undertaking other appropriate continuing education or training programmes of comparable quality and duration as may be specified or approved by the AICTE.

7. The reliance as placed by the petitioner on the Annexures 8A, 8B and 8C have to be understood on the light of the provisions as spelt-out in Clause F(ii) of the said Office Memorandum, dated 20.05.2004.

8. On a perusal of the provisions of Clause F(ii) of the said Office Memorandum, dated 20.05.2004, it is seen that refresher course or industrial training has to be of an aggregate duration of 8 weeks. Even the other appropriate continuing education or training programmes has to be of comparable quality and duration as may be specified or approved by the AICTE.

9. It is to be understood that both the alternative criterias must be undertaken by a candidate for a period of at least 8 weeks. The certificates as available at Annexures 8, 8B and 8C do not go to show that the petitioner had pursued either a orientation course/induction training or had undertaken a refresher course or industrial training for a period of 8 weeks. Even a conjoint reading of 8, 8B and 8C do not indicate fulfillment of such qualification. The materials as brought on record demonstrates that the petitioner prior to 12.02.2010 had not undertaken the requisite refresher course/industrial training or any other appropriate continuing education or training for an aggregate period of 8 weeks. As such, the petitioner cannot be held to have fulfilled the criterias as spelt-out in Clause F(ii) of the said Office Memorandum, dated 20.05.2004.

10. At this stage; Mr. Sarma, learned counsel for the petitioner, refers to a judgment of a coordinate Bench of this Court, dated 21.01.2022, passed in WP(c)1933/2020 [Rajeev Sharma Tamuly v. State of Assam & 3 ors.] and contends that the said judgment having been passed in case of a similarly situated person; the decision squarely covers the case of the present petitioner.

11. This Court has perused the judgment referred to above and have found that the factual matrix of the said judgment is different from that is available in the case on hand. The petitioner in the case of Rajeev Sharma Tamuly(supra), had undertaken 2(two) four weeks training programmes and the same on being conjointly read; this Court had come to a conclusion that the petitioner therein, had satisfied the eligibility criteria as spelt-out under Clause F(ii) of the said

Office Memorandum, dated 20.05.2004. This Court further required the respondent authorities to undertake an exercise to ascertain as to whether the training programme as undertaken by the petitioner therein with ONGC Ltd., meets the standard required.

12. The petitioner in the present case, has not undertaken any such training course for a duration of 8 weeks. Further the refresher course or continuing education or training programmes that the petitioner has contended to have undertaken, in the view of this Court, does not meet the eligibility criterias as set-out in the provisions of Clause F(ii) of the said Office Memorandum, dated 20.05.2004. The respondent authorities have also disputed the claim of the petitioner of having fulfilled the requirement of eligibility criteria as mandated under Clause F(ii) of the said Office Memorandum, dated 20.05.2004.

13. In that view of the matter, this Court is of the considered view that the contentions raised by the petitioner in this writ petition for being granted with the scale of pay for the post of Lecturer(senior scale) w.e.f. 12.02.2010 and the scale of pay for the post of Lecturer(selection grade) w.e.f. 12.02.2015, does not merit acceptance. The writ petition accordingly stands dismissed. However, there shall be no order as to costs.

14. However, given the nature of claims raised by the petitioner in this writ petition and the documents produced not being satisfactory, liberty is reserved to the petitioner to approach the respondent authorities by way of producing documents that may be available with her(in addition to those produced before

this Court) indicating satisfaction of the eligibility criterias as spelt-out in Clause F(ii) of the Office Memorandum, dated 20.05.2004.

In the event, the petitioner approaches the respondent authorities along with such documents which establishes fulfillment of the provisions of Clause F(ii) of the Office Memorandum, dated 20.05.2004, the respondent authorities shall give the same due consideration and the dismissal of this writ petition will not come in the way of such consideration being made. It is to be noted that the fulfillment of the criterias as spelt-out in Clause F(ii) of the said Office Memorandum, dated 20.05.2004, by the petitioner, must be on a date prior to 12.02.2010.

JUDGE

Comparing Assistant