

GAHC010172122023



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

Case No. : WP(C)/4498/2023

DR. PANKAJA DAS
W/O- DR. BIRAJ KUMAR DAS,
RESIDENT OF HOUSE NO. 29,
M.G. PATH, CHRISTIAN BASTI,
GUWAHATI, IN THE DISTRICT OF KAMRUP(M),
PIN- 781006, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
HIGHER EDUCATION (TECHNICAL) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE (ESTT.) DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR
TECHNICAL EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI- 781019.

4:THE PRINCIPAL
ASSAM ENGINEERING COLLEGE
GUWAHATI
PIN- 781013.

5:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON
BELTOLA

GUWAHATI
PIN- 781029.

6:DR. NABAMALLIKA BARUAH
DEPARTMENT OF MATHEMATICS

ASSAM ENGINEERING COLLEGE

GUWAHATI
PIN- 781013

Advocate for the Petitioner : MR. U K NAIR, J KOTOKY,MS P DEB,MS. M DEV,MS D MAHANTA,MR. M P SARMA

Advocate for the Respondent : SC, HIGHER EDU, SC, AG,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 19.08.2024

Heard Ms. M. Dev, learned counsel for the petitioner. Also heard Mr. D. Upamainya, learned standing counsel, Higher Education Department for the respondent Nos. 1 and 3; Ms. R. M. Baruah, learned standing counsel, Finance Department for the respondent No.2 and Ms. Tinslung, learned counsel appearing on behalf of Mr. R. K. Talukdar, learned standing counsel for the respondent No.5/Accountant General, Assam.

2. The petitioner on the recommendation of the Assam Public Service Commission was appointed as Lecturer in AES-II in the Mathematics subject along with 8(eight) others by a Notification dated 13th of February, 1991 issued by the

Deputy Secretary to the Govt. of Assam, Education Department. By the said Notification, the petitioner was posted at the Assam Engineering College. Thereafter, the petitioner while in service acquired her Ph.D degree in Mathematics in the year 2001. The petitioner was accordingly granted 2(two) advance increments after acquiring the Ph.D degree. The petitioner was also granted the Selection Grade in the pay scale of Rs.12000-420-18300/- w.e.f 14.02.2002. Thereafter, after completion of 5(five) years on receiving the selection grade pay scale the petitioner was granted the Super Selection Grade w.e.f 14.02.2007.

3. The Secretary to the Govt. of Assam, Education (H) Department issued a draft gradation list by a Notification dated 20.05.2004. In the said list, the name of the petitioner appears at Sl. No.232 and her date of joining is indicated as 14.02.1991 and the name of the proforma respondent No.5 appears at Sl. No.235 and her date of joining is indicated as 25.02.1991.

4. It is the case of the petitioner that the proforma respondent No.6 was also appointed as Lecturer in AES-II by the same Notification dated 13th of February, 1991 and her name appeared at Sl. No.9. The proforma respondent No.6 also acquired her Ph.D degree in the year 2008 and she was allowed to draw 3(three) advance increments. It is the case of the petitioner that as she acquired her Ph.D degree in the year 2001, the pay scale of the petitioner should be higher than that of the proforma respondent No.6, particularly, when the proforma respondent No.6 obtained her Ph.D degree only in the year 2008. However, the proforma respondent No.6 is getting higher pay scale than the petitioner as on date. The petitioner raises a claim of disparity between her and the proforma respondent No.6 and referring to the Office Memorandum dated 7th of July, 2014, issued by

the Commissioner and Secretary to the Govt. of Assam, Higher Education Department submits that Clause-8 provides that a teacher who had completed their Ph.D degree while in service shall be entitled to get 3(three) non-compounded increments if such Ph.D degree is in a relevant discipline of the Discipline of Employment and has been awarded by University complying with the process prescribed by the UGC for enrollment course work, evolution etc. The Office Memorandum dated 07.07.2014 also refers to some discrepancy that had arisen between the teachers and the librarians getting incentives between 01.01.1996 and 31.12.2005 and 01.01.2006 onwards. By referring to discrepancy, the Office Memorandum provides that the Senior Teacher/ Librarian who are eligible to get incentives for acquiring the Ph.D /M.Phil degree before 31.12.2005 and are getting a lesser pay than the Junior Teachers who had obtained their Ph.D /M.Phil on or after 01.01.2006 the Government has decided to equalize the pay of Senior Teacher/Librarian. The relevant portion of the Office Memorandum dated 7th of July, 2014 is reflected herein below:

“Clause 8: Teachers who completed their Ph.D. degree while in service shall be entitled to get 3(three) non compounded increments if such Ph.D. is in a relevant discipline of the discipline of employment and has been awarded by a university complying with the process prescribed by the UGC for enrolment course work, evaluation etc.

Accordingly, incentive for Ph.D./M.Phil Degree is allowed to the concerned teachers and librarians as per guideline of the O.M. issued from time to time.

But, there are some discrepancies which have arisen among the teachers and librarians getting incentive during 01-01-1996 to 31-12-2005 and 01-01-2006 onwards. The senior teachers/librarians who were eligible to get incentive for acquiring Ph.D./M. Phil Degree before 31-12-2005 are getting less pay then the junior teachers who are eligible to get incentive for Ph.D./M.Phil on or after 01-01-2006.

Therefore, the Govt. of Assam has decided to equalize the pay of senior teacher/librarian by stepping up the pay of senior teacher/librarian so as to make the pay equal to the junior when the service conditions in all other respects are similar.”

5. The petitioner therefore relying on the Office Memorandum dated 07.07.2014

claims that she is entitled to equalization of pay w.e.f 01.07.2008 i.e., the date from which the other teacher/proforma respondent No.6 was given higher scale of pay by including three advance increments.

6. The petitioner therefore raised her demand for equalization of monthly salary by filing representations from the year 2015 onwards and the last representation being 23rd of December, 2020 before the Commissioner to the Govt. of Assam, Higher Education Department.

7. The further case of the petitioner is that the Office of the Accountant General (A&E) Assam through the Senior Accounts Officer wrote to the Joint Secretary to the Govt. of Assam Higher Education (Technical) Department on the subject of equalization of pay in respect of the petitioner. The Communication dated 27.05.2022 is also reproduced as under:

*“OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A&E) ASSAM
MAIDAMGAON, BELTOLA GUWAHATI 29.*

Memo no.GE -05/EDN/CORRES/2021-22/ 32

Dated 27/05/2022

To,

*The Joint Secretary to the Govt. of Assam
Higher Education (Technical) Deptt. Dispur, Guwahati-06*

*Subject: Regarding Equalization of Pay in respect of Dr. Pankaja Das Associate Prof.
Deptt. of Mathematics Assam Engineering College Guwahati-13.*

Ref: Your Letter No. ATE.97/2019/52 Dated: 24/03/2022

Sir,

With reference to your above referred letter on the subject cited above, I am to state that Dr. Pankaja Das Associate Prof. Deptt. Of Mathematics Assam Engineering College Guwahati-13 was drawing less pay due to drawal of less advance increment for

acquiring Ph.d degree under PRE REVISED PAY (Rs 10000-325-15200) and increment was at the rate Rs 325/- (Fixed) at the time that was allowed vide Govt. Notification No.H134/2002/33 dated 19/02/2002.

Further, Dr. Nabamallika Baruah Associate Prof. Deptt. Of Mathematics Assam Engineering College Guwahati-13 got her Advance Increment under ROP 2010 revised pay band 4. (Rs 37400-67000+GP9000/-) and the Increment rate was 3% at that time vide Govt. Order No. (I). B(2) H400/99/Pt.II/40 Dated 28.04.2010 and (II). ATE226/2011/54 dated 02.11.2016.

Thus, the difference of Pay of Dr. Pankaja Das Associate Prof. Deptt. Of Mathematics Assam Engineering College Guwahati with Dr. Nabamallika Baruah Associate Prof. Deptt. Of Mathematics Assam Engineering College Guwahati is observed.

In this connection, a comparative statement in Annexure I is enclosed for further necessary action at your end.

Enclosed: ANNEXURE I

*Yours Faithfully
Sr. Accountant Officer."*

8. However, the despite the representation made by the petitioner as well as the Communication dated 27.05.2022 reflecting the Observations of the Office of the Accountant General with regard to the equalization of pay in respect of the petitioner, the respondents have done nothing till date and therefore, the petitioner having no other option has approached this Court by way of the present writ petition.

9. The respondent No.3/Director of Technical Education, Assam has filed counter affidavit and in the affidavit, it is stated that the increments junior to the petitioner were automatically merged with the higher pay scale due to the promotion of the petitioner to selection grade with higher scale of pay. It is also stated that pursuant to the Govt. of Assam vide letter dated 24.03.2022, regarding equalization of pay in respect of the petitioner the Office of the Accountant General by letter dated 27.05.2022 has clarified that the petitioner was drawing less pay due to drawal of less advance increment for acquiring Ph.D degree under Pre-revised pay.

10. This Court has considered the submissions made by the learned counsel for the parties.

11. What is noticed in the present writ petition after perusal of the records available before this Court is that despite the Communication dated 27.05.2022, written by the Office of the Accountant General and addressed to the Joint Secretary to the Govt. of Assam, Higher Education (Technical) Department with regard to the equalization of pay in respect of the petitioner no steps have been taken by the respondents till date. This Court has also noticed that the petitioner has been making representations from the year 2015 up to the year 2020. However, such representations has also been kept in cold storage till today. The Office Memorandum dated 07.07.2014 clearly provides the guidelines for incentives for Ph.D/M.Phil and other higher qualifications and equalization of pay in respect of the employees of the Higher Education, Assam. Despite such Office Memorandum being issued, the claim of the petitioner has not been considered by the respondents till date.

12. Under such circumstances, this writ petition is disposed of directing the respondent No.1/Commissioner and Secretary, Higher Education (Technical) Department to forthwith take steps to redress the grievance of the petitioner in terms of the Communication dated 27.05.2022 written by the Senior Accounts Officer and addressed to the Joint Secretary Govt. of Assam, Higher Education (Technical) Department by further taking into account the Office Memorandum dated 07.07.2014, issued by the Commissioner and Secretary to the Govt. of Assam, Higher Education Department. Considering that the petitioner would be

retiring in the month of November, 2024 the respondent No.1 is directed to complete the process for consideration of the case of the petitioner within a period of 1(one) month from the date of receipt of a copy of the order of this Court. The petitioner is also permitted to furnish a certified true copy of this order to the respondent No.1.

13. With the above observations and directions, this Writ Petition is disposed of.

JUDGE

Comparing Assistant