
(2016) 01 GAU CK 0015
In the Gauhati High Court
Case No : WP(C) No. 2927 of 2014.

Assam Diploma Engineers Service	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 GauLJ 70 : (2016) 3 GauLR 102 : (2016) 4 GauLT 1056 : (2016) 5 NEJ 543

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. B. Banerjee and Mr. D. N. Bhattacharya, Advocates, for the Appellant; Ms. A. Verma, Mr. J. I. Borbhuiya and Dr. B. Ahmed, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Ujjal Bhuyan, J. :- Heard Mr. D. N. Bhattacharya, learned counsel for the petitioner, Ms. A. Verma, learned Standing Counsel, Finance Department, Mr. J.I. Borbhuiya, learned Standing Counsel, Public Health Engineering Department and Dr. B. Ahmed, learned Standing Counsel, Irrigation Department.

2. Petitioner in this case is an association of Diploma Engineers serving in different Departments under the Govt. of Assam, called Assam Diploma Engineers Service Association (petitioner Association hereafter). It is stated that petitioner Association is recognised by the Govt. of Assam and espouses the cause of Diploma Engineers.

3. By filing this petition under Article 226 of the Constitution of India, petitioner Association seeks quashing of the decision of the Finance Department dated 09.10.2013 and for a direction to the respondents to implement the report of the Pay Anomaly Committee dated 30.09.2010 by upward revision in the pay-scale of Junior Engineers (Diploma Engineers) from Pay Band-2 to Pay Band-3 with grade pay of Rs.4200.00. However, such relief is sought for in respect of Junior

Engineers (Diploma Engineers) serving in Public Works Department, Irrigation, Water Resources and Public Health Engineering Departments.

4. Case of the petitioner Association is that initially pay-scale of Subordinate Engineer Grade-I was revised on 23.11.1978. It is stated that from the pay-scale of Rs.350-750, it was revised to Rs.400-20-500(EB)-25-750(EB)-30-900 with effect from 02.05.1978. However, Pay Commissions constituted by the Govt. of Assam thereafter did not consider corresponding revision of the aforesaid pay-scale which resulted in anomalies in their subsequent fixation of pay-scale. This was carried over from one Pay Commission to the other. Petitioner Association has presented in the form of a statement what it contends to be anomalous pay-scales in para-3 of the writ petition.

5. Assam Pay Commission, 2008, i.e., the last Pay Commission, also did not consider the grievance of the petitioner Association for corresponding increase in the pay-scale.

6. Govt. of Assam constituted a Pay Anomaly Committee under the Chairmanship of Shri C.K. Das, IAS (Retd.) vide notification dated 01.01.2010 to examine the recommendations of the Assam Pay Commission, 2008.

7. Petitioner Association submitted representation dated 06.01.2010 before the Chairman of the Pay Anomaly Committee requesting the said authority to remove anomalies in the pay-scale of Junior Engineers (Diploma Holders).

8. According to the petitioner Association, the Pay Anomaly Committee had submitted report dated 30.09.2010. In the said report, the Committee recommended revised pay to the Junior Engineers (Diploma Holders) in Pay Band-3 with grade pay of Rs.4200.00 in the four major Engineering Departments, i.e., PWD, Irrigation, Water Resources and Public Health Engineering Departments.

9. Upon receipt of the report, Govt. of Assam issued instructions to the concerned Departments to examine the report and thereafter to submit proposal to the Finance Department for necessary decision. This was contained in the notification, dated 19.02.2011.

10. At this stage, petitioner Association submitted representations to the Secretaries of the aforesaid four Departments requesting them to submit necessary proposal to revise the pay-scale of the Diploma Engineers in Pay Band-3. It is stated that the aforesaid four Departments had examined the report of the Pay Anomaly Committee and thereafter submitted proposal to the Finance Department for revision of pay-scale of Junior Engineers (Diploma Engineers) to Pay Band-3 with grade pay of Rs.4200.00.

11. It is stated that since no decision was forthcoming, petitioner Association had submitted a number of representations before various authorities including one dated 19.12.2012 before Hon"ble Chief Minister, Assam.

12. While grievance of the petitioner Association was kept pending, Additional Chief Secretary, Finance Department, had submitted a proposal on 21.08.2013 before the Hon'ble Chief Minister, Assam, for revision of pay-scale of Enforcement Inspectors in the Transport Department from Pay Band-2 with grade pay of Rs.3300.00 to Pay Band-3 with grade pay of Rs.4300.00. It is stated that the said proposal was accepted where after consequential notification dated 07.11.2013 was issued enhancing the pay-scale of Enforcement Inspectors as above.

13. However, in so far the proposals for revision of pay-scale of Junior Engineers (Diploma Holders) were concerned, those were rejected by the Finance Department on 09.10.2013 on the ground that it might generate similar demands from other similarly placed service organisations.

14. Though representation was submitted by the petitioner Association before the Chief Secretary on 17.05.2014 to direct the Finance Department to accede to the prayer of the petitioner Association, nothing emerged therefrom. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

15. Mr. B. Banerjee, learned Senior counsel, in the course of earlier hearings and thereafter Mr. D.N. Bhattacharjee, learned counsel appearing for the petitioner Association submits that action of the Finance Department is most arbitrary and unreasonable. When the High Powered Pay Anomaly Committee in its report had recommended revision of pay-scale from Pay Band-2 to Pay Band-3 with grade pay of Rs.4200.00, which recommendation has been accepted by the above four Engineering Departments of the State and submitted before the Finance Department in the form of proposals, it was not open to the Finance Department to simply brush aside such proposals on the ground that it might generate similar demands from other service organisations. It is no ground to reject the justified grievance of the petitioner Association. Grievance of the petitioner Association has to be decided on its own merit and not by taking a hypothetical view that acceding to such demand may lead to raising of similar demands by others. Learned counsel for the petitioner Association submits that when the Finance Department has revised the pay-scale of Enforcement Inspectors of the Transport Department in a manner similar to the claim of the petitioner Association, there can be no justification to deny similar benefit to the Diploma Engineers serving in the four Engineering Departments of the State. Therefore, Diploma Engineers have been subjected to hostile discrimination by the State. Situation needs to be remedied, they submit.

16. Learned Standing Counsel appearing for the Irrigation and Public Health Engineering Departments have generally supported the contentions of the petitioner Association. In fact, PHED has filed an affidavit. Ms. A. Verma, learned Standing Counsel, Finance Department, however, has strongly resisted the submissions advanced on behalf of the petitioner Association. Referring to the averments made in the affidavit filed on behalf of the Finance Department, she submits that none of the Pay Commissions starting from the Assam Pay

Commission, 1979, found enough justification for enhancement of the pay-scale of the Diploma Engineers as per their demand. The matter regarding enhancement of pay-scale of Diploma Engineers was not even placed before the Assam Pay Commission, 2008, as there was no recommendation. Therefore, Assam Pay Commission, 2008, prescribed pay-scale for the Diploma Engineers in Pay Band-2 with grade pay of Rs.2800.00 (now Rs.3300.00) against pre-revised pay-scale of Rs.3580-8750. She, therefore, submits that revised pay-scale provided to Diploma Engineers cannot be characterised as anomalous.

17. While admitting that Pay Anomaly Committee had recommended that revised pay-scale of the Diploma Engineers may be fixed in Pay Band-3 with grade pay of Rs.4200.00 (instead of Pay Band-2 with grade pay of Rs.2800.00 enhanced to Rs.3300.00), she submits that such recommendation was with a caveat. The concerned Departments were required to examine the possible ramifications of such pay revision on the prevalent equilibrium of different posts in the respective Departments as well as across other Departments; recommendation was required to be examined in the light of past references, judicial pronouncements and as above effect on different posts and thereafter to submit proposal to the Finance Department with detailed justification. It is stated that the proposal submitted by PWD for revision of pay-scale of Diploma Engineers was considered by the Finance Department but Finance Department took the view that acceptance of such recommendation of the Pay Anomaly Committee would be at variance with the recommendations of the previous Pay Commissions and may generate similar demands from other service Associations. Therefore, she submits that Finance Department rightly rejected the said proposal. She has justified revision of pay of Enforcement Inspectors of the Transport Department by submitting that such revision became necessary because of higher entry level qualification of Enforcement Inspectors. Moreover, Enforcement Inspectors though are Class-II Gazetted Officers but they were drawing pay-scale of Class-III and this anomaly was required to be rectified. Besides number of Enforcement Inspectors are comparatively less than the number of Junior Engineers (Diploma Holders). Therefore, financial implication would be minimal.

18. Submissions made by learned counsel for the parties have received the due consideration of the Court.

19. At the outset, it has to be borne in mind that in matters relating to finances of the State or where there is financial implication such as enhancement of pay-scale, Courts in exercise of the power of judicial review would be slow to interfere with the decision of the Executive. This is a matter which is within the domain of the subject experts and ordinarily Courts would defer to the wisdom of the subject experts. This is not to say that in all cases, hands of the Court would be tied. In cases where arbitrariness or discrimination in fixation of pay-scale is manifest, certainly Courts would be entitled to examine the grievances arising therefrom.

20. Having said so, case of the petitioner Association may be examined.

Petitioner Association in paragraph-17 of the amended writ petition has stated that there are about 2520 Junior Engineers (Diploma Engineers) serving in the four Engineering Departments. Out of the 2520 Junior Engineers, about 1758 of them are already enjoying pay-scale in Pay Band-3. That means the remaining 762 Junior Engineers are now placed in Pay Band-2.

21. Though the averments made in the said paragraph as well as in the subsequent paragraphs of the writ petition are silent as to how 1758 out of 2520 Junior Engineers are receiving pay-scale in Pay Band-3, it is understood that State of Assam in order to remove a sense of stagnation in the service career of Diploma Engineers, had created within the cadre of Junior Engineer a superior rank enjoying higher pay-scale in Pay Band-3. In other words, a Junior Engineer drawing pay-scale in Pay Band-2 on fulfilment of certain criteria would become entitled to higher pay-scale in Pay Band-3. If that be so, acceptance of the grievance of the petitioner Association in its present form at this stage may lead to obliteration in the distinction between the two groups of Junior Engineers created by the State to remove the sense of service stagnation amongst the Junior Engineers and it would be back to square one. Since pleadings to this effect are sketchy, Court would not like to deal with this aspect of the matter more than what has been stated above.

22. However, as has been noticed above, grievance of the petitioner Association for revision of pay-scale from Pay Band-2 to Pay Band-3 was not placed before the Assam Pay Commission, 2008. However, the Pay Anomaly Committee in its report had recommended such revised pay-scale to the Diploma Engineers. Thereafter, the concerned Engineering Departments had also submitted proposals suggesting such pay revision.

23. At this stage, judicial notice can be taken of the fact that process is on for constitution of the next Pay Commission in the State of Assam to look into the pay related grievance of the employees of the State of Assam. Since grievance of the petitioner Association has received the endorsement of the Pay Anomaly Committee constituted to look into the recommendations of the Assam Pay Commission, 2008, and of the concerned Engineering Departments, Court is of the considered opinion that such grievance of the petitioner Association should be placed before the next Pay Commission as and when it is constituted so that the Pay Commission, which is an expert body competent to deal with matters relating to pay of the Government employees, may take a conscious decision having regard to the long-standing grievance of the petitioner Association.

24. As already discussed above, the writ Court exercising power of judicial review has no judicially manageable standard to embark upon and determine pay-scale or revised pay-scale of a group of employees. Such an exercise should be best left to be carried out by the experts.

25. That being the position, respondent No.1, i.e., Chief Secretary to the Govt. of Assam, is directed to forward the grievance of the petitioner Association for

enhancement of pay-scale to the next Pay Commission as and when constituted.

26. With the above observations, writ petition is disposed of.