

GAHC010227232014



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

Case No. : WP(C)/5425/2014

DINESH CH. KALITA and 4 ORS
S/O- SRI THANURAM KALITA, R/O VILL. and P.O.- PACHARI, DIST.-
KAMRUP R, ASSAM.

2: NABIN CH. DAS
S/O- LT. ROHIT CH. DAS
R/O VILL.- GUIYA
P.O.- SONESWAR
DIST.- KAMRUP R
ASSAM.

3: AJIT KR. SARMAH
S/O- SRI HARENDRA NATH SARMA
R/O VILL.- JAJIKONA
P.O.- BAIHATA
DIST.- KAMRUP R
ASSAM.

4: BINOD KR. DAS
S/O- LT. NABIN CH. DAS
R/O VILL. and P.O.- DADARA
P.S.- HAJO
DIST.- KAMRUP R
ASSAM.

5: RAJIB BARUAH
S/O- LT. RATI RAM BARUAH
R/O- HAJO
DIST.- KAMRUP R
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS

REP. BY THE SECY. TO THE GOVT. OF ASSAM, EDUCATION DEPTT.,
DISPUR, GHY- 6.

2:THE DY. SECY. TO THE GOVT. OF ASSAM
FINANCE PAY RESEARCH UNIT DEPTT.

3:THE DIST. ELEMENTARY EDUCATION OFFICER
KAMRUP
AMINGAON
GHY- 31 TO THE PETITION

Advocate for the Petitioner : MS.P MAZUMDAR

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 09.01.2024

Heard Ms. N. M. Deka, learned counsel for the petitioner. Also heard Mr. P. K. Bora, learned Standing Counsel for the Elementary Education and Mr. A. Chaliha, learned Standing Counsel for the Finance Department.

2. The petitioners by way of instituting the present proceedings have raised a grievance against the denial to them of the "Advance Increment" on account of acquiring the B.Ed degree while in service.

3. The petitioners were all appointed as Graduate Science Teachers in ME Schools during the years 1992-94. Thereafter, on the basis of the approval granted by the Sub-Divisional Advisory Board, the petitioners

came to be regularized in their service. The petitioners thereafter, with due permission pursued their B.Ed course and on clearing the examinations involved were awarded their B.Ed degree. On being awarded their respective B.Ed degrees, the petitioners approached the authorities praying for being authorized an advance increment for acquiring higher qualification. The same having not been granted, the present proceedings were initiated.

4. The petitioners, who are Graduate Science Teachers working in ME Schools had acquired their B.Ed degree in the year 2010, 2001, 1999, 2005 and 2008 respectively. The B.Ed degree as acquired by the petitioner was so acquired during the period when it was not a mandatory qualification prescribed for recruitment against the post of Graduate Science Teachers in ME Schools. As such, the said qualification is a higher qualification.

5. The Finance (Establishment-A) Department vide Office Memorandum dated 07.03.1998, prescribed that the advance increment for acquiring higher qualification shall be sanctioned w.e.f. the date of next annual increment, irrespective of the date of acquiring such higher qualification. The Finance (Pay Research Unit) Department thereafter, vide notification dated 30.08.2004 extended the benefit of one Advance Increment to Graduate Headmaster/Head Mistress of ME School for acquiring B.Ed degree. The petitioners also had approached the authorities requesting for authorizing to them Advance Increment for acquiring B.Ed degree as was

extended to Headmaster/Head Mistress of ME Schools.

6. The stand of the Elementary Education Department is that the Finance Department vide notification dated 10.11.2004, having extended the benefit of Advance Increment to only Headmasters/Head Mistress of ME Schools, the petitioners being only Graduate Science Teachers they are not entitled to such benefit.

7. On the basis of the above discussion, the issue arising in the present proceedings is as to whether the petitioners would be entitled to receive Advance Increment on acquiring B.Ed qualification.

8. The Revision of Pay Rules, 1998 mandated that Advance Increment for acquisition of higher qualification having direct link with the actual performance of the duties attached to the post held is to continue. The Assistant Teachers in Secondary Schools were being authorized Advance Increment prior to 2012 inasmuch as the Rules holding the field then did not mandate possession of B.Ed degree as a compulsory qualification for recruitment. The Assam Secondary Education (provincialization) Rules, 2003 came to be amended in the year 2012, and B.Ed qualification was introduced as a compulsory qualification for recruitment as Assistant Teachers in a Secondary School. On the B.Ed qualification being prescribed as a compulsory qualification, the respondent authorities discontinued the grant of Advance Increment for acquiring the B.Ed degree by such category of teachers.

9. The above position as existing in the Secondary Schools would reflect that it is only upon acquiring a higher qualification not mandated under the Rules to be a compulsory qualification for recruitment against the post, an Advance Increment becomes due. In the case of ME School Teachers, the Recruitment Rules holding the field during the period the petitioners had acquired their respective B.Ed degrees, graduation was not mandated as a requisite qualification. The Graduate qualification was mandated only for the purpose of recruitment against the post of Science Teacher and the Graduate Science Teachers were authorized the scale of pay as applicable to Graduate Teachers in Secondary Schools.

10. The post of Headmaster/Headmistress were being held by under graduates inasmuch as at that relevant point of time Graduation was not prescribed as one of the qualifications required for the purpose of holding the said post and accordingly a notification was mandated to be issued to extend the benefit of Advance Increment to such Headmaster/Headmistress of ME Schools who being graduates, had also acquired their B.Ed degree. However, the case of the petitioners stands on an altogether different position inasmuch as for recruitment as Graduate Science Teachers in ME Schools, only a Graduate in Science could be considered. As such, the acquisition by such Graduate Teacher of a B.Ed degree after joining his services must be deemed to be acquisition of a higher qualification and maintaining parity with the Graduate Teachers of Secondary Schools who had acquired such B.Ed degree prior to 2012, the Graduate Science Teachers of ME Schools also would be entitled to the

Advance Increment for acquiring the B.Ed degree.

11. The petitioners having acquired their B.Ed degree in the years 2010, 2001, 1999, 2005 and 2008 respectively, would be entitled to be authorized an advance increment in terms of the Office Memorandum dated 07.03.1998. The said eligibility of the petitioners is so determined on the premises that on the dates the petitioners acquired their B.Ed qualification, the B.Ed qualification was not mandated as a compulsory qualification for recruitment as a Graduate Science Teacher in a provincialized ME School in the State.

12. In view of the above conclusions, it is held that the petitioners being Graduate Science Teachers are entitled to be authorized an Advance Increment for acquiring the higher qualification of B.Ed degree, which has a direct link with the actual performance of the duties attached to the posts held by the petitioners.

13. In view of the conclusions as reached herein above, the petitioners are required to approach the Director of Elementary Education Department, Assam by way of filing individual representations enclosing thereto the copies of their B.Ed Certificates along with a certified copy of this order.

14. The Director of Elementary Education Department, Assam on receipt

of such representations along with a certified copy of this order shall examine as to whether the petitioners have acquired the degree from a recognized University and on such degree having been found so acquired from a recognized University shall issue orders authorizing to the petitioners advanced increments retrospectively by following the procedure as mandated in the Office Memorandum dated 07.03.1998, reckoning the date on which the petitioners have acquired their B.Ed degrees.

15. On such authorization of the advanced increments of the petitioners with retrospective effect, the Director of Elementary Education Department, Assam shall compute the arrears of the pay due to the petitioners on account of the same and release the amounts due to the petitioners.

16. The exercise now required to be carried out in terms of the directions passed hereinabove by the Director of Elementary Education Department, Assam, shall be so carried out within a period of 90 days from receipt of representations along with a certified copy of this order from each of the petitioners.

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

JUDGE

Comparing Assistant