

GAHC010263792017



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

Case No. : WP(C)/7727/2017

DWIJENDRA NATH BARMAN
JUNIOR ADMINISTRATIVE ASSISTANT, OFFICE OF DEAN, FVSC, ASSAM
AGRICULTURAL UNIVERSITY, KHANAPARA, DIST. KAMRUPM, ASSAM,
PIN-781022

VERSUS

ASSAM AGRICULTURAL UNIVERSITY and 4 ORS.
REP. BY THE REGISTRAR, JORHAT, PIN-785013

2:THE VICE-CHANCELLOR
ASSAM AGRICULTURAL UNIVERSITY
JORHAT
PIN-785013

3:THE BOARD OF MANAGEMENT
REP. BY ITS CHAIRMAN
ASSAM AGRICULTURAL UNIVERSITY
JORHAT
PIN-785013

4:THE COMPTROLLER
ASSAM AGRICULTURAL UNIVERSITY
JORHAT
PIN-785013

5:THE REGISTRAR
ASSAM AGRICULTURAL UNIVERSITY
JORHAT
PIN-78501

Advocate for the Petitioner : MR. S. Nath

Advocate for the Respondent : Mr. P. Kataki, SC, A A U

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

Date : 22-01-2024

Heard Mr. S. Nath, learned counsel for the petitioner. Also heard Mr. P. Kataki, learned standing counsel, Assam Agricultural University.

2. The petitioner, by way of instituting the present proceedings presented a challenge to an order, dated 23.10.2017, issued by the Registrar, Assam Agricultural University by which the pay parity order issued in his favor on 12.01.2015 was revoked and directions issued for recovery of the access amount so paid to the petitioner.

3. The petitioner was initially engaged as a Section Assistant (W/C) on a consolidated pay vide an order dated 24.06.1985. The petitioner continued in his services as a Section Assistant (w/c) and was authorized a scale of pay along with grant of annual increments. The petitioner on being recommended by the selection committee so constituted, came to be appointed vide order dated 11.02.1999 as a Typist in the scale of pay of Rs. 1185/-2395/- pm. It is to be noted here that the scale of pay as authorized to a Section Assistant (w/c) and to a Typist is one and the same.

4. The authorities of the Assam Agricultural University on consideration

of the matter and noticing that the scales of pay drawn by the petitioner as a Section Assistant (w/c) and as a Typist were the same, proceeded to fix the pay scale of the petitioner against the post of typist w.e.f. the date of his joining therein i.e. 16.02.1999 at the stage of Rs. 1785/-. His next date of increment was also fixed as 01.05.1999. The fixation of pay of the petitioner at the stage of Rs. 1785/- as of 16.02.1999 was the stage at which the petitioner was drawing his pay and allowances as on 15.02.1999 as a Section Assistant (w/c) and the date of increment was also so fixed reckoning the next date of increment of the petitioner as a Section Assistant (w/c). The authorities of the University proceeded to regularize the services of work-charged/contingency workers working in the Assam Agricultural University including those working as Section Assistant. Persons similarly situated like the petitioner and also junior to him as Section Assistant (w/c) came to be regularized in their services. However, the said benefits were not extended to the petitioner for the period of his service as Section Assistant (w/c).

5. The petitioner, thereafter, raised grievances in this connection and accordingly, vide order dated 07.02.2013, the services of the petitioner as Section Assistant (w/c) in the Directorate of Physical Plant, AAU, Khanapara, came to be regularized. The period of service regularized in respect of the petitioner is w.e.f. 01.05.1985 to 15.02.1999. The respondent authorities arrived at a decision for grant of scale promotion to officials and employees of Assam Agricultural University" and accordingly, the "Assam Agricultural University Officers and Employees Scale Promotion on merit Rules, 2000" (for short Rules of 2000) came to be formulated.

6. In terms of the said Rule of 2000, the scale promotion envisages change of the scale of pay authorized to an officer or employee from the scale of pay authorized to him to the immediate next higher scale of pay as provided for in the Schedule-1 to the said Rules of 2000. The said Rules of 2000 mandate that on scale promotion being effected in case of an employee to the next higher scale, his initial pay shall be fixed at the same stage if there happens to be a similar stage, and, if there is no similar stage, pay will be fixed at the stage next below in the higher scale and the difference of pay shall be treated as personal pay to be merged in the next increment.

7. The petitioner, in terms of the provisions of the said Rules submitted his applications in the manner required and was under the legitimate expectation that the Assessment Committee would also consider his case for such scale promotion, inasmuch as, the petitioner till the relevant point of time had not been favored with any promotion.

8. The recommendations of the Assessment Committee dated 09.06.2006, were accepted by the competent authority of the Assam Agricultural University and thereafter, an order dated 10.08.2006 was issued effecting such scale promotion in respect of the persons, whose names figure in the list annexed to the order dated 10.08.2006. Although, persons working as Section Assistant (w/c), including persons junior to the petitioner as Section Assistant were favored with the scale promotion w.e.f. 01.01.1999, such benefit was not extended to the petitioner and accordingly, he had submitted appeals for rectification of the discrimination meted out to

him.

9. The prayers as made by the petitioner was considered by the Assessment Committee in its meeting held on 06.02.2014 and did not recommend the case of the petitioner for scale promotion, but, required him to apply for equalization of pay with that of persons junior to him as Section Assistant, who had been granted scale w.e.f. 01.01.1999. The petitioner as advised by the Assessment Committee proceeded to submit an application for the equalization of his pay with that of one of his junior Sunit Kr. Borah, Section Assistant. The competent authority of the University on consideration of the matter approved such equalization and vide order dated 12.01.2015, the Registrar, Assam Agricultural University equalised the pay of the petitioner with that of the said Sunit Kr. Bora, Section Assistant and fixed the pay of the petitioner at the stage of Rs. 16,150/- with grade pay of Rs. 4300/- w.e.f. 01.07.2014. It is to be noticed that grade pay of Rs. 4300/- as authorized to the petitioner w.e.f. 01.07.2014 is the grade pay becoming available to similarly situated incumbents who were granted scale promotion w.e.f. 01.01.1999.

10. The petitioner was thereafter, vide order dated 14.10.2015, promoted as Junior Administrative Assistant (JAA) in the scale of pay of Rs. 5200-20200/- with grade pay of Rs. 3200/-. The petitioner vide his representation dated 24.03.2017, being aggrieved by the authorization of grade pay of Rs. 3200/- to him approached before the Registrar, Assam Agricultural University praying for consideration for grant of scale promotion w.e.f. 01.01.1999 inasmuch as inspite of his promotion as JAA, he has not been able to enjoy

the benefits of pay flowing there from.

11. It is to be noted here that the petitioner by virtue of his promotion as JAA was placed in the scale of pay of Rs. 5200-20200/- with the grade pay of Rs. 3300/-, but, the petitioner was already on account of equalization of his pay authorized the grade pay of Rs. 4300/- w.e.f. 01.07.2014.

12. The respondent authorities, thereafter, vide order dated 23.10.2017, basing on certain objections from the Comptroller, proceeded to review the equalization of pay as effected in the case of the petitioner and on such consideration, proceeded to revoke the order dated 12.01.2015, by which, pay of the petitioner was equalized with that of his junior in the rank of Section Assistant. It was further directed that the excess amount as drawn by the petitioner on account of grant of such pay parity would be recovered from his salary/pensionary benefits. The said order also requires for a review of pay of the petitioner w.e.f. 01.07.2014 as Typist and the fixation made in his case on promotion as JAA and to fix the same as per the University rules.

13. The said order dated 23.10.2017, was passed on the premises that the equalization as ordered in the case of the petitioner with that of his junior Sunit Kr. Bora, Section Assistant was not permissible inasmuch as both the petitioner and Sunit Kr. Bora were working at that relevant point of time in two different grades. It is the order dated 23.10.2017, that is under challenge before this proceeding. The petitioner has also prayed for grant to him a scale promotion w.e.f. 01.01.1999 with the scale of pay of Rs. 3130-6600/- to Rs. 3370-6670/- w.e.f. 01.01.1999. The petitioner, during the

pendency of the present proceedings has retired from his services on reaching the age of superannuation w.e.f. 31.12.2017.

14. The grievance of the petitioner in the present proceedings, relates to the denial to him of the scale promotion in terms of the said Rules of 2000, this Court is required to examine as to whether the petitioner was entitled for a scale promotion in terms of the said Rules of 2000. The petitioner was initially appointed as a Section Assistant (w/c) w.e.f. 24.06.1985 and he continued in such capacity till his appointment on regular basis on selection as typist in the University vide order dated 11.02.1999. The petitioner had joined his services as a Typist w.e.f. 16.02.1999. The petitioner, accordingly, having been found to be serving in a similar post with similar scale of pay as that of Section Assistant was granted fixation of his pay as Typist w.e.f. 16.02.1999, reckoning the pay that he drew as on 15.02.1999 as a Section Assistant (w/c) and accordingly, his pay was fixed at the stage of Rs. 1785/- w.e.f. 16.02.1999.

15. The respondent authorities also maintained the continuity of the services of the petitioner as Typist by reckoning the services rendered by him as a Section Assistant by fixing his next date of increment to fall on 01.05.1999. The services of the petitioner as an Section Assistant w.e.f. 01.05.1985 to 15.02.1999 was duly regularized and he for all intent and purposes upon such regularization of his services is to be held to be a regular employee in the services of the University w.e.f. 01.05.1985.

16. In terms of the provisions of the said Rules of 2000, the petitioner not

having been granted any promotion within the period of 8 years of his services, which now has to be reckoned w.e.f. 01.05.1985, became eligible for grant of the scale promotion as brought in force vide the said Rules of 2000. It is to be noted that the scale promotion on merit scheme only envisages that placement of an employee in the next higher scale of pay than that what he was so drawing at the relevant point of time. The scale promotion is a In-situ promotion and does not involve assumption of higher responsibility and, or, any change of designation. The said scheme was so introduced to redress the stagnation of employees in the service of the University. The petitioner in terms of the provisions of the said Rules of 2000 was entitled to have his case considered for such promotion to the next higher scale of pay. It is to be mentioned here that the petitioner, at the relevant point of time was drawing his emoluments in the scale of pay of Rs. 3130-6600/- and in the event he was granted the scale promotion, he would have been placed in the scale of pay of Rs. 3370-6600/-.

17. The Assessment Committee as constituted for considering the cases of the employees for the University for scale promotion had insofar as it concerns persons who had earlier worked as work-charge/contingency basis decided that such scale promotion would be so granted only w.e.f. 01.01.1999 and such employees, even if they have completed their 8 years of residency in a particular scale of pay/posts would not be considered for such scale promotion from a date prior to 01.01.1999. Accordingly, the petitioner would be eligible for the scale promotion from 01.01.1999 and not from a date prior thereto, although he had completed 8 years of services prior to 01.01.1999.

18. The case of the petitioner not being considered for grant for scale promotion to him approached the respondent authorities praying that he be also extended such benefits. Accordingly, the case of the petitioner again came to be placed before the Assessment Committee in its meeting held on 06.02.2014, the Assessment Committee did not recommend the case of the petitioner for the scale promotion, but, advised him to apply for equalization of his scale of pay. The petitioner, accordingly, in terms of the advice given to him by the Assessment Committee applied for the equalization of his pay and the authorities of the University upon consideration of the matter vide order dated 12.01.2015, equalized the pay of the petitioner with that of one Sunit Kr. Bora, Section Assistant. On equalization of the pay of the petitioner, his pay w.e.f. 01.07.2014 came to be fixed at the stage of Rs. 16,150/- and he was authorized the grade pay of Rs. 4300/-. The petitioner was thereafter promoted to the cadre of Typist to that of JAA vide an order dated 14.10.2015, however, on such promotion, the petitioner was to be authorized a scale of pay of Rs. 5200-20200/- with grade pay of Rs. 3300/-.

19. It is to be noted that the petitioner was already authorized his grade pay of Rs. 4300/- p.m. w.e.f. 01.07.2014 and on account of the said promotion as effected in this case vide order dated 14.10.2000, the petitioner would now be eligible only to Rs. 3300/- as his grade pay. Being aggrieved, the petitioner approached the authorities vide order dated 24.03.2017 and accordingly, the impugned order came to be issued.

20. The reasoning as contained in the order dated 24.03.2017 that the

equalization of the pay of the petitioner while working as a Typist in comparison to a employee junior to him, but working as a Section Assistant could not have been done merits acceptance inasmuch as the pay parity cannot be considered between incumbents working in two different cadres, however, the said benefits of equalization of pay was not the one which was given to the petitioner on his demand, but, has occasioned basing on the advice rendered in the matter by the Assessment Committee and was granted by the authorities of the University to the petitioner.

21. The petitioner being in services as a Section Assistant as on 01.01.1999 and other Section Assistants working as on 01.01.1999, even persons junior to the petitioner were all granted promotion w.e.f. 01.01.1999 and there exists no material on record to demonstrate that the petitioner as on 01.01.1999 was not entitled to be granted the said scale promotion w.e.f. 01.01.1999. The subsequent appointment of the petitioner as Typist was on a regular basis and the same could not have wiped out the claim of the petitioner for reckoning his services w.e.f. 01.05.1985 to 15.02.1999 as a Section Assistant inasmuch as the said period was also regularized and the pay of the petitioner as a Typist was so fixed by reckoning his previous services as a Section Assistant (w/c). The petitioner is accordingly held to be entitled for the scale promotion w.e.f. 01.01.1995. In that view of the matter, the petitioner is entitled for the consideration of his case for scale promotion as of 01.01.1999 from the scale of Rs. 3130-6600 to 3370-6600/- and the denial to him of such scale promotion is clearly arbitrary and discriminatory.

22. Accordingly, the order dated 23.10.2017, stands interfered with and the

University authorities are directed to consider the case of the petitioner for scale promotion in accordance with the provisions of Rules of 2000 and to grant to him such scale promotion from the scale of Rs. 3130-6600/- to 3370-6600/- w.e.f. 01.01.1999 with all consequential benefits.

23. On being granted the said scale promotion as indicated herein above, the petitioner would be eligible to the revisions of pay as occasioning in the higher scale of pay and his pay be regulated accordingly.

24. On appointment as a Junior Administrative Assistant (JAA) vide order dated 14.10.2015, the pay of the petitioner in the promotional post be so fixed reckoning the pay as now would be drawn by the petitioner on account of the scale promotion directed to be granted to him w.e.f. 01.01.1999. The pay of the petitioner on being fixed against the post of Typist as of 16.02.1999, the petitioner would be entitled to the revision of pay occasioning as regards the scale of pay authorized to him.

25. The arrears of pay that would now be available to the petitioner on account of the fixation as required to be made herein above shall be so computed and released to the petitioner. The scale promotion as directed to be granted to the petitioner w.e.f. 01.01.1999 and the consequential fixation of pay against the post of 16.02.1999 being now required to be made reckoning the said scale promotion, the pension and pensionary benefits would also call for a revision and the same be computed and released to the petitioner. The arrears of pay as well as of pension and pensionary benefits be released to the petitioner within 3(three) months from the date of receipt

of a certified copy of this order.

26. The petitioner is required to submit a certified copy of this order along with a forwarding to the Registrar, Assam Agricultural University for taking the matter forward.

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

JUDGE

Comparing Assistant