

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 1122/2003**

% **8th March, 2017**

N.R. RADHA Petitioner

Through: None.

versus

ASSAM GOVT. MARKETING CORPORATION LTD. & ANR.
..... Respondents

Through: Mr. Rana Ranjit Singh and Mr. Vivek
Kumar Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for grant of revised pay scale of Rs.4120-90-4480-120-5200-175-5500-EB-175-6600-250-8100-325-9725 with effect from January, 1996. The present writ petition seeking revised pay scale from January, 1996 has been filed in January, 2003.

2. The case of the petitioner is that the respondent no. 1/Assam Government Marketing Corporation Limited/employer vide circular dated 11.6.2001 accepted the recommendations of the Assam Pay Commission,

1998, for grant of higher pay scales and accordingly, the petitioner prays for being granted higher pay scales.

3. Respondent no. 1/employer has filed its counter affidavit wherein it is stated that the relevant rule applicable is Rule 52 of the Staff Regulations, and that no doubt the Board of respondent no. 1/employer in its meeting dated 22.12.1998 observed that employees of respondent no. 1/employer shall be paid the pay scale of Assam Pay Commission 1998, however, the same was subject to availability of funds. Rule 52 of Chapter IV of the Staff Regulations of the respondent no. 1/employer reads as under:-

“An employee shall be entitled to the pay of his post plus allowances as may be decided by the Board from time to time. The title to pay and allowances and increments and the conditions regulating the payment thereof will be governed by Regulations as laid down herein and as modified from time to time.”

4. Respondent no. 1/employer in its counter affidavit has further stated that the respondent no.1/employer could not pay the higher pay scales, inasmuch as, the Board meeting dated 22.12.1998 gave benefit of higher pay scales subject to availability of funds, and that the respondent no. 1/employer has no funds available for payment of enhanced salaries. In para 6 of the counter affidavit of the respondent no. 1/employer it is stated that respondent no. 1/employer has to generate his own funds for payment of

salaries, allowances, etc to its employees and in the absence of funds, respondent no. 1/employer in fact has not even been able to pay the old scale salary to its employees for the last fourteen months. Accordingly, respondent no. 1/employer has contended that the petitioner is not entitled to any higher pay scale as per the pay scale of Assam Pay Commission, 1998.

5. In view of the above facts and discussion, and since petitioner could have been granted higher pay scale only if there were available funds with the respondent no. 1/employer, and which was the pre-condition as per the Minutes of Meeting of the Board of respondent no. 1/employer dated 22.12.1998 for payment of pay scales as per Assam Pay Commission 1998, accordingly, petitioner cannot be granted the relief of higher pay scale because higher pay scales have not been paid to any of the employees of respondent no. 1/employer by the respondent no. 1/employer on account of unavailability of funds.

6. In view of the above discussion, there is no merit/legal right of the petitioner to seek the higher pay scale by means of this writ petition.

7. The writ petition is accordingly dismissed.

MARCH 08, 2017

AK

VALMIKI J. MEHTA, J