

GAHC010211872021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
Case No. : WP(C)/7109/2021

L IBOCHOW SINGHA
S/O. BINODE SINGHA,
RETD. SENIOR METER READER,
HAFLONG ELECTRICAL SUB-DIVISION,
APDCL, R/O. 94, HAFLONG,
DIMA HASAO, NORTH BAGETAR,
LUNGKHOK, NORTH CACHAR HILLS,
DIMA HASAO, ASSAM, PIN-788820.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMM. AND SECY.,
TO THE GOVT. OF ASSAM,
DEPTT. OF POWER, DISPUR,
GUWAHATI, ASSAM, PIN-781006.
2:THE ASSAM POWER DISTRIBUTION COMPANY LTD.
TO BE REP. ITS CHAIRPERSON
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001.

3:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD.
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001.

4:THE CHIEF GENERAL MANAGER
(AUDIT)

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001
5:THE CHIEF GENERAL MANAGER
(D AND S)
ASSAM POWER DISTRIBUTION COMPANY LTD.
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001.

6:THE CHIEF GENERAL MANAGER
(F AND A)
PENSION
ASSAM POWER DISTRIBUTION COMPANY LTD.
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001.

7:THE CHIEF GENERAL MANAGER
(HRA)
ASSAM POWER DISTRIBUTION COMPANY LTD.
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001.

8:THE ASSTT. GENERAL MANAGER
HAFLONG
ELECT. DIVISION
ASSAM POWER DISTRIBUTION COMPANY LTD.
(CAR)
HAFLONG
DIMA HASAO
ASSAM

Linked Case : **WP(C)/6901/2021**

KHAGENDRA ARDAO

S/O- LATE UMAKANTA ARDAO RETIRED SENIOR METER READER
HAFLONG ELECTRICAL SUB-DIVISION
APDCL
R/O BOILDURA
NORTH CACHAR HILLS
DIMA HASAO
ASSAM-788819
VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF POWER
DISPUR
GUWAHATI
ASSAM-781006

2:THE ASSAM POWER DISTRIBUTION COMPANY LIMITED
REPRESENTED BY ITS CHAIRPERSON
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI
ASSAM
-781001

3:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001

4:THE CHIEF GENERAL MANAGER (AUDIT)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001

5:THE CHIEF GENERAL MANAGER (D AND S)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001

6:THE CHIEF GENERAL MANAGER (F AND A)
PENSION
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI-781001

7:THE CHIEF GENERAL MANAGER
(HRA)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001

8:THE ASSISTANT GENERAL MANAGER
HAFLONG ELEC. DIVISION
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR)
HAFLONG
DIMA HASAO
ASSAM

Linked Case : **WP(C)/128/2022**

SURENDRA NATH DIHINGIA
S/O- BONGSHIDHAR DIHINGIA
RETD. SENIOR METER READER
JORHAT ELECTRICAL
SUB- DIVISION
APDCL
R/O- JADU NATH BARUAH PATH
TARAJAN GAYAN GAON
JORHAT EAST
DIST- JORHAT
ASSAM
PIN-785001

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF POWER
DISPUR
GUWAHATI
ASSAM
PIN-781006

2:THE ASSAM POWER DISTRIBUTION COMPANY LIMITED
TO BE REP. BY ITS CHAIRPERSON
BIJULEE BHAWAN

PALTAN BAZAR

GUWAHATI
ASSAM
PIN-781001

3:THJE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001

4:THE CHIEF GENERAL MANAGER (AUDIT)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001

5:THE CHIEF GENERAL MANAGER
(D AND S)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001

6:THE CHIEF GENERAL MANAGER
(F AND A)
PENSION
ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001

7:THE CHIEF GENERAL MANAGER
(HRA) ASSAM POWER DISTRIBUTION COMPANY LIMITED
(CAR) BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI
ASSAM
PIN-781001

8:THE ASSISTANT GENERAL MANAGER
JORHAT
ELECT. DIVISION -I
(UAR)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
DIST- JORHAT ASSAM

Advocate for the Petitioners : Mr. A K Dutta, Mr. B Purkayastha
Advocate for the Respondents : Mr. S P Sarma, SC, APDCL

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing & judgment : 05.11.2024

J U D G M E N T & O R D E R (O R A L)

All the 3 (three) writ petitions are being disposed of by this common order as the issue involved are similar.

[2.] Heard Mr. B Purkayashtha for the petitioners and Mr. S P Sarma, learned Standing Counsel, APDCL for respondent Nos. 2 to 8.

[3.] Brief facts of the case is that all the petitioners were appointed as Meter Reader under the erstwhile Assam State Electricity Board, now known as the Assam Power Distribution Company Limited (APDCL). The petitioner in WP(C) No. 7109/2021 was appointed on 16.12.1980. He was promoted as

Senior Meter Reader on 02.03.2016 and subsequently retired from service on 30.09.2019.

[4.] The petitioner in WP(C) No. 6901/2021 was also appointed as Meter Reader on 16.12.1980 and promoted as Senior Meter Reader on 24.11.2014. Subsequently, he retired from service on 31.03.2019.

[5.] The petitioner in WP(C) No. 128/2022 too was appointed as Meter Reader on 16.12.1980 and promoted as Senior Meter Reader on 24.11.2014. Subsequently, he retired from service on 31.12.2017.

[6.] It is the case of the petitioners that the respondent establishment adopts and follows the Revision of Pay Rules of the State Government issued from time to time by way of publishing a separate notification in this regard. Despite their appointment way back on 16.12.1980, the petitioners did not get a chance of promotion for a long period of time and therefore, when the respondents came up with the O.M dated 30.12.2006 introducing financial upgradation scheme for its employees w.e.f. 01.01.2007, all the petitioners were given the benefit of financial upgradation w.e.f. 01.01.2007. Thereafter, the petitioner in WP(C) No. 7109/2021 was promoted as Senior Meter Reader on 02.03.2016 while the petitioners in the other two writ petitions were both promoted as such on 24.11.2014.

[7.] After their retirement on superannuation, the pension to be received by them was revised on the ground of wrong fixation of their pay. According to the petitioners, upon such re-fixation of their pay, the amount of excess drawal was deducted from the pensionary benefits due to them. Aggrieved with the same, they submitted their respective representation before the authority concerned which however was rejected. That is how they are now before this Court.

[8.] Mr. B Purkayastha, learned counsel submits that the petitioners have been given promotion to the post of Senior Meter Reader after rendering more than 33 to 35 years of service. Therefore, when the financial upgradation scheme was notified vide O.M dated 30.12.2006, they were given two financial upgradation w.e.f. 01.01.2007. Thereafter, the respondent authorities vide O.M dated 12.12.2017 notified the ASEB and its Successor Companies, Revised Pay Rules- 2017 (ROP 2017), which came into effect from 01.04.2016 as an interim measure. Clause 12 of the said Office Memorandum speaks of Modified Assured Career Progression Scheme (MACPS) which provides for grant of financial upgradation benefit for three times in the entire service period upon completion of 10 years, 20 years and 30 years of service to those employees who do not get one regular promotion within the first ten years or two regular

promotion/ACPS benefits within two years or three promotion/ACPS benefit within 30 years of regular service. It was provided that a separate order in this regard would follow.

[9.] Thereafter, the respondent authorities, in order to implement the MACPS, notified O.M dated 04.05.2018. Clause 10 of the O.M provides as follows:-

“10 The financial benefit of the scheme shall be given with effect from 01.01.2018 only, although the services rendered by the employee before 01.01.2018 and promotions/ACPS benefits availed before 01.01.2018 shall be taken into account for deciding and determining the extent of benefit under MACPS. For example an employee who has joined regular service on 1995 and his case has been considered in 2016, the service for the purpose of MACPS shall be counted from 1995 and accordingly he will be entitled for one promotion in 2006 and another in 2016. However, the first benefit under MACPS will in this case start from 01.01.2018 only and not from earlier.”

[10.] Mr. B Purkayastha, learned counsel submits that since the MACPS provides for financial upgradation for three times in the entire service period on completion of 10 years, 20 years and 30 years, as the petitioners were promoted only at the very fag end of their career in the year 2014-2016, they

are entitled to be given the benefit of the financial upgradation in terms of the MACPS. The said Scheme came into effect from 01.01.2018 and the petitioners having all served more than 30 years before they were promoted, they should be given their 3rd financial upgradation as provided by the MACPS and their pension emoluments be accordingly modified.

[11.] Mr. S P Sarma, learned counsel for the respondent APDCL, on the other hand, submits that the petitioners were given benefit of 1st and 2nd financial upgradation w.e.f. 01.01.2007 without recasting their pay w.e.f. 01.04.1997 and therefore, the same was required to be rectified and accordingly a communication in this regard was made to the respective Controlling Officers of the petitioners to make rectification in their service book. On recasting their pay, it was found out that there was excess drawal of pay which then had to be adjusted from their pension emoluments. Therefore, the petitioners cannot be said to have any legitimate grievance in this regard. Insofar as the claim to get the 3rd financial upgradation by the petitioners is concerned, the same will not be admissible in view of the fact that they had already earned their respective promotion in the year 2014-2016 and moreover, the MACP Scheme came into effect only from 01.01.2018 and by which time, the petitioners had already earned two financial upgradation and one promotion to the next higher rank. As

such, the petitioners would be getting four upgradation if their prayer is to be allowed and which is not in terms of Assured Career Progression Scheme or the MACPS. He, thus, submits that the writ petitions are without merit and they should be dismissed.

[12.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[13.] As regards, the claim for interference with the adjustment being made upon the re-fixation/re-casting of the pay of the petitioners, it may be seen that according to the respondents when the 1st and 2nd financial upgradation benefit was given to them w.e.f. 01.01.2007, proper fixation of their pay was not done leading to excess drawal of pay. Accordingly, the respondent authority concerned intimated the Controller Officers concerned under whom the petitioners were working to make the rectification in their respective service books. However, the same was not done. It is seen that the re-fixation of pay was done by calculating the pay scale benefit as per completion of the prescribed years of service. Under the circumstance and in the absence of any serious dispute raised by the petitioners, the re-fixation of pay of the petitioners appears to be in order. It is also a settled law that matters relating to pay fixation should be left to those who are experts in the field as the Courts lack

the expertise and the resource.

[14.] In respect of the claim of the petitioners to be given the 3rd financial upgradation of their pay, it may be seen that the 1st financial upgradation was introduced vide O.M dated 30.12.2006 which was applied w.e.f. 01.01.2007. Under the said scheme, only those employees who did not already get two regular promotions or two similar benefits of higher pay scales as on the date of implementation of the scheme were eligible to avail the benefit of the financial upgradation. By that time, the petitioners admittedly had not earned any promotions and therefore, they were given two financial upgradation w.e.f. 01.01.2007. The MACPS was introduced vide O.M dated 12.12.2017 and it was subsequently implemented by the issuance of O.M dated 04.05.2018, which further provided that the financial benefit of the scheme shall be given w.e.f. 01.01.2018. The MACPS no doubt provides for three financial upgradation in the entire service period on completion of 10 years, 20 years and 30 years. However, such upgradation are meant for those employees who do not get one regular promotion within the the first 10 years of their appointment or two regular promotions/ACPS benefit within 20 years or three promotions/ACPS benefit within the 30 years of regular service. In the present case, as already noted herein above, the petitioners were given two upgradation w.e.f.

01.01.2007 and thereafter, they were promoted to the Senior Meter Reader post on 24.11.2014 in respect of the petitioners in WP(C) No. 6901/2021 & WP(C) No. 128/2022. The petitioner in WP(C) No. 7109/2021 was promoted on 02.06.2016. Therefore, the petitioners in all have availed for one regular promotion and two financial upgradation benefits. Under the circumstance, it only appears that they already having availed three benefits whether by promotion or by financial upgradation and therefore, they are not eligible to get the three financial upgradation as contemplated by the MACPS. Therefore, no relief can be granted as claimed by the petitioners.

[15.] Under the facts and circumstances, I find no merit in the writ petitions and accordingly they are dismissed. No costs.

JUDGE

Comparing Assistant