

GAHC010212842021



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

Case No. : WP(C)/6984/2021

PUSHPENDU CHAKRABARTY
S/O- LATE PROMODE RANJAN CHAKRABORTY, R/O- 1ST LINK ROAD,
LANE, 10, HOUSE NO 5, BRAJA BHAWAN, SILCHAR, CACHAR, ASSAM-
788006

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR, GUWAHATI,
ASSAM-781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM-781019

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
ASSAM-788001

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
SILCHAR
ASSAM-788003

5:THE DEPUTY INSPECTOR OF SCHOOLS
SILCHAR
CACHAR
ASSAM

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
NARSINGPUR
DIST- CACHAR
ASSAM

7:THE ACCOUNTANT GENERAL
ASSAM(A AND E)
ASSAM MAIDAMGAON
BELTOLA
GUWAHATI
ASSAM-781029

8:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
DISPUR
GUWAHATI
ASSAM-781006

9:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF PENSION AND PUBLIC GRIEVANCES
DISPUR
GUWAHATI
ASSAM-78100

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/5150/2020

PUSHPENDU CHAKRABARTY
S/O- LT. PROMODE RANJAN CHAKRABORTY
R/O- 1ST LINK ROAD
LANE 10
H.NO. 5
BRAJA BHAWAN
SILCHAR
CACHAR
ASSAM
PIN- 788006

VERSUS

STATE OF ASSAM AND 8 ORS.
REP. BY THE COMM. AND SECY.
TO THE GOVT. OF ASSAM
DEPTT. OF ELEMENTARY EDUCATION
DISPUR
GHY ASSAM
PIN- 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
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GHY
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PIN- 781019

3:THE DY. COMMISSIONER
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ASSAM
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DEPTT. OF PENSION AND PUBLIC GRIEVANCE
DISPUR
GHY
ASSAM
PIN- 781006

Advocate for : MR. A K DUTTA
Advocate for : GA
ASSAM appearing for STATE OF ASSAM AND 8 ORS.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 06.02.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. N. J. Khataniar, learned standing counsel, Elementary Education and Mr. R. Borpujari, learned standing counsel, Finance department.

2. These two writ petitions are taken up for disposal together as the issues involved in these two writ petitions are similar. Both the writ petitions are filed by the same petitioner. The writ petitioner was appointed as Sub-Inspector of Schools on 05.11.1985 in the department of Elementary Education and he joined in the said post on 29.11.1985. Thereafter he was promoted to the post of BEEO after completion of more than 24 years of continuous service as SI of Schools. He was regularized by Notification dated 04.03.2016 with effect from the date of joining on promotion. Petitioner superannuated on 31.08.2013.

3. WP(C) 5150/2020 is filed by the petitioner claiming the benefit of ACPs which was introduced by the Government of Assam by Notification dated 25.05.2011. According to the petitioner, having completed 24 years of regular service, as he was not given any promotion prior to completion of 24 years of regular service, he is entitled to two benefits under the ACPs scheme for

financial up-gradation with effect from the date of its Notification dated 25.05.2011. Being aggrieved, by non consideration of his claims he has approached this court praying for direction to the respondents to grant him benefits of financial up-gradation under ACPs scheme.

4. In WP(C) 6984/2021, the petitioner has assailed the order dated 17th July, 2021 issued by the Director of Elementary Education, Assam, rejecting his claim for financial benefits under ACPs schme.

5. The learned counsel for the petitioner submits that in terms of the scheme, petitioner having completed more than 24 years of service on the date of the notification dated 25.05.2011, by which the ACPs scheme was introduced, as per the scheme itself, he is entitled to two financial up-gradations. It is submitted that under the scheme an employee is entitled to first up-gradation after completion of 10 years of regular service and second financial up-gradation after completion of 24 years of regular service. These financial up-gradations are to be allowed under this scheme if the petitioner is not granted any promotion or any financial up-gradation within the time frame specified.

6. The learned counsel for the petitioner submits that till the time the petitioner completed 24 years of regular service, he was not promoted or given any financial benefits. He, however was promoted to the post of BEEEO on 12.05.2010 which is after completion of 24 years of regular service. Therefore, in terms of the provisions of the scheme according to the petitioner he is entitled to two up-gradations. Denial of these benefits as prayed for is contrary to the scheme itself, therefore he has approached this Court seeking appropriate writ, direction or order. In the subsequent writ petition, namely WP(C)/6984/2021, his claim which was rejected by the order dated 17.07.2021,

issued by the Director of Elementary Education, Assam, is put to challenge.

7. The education department has filed their counter affidavit disputing the claims of the petitioner, holding that since the petitioner was granted a promotion in the year 2010 to the post of BEEO, he does not fulfill the criteria under the ACPs scheme, which was brought in effect from 25.05.2011 and therefore, he is not entitled to the benefits as prayed for.

8. The respondent counsel relying on the affidavit filed submits that since this benefit is meant for employees who has never received any promotion or any financial benefits on the date of the implementation of the scheme, the petitioner is not entitled to the benefits under the scheme, as he had been given the benefit of promotion to the post of BEEO on 12.05.2010. Therefore there is no infirmity in the impugned order dated 17.07.2021 issued by the Department of Elementary Education, rejecting the claims of the petitioner.

9. The finance department has also filed an affidavit in WP(C) 5150/2020, rejecting the claims of the petitioner. It is stated in the affidavit that the petitioner was initially appointed as a Headmaster of Bagbahar ME School in the district of Cachar vide order dated 30.11.1971 and he was getting a graduate scale of pay w.e.f 01.07.1977. Thereafter, he was appointed as Sub-Inspector of Schools under the Deputy Inspector of Schools, Silchar, vide order dated 05.11.1985. He was granted continuity of service and pay protection. By order dated 12.05.2010, he was promoted to the post of BEEO.

10. Under such circumstances, since the petitioner has been given the promotional benefit in the post of Sub-Inspector of Schools by allowing appropriate pay protection as per FR-22 (C) and subsequent promotion to the post of BEEO by notification dated 12.05.2010, the benefits under the ACPs

scheme is not available to the petitioner. It is submitted that this benefit under the ACPs scheme is available only to those employees, who completed 24 years of regular service without any promotion or any financial up-gradation. The scheme is available to the employees, who are given one up-gradation after completion of 10 years, and the second up-gradation, which is to be allowed after completion of 24 years of regular service if the employee was not given the benefit of promotion or financial up-gradation. It is only under these two circumstances that the benefits under the ACPS can be granted. It is submitted that since the petitioner had been given the benefit of pay protection in a Higher scale of pay as well as subsequent promotion to the post of BEE0, the claims of the petitioner for further financial up-gradation under the ACPs scheme is not acceptable. Therefore, his claims are bereft of any merits.

11. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. It is seen from the pleadings that by Notification No. FPC.109/2010/42 dated 25.05.2011, the ACPs scheme was introduced by the Department of Finance, Government of Assam. The scheme provides two financial up-gradations under the ACPs scheme for employees under the Government of Assam. These two financial up-gradations are to be provided under the scheme as under:-

“First benefit after completion of 10 years of regular service and second benefit after completion of 24 years of regular service if they do not get regular promotion within the first 10 years of regular service or two regular promotions within 24 years of regular service”.

12. It is categorically stated in the scheme that it is only to provide financial up-gradation and it is not a regular promotion nor does it require creation of new posts for the purpose. Under the scheme, a screening committee was to be

constituted in each department in the pattern of departmental promotion committee as per the service Rules and Orders to consider the case for grant of financial up-gradations under the ACPs scheme. In case there are no service Rules or Orders available, Standard Screening committee for various appointing authorities shall be constituted. The screening committee shall consist of a Chairman and two members. To make the ACPs scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee within a month from the date of issue of this Notification to consider cases maturing up to 30th June, 2011 for grant of benefits under the ACPs scheme. The date of effect of the scheme as provided under the scheme is 01.01.2011. Clause 4 in the scheme lays down the procedure by which the financial up-gradations are to be conferred under the scheme. A careful perusal of the sub-clauses, under Clause 4 reveal that the benefit of the first financial up-gradations under the scheme will be allowed after 10 years of regular service, if the employee concerned has not been given any regular promotion. Second financial up-gradations will be allowed after 24 years of regular service where the employee concerned has also been not considered for promotion or any financial benefits. In that event any employee who completes 24 years of regular service without any promotion or any financial benefits, they shall be given two financial up-gradations simultaneously. In case of employees who have rendered 10 or more years of regular service, but less than 24 years of regular service without single promotion on the date of introduction of the scheme i.e. 01.01.2011, the first financial up-gradation should be granted immediately. The surplus years above 10 years shall be counted towards next 14 years span for allowing the second financial up-gradation. Clause XV of the scheme lays down as under:-

“XV. Only 2 financial up-gradations will be admissible if no regular promotion is

given to the employee during the prescribed period i.e. 24 years.

- i) If an employee has got one regular promotion already, he shall be qualified for the 2nd financial upgradation on completion of 24 years of regular service from the date of initial appointment;*
- ii) If an employee has got two regular promotions already no financial upgradation will be allowed.*
- iii) In case of isolated posts where there is no scope of promotion at all, two financial upgradations shall be allowed on completion of 10 and 24 years of regular service”.*

13. Clause 5 of the scheme defines 'Regular Service' which shall commence from the date of joining a post in the direct entry Grade on a regular basis, either on direct recruitment basis or on absorption or re-employment basis.

14. Having minutely examined the scheme and the clauses there under, what is evident is that the scheme is for financial up-gradation conferring two financial up-gradation for employees having completed regular service of 24 years. The first up-gradation is to be conferred upon completion of 10 years of regular service, second, on completion of 24 years of regular service. The other requirement for being considered for financial up-gradation is that the employee concerned, should not have been conferred with any promotion or financial up-gradation during this period of time.

15. In the facts of the present case, while it is contended by the learned counsel for the petitioner that he has completed 24 four years of service and no promotion or financial up-gradation has been granted, but from the averments made in the counter affidavit and which position is also not disputed by the learned counsel for the petitioner, it is seen that while it may be correct that the petitioner was not conferred any promotion for financial benefits from the date

of his initial entry into the cadre as SI, w.e.f 05.11.1985 as he was not conferred with any promotion or financial benefits for 24 years if calculated from the date of his initial appointments, however, he was granted promotion on 12.05.2010 to the post of BEE0 and in which post the petitioner rendered his service till his superannuation. As such on the effective date as referred to under the ACPs, which is 25.05.2011, although strictly speaking the petitioner was not granted any promotion prior to completion of his 24 years, but he was considered and promoted to the post of BEE0 on 12.05.2010, which is prior to implementation of the ACPs scheme. Therefore, to say that the petitioner has not been granted any benefit or any promotion and therefore, he is entitled to two financial up-gradations, as per the ACPs scheme cannot be accepted. Such contention by the petitioner is therefore rejected. However, the fact remains that in terms of the scheme, an employee is entitled to two financial up-gradations, the first, upon completion of 10 years and the second upon completion of 24 years of regular service if there is no benefit or financial up-gradation granted to the employee. The scheme proposes two financial up-gradations in the absence of promotion, and the period of service required is 24 years of regular service. There is no dispute that the petitioner had already completed 24 years of service on the date when the ACPs scheme has been implemented with effect from 25.05.2011. As such, although the petitioner had been given the benefit of promotion to the post of BEE0 on 12.05.2010 and thereby he may not have been entitled to the first financial up-gradation as contemplated under the ACPs scheme, however, his claim for the second financial up-gradation ought to have been considered, since on the effective date, when the ACPs scheme was brought into service, which is 25.05.2011, petitioner had already rendered 24 years of regular service with only one

promotion.

16. Under such circumstances, this court has arrived at a conclusion that in terms of the ACPs scheme brought into effect on 25.05.2011, and having satisfied the criteria prescribed under the scheme of completion of 24 years of regular service, and also keeping in view the benefits conferred under the scheme, which is two financial up-gradations, as the petitioner had already been promoted prior to the effective date under the scheme, he would still be entitled to one financial up-gradation under this scheme. Therefore, the respondent authorities are required to pass appropriate orders allowing the financial up-gradation to the petitioner and confer the effective financial benefits, which will add up to his pensionary and other retirement benefits.

17. The writ petitions, therefore, is allowed to the extent indicated above.

18. The impugned order of the Director of Elementary Education dated 17.07.2021, rejecting the claim of the petitioner for financial benefits under the ACPs is therefore set aside. The department will now proceed to allow the one financial benefit i.e. the second financial up-gradation/benefit to the petitioner and quantify the amount, which will reflect in his retiral pensionary benefits.

19. The entire exercise be completed within a period of 60 (sixty) days from the date of receipt of a certificate copy of this order.

20. Writ petition is accordingly disposed of in terms of the above. No order as to cost.

21. Interim orders, if any, stands merged. Any pending I/As stands dismissed.

JUDGE

Comparing Assistant