

(2023) 12 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5656 of 2022

Damodar Das

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Citation : (2023) 12 GAU CK 0013

Hon'ble Judges : N. Unni Krishnan Nair, J

Bench : Single Bench

Advocate : J. Sarmah, K. Gogoi, K.K. Medhi, D. Borpujari

Final Decision : Allowed

Judgement

1. Heard Mr. J. Sarmah, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Education (Higher) Department representing the respondent Nos.1 & 3; Mr. K.K. Medhi, learned counsel representing the respondent No.2 and Mrs. D. Borpujari, learned counsel representing the respondent No.4.

2. The petitioner, on being selected, was initially appointed as a Laboratory Bearer in the Department of Botany in Rangia College vide order dated 07.04.1992. He joined in the said post on 20.04.1992. The petitioner claims to be in regular employment since the day of his initial appointment. The petitioner's services were provincialized w.e.f. 01.12.2005 in terms of the provisions of the Assam College Employees (Provincialisation) Act, 2005. The grievance raised in the present proceeding is with regard to denial of the benefits to the petitioner flowing under the Assured Career Progression Scheme formulated by the State Government for its employees. Subsequently, the said Scheme was renamed as "Modified Assured Career Progression Scheme" (hereinafter referred to as "MACPS").

3. Under the said Scheme, financial upgradation is extended to the employees on completion of 10/20/30 years of service without promotion. In short, the said

Scheme is a Scheme for in situ promotion. The petitioner, on completion of his first 10 years of regular service, was granted the first financial upgradation under the MACPS, i.e. for completion of 10 years w.e.f. 01.01.2011 vide order dated 07.01.2013. The petitioner thereafter was entitled to the second financial upgradation w.e.f. 2021, which was denied to him.

4. The petitioner approached the concerned authorities and having not found a redressal for his grievances, has instituted the present proceeding.

5. Mr. J. Sarmah, learned counsel for the petitioner submits that there is no dispute that the petitioner has been in continuous service w.e.f. the date of his initial joining, i.e. 20.04.1992, without any promotion being effected in his case and as such, applying the provisions of the MACPS, he was entitled to the financial upgradation flowing therefrom on completion of 10 years and 20 years of service, respectively. It is the contention of Mr. Sarmah that the first upgradation although granted, the financial benefits thereon was withheld and the second financial upgradation was not granted to the petitioner.

6. Mr. K. Gogoi, learned standing counsel, Education (Higher) Department submits that contradictory stands on behalf of the Director of Higher Education is available on record, which on one hand projects that there was a disciplinary proceeding initiated against the petitioner and he was placed under suspension and the period of suspension was not regularized, whereas on the other hand, there is available on record an order dated 07.04.2014 by which a penalty of withholding of 1(one) annual increment was imposed upon the petitioner, followed by regularization of the period of suspension of the petitioner from 24.11.2012 to 03.04.2014 as on duty, which was, however, followed by a Corrigendum, wherein it was stated that in place of "24.11.2012", the date "20.11.2012" was to be read in the said order dated 07.04.2014. Mr. Gogoi fairly submits that in view of the above position, it is the order dated 07.04.2014 (Annexure-12, Page 59 of the writ petition) that will hold the field and this Court may proceed to determine the rights of the petitioner basing thereon.

7. Mrs. D. Borpujari, learned counsel for the respondent No.4 submits that the petitioner was granted the first financial upgradation w.e.f. 01.11.2011. It is further contended that as the petitioner's name did not figure in the list of persons found eligible for being extended with the benefits of the second financial upgradation on completion of 20 years of service after the matter was placed before the Director of Higher Education by the College Authorities, the said benefit could not be extended to him. Mrs. Borpujari, by drawing the attention of this Court to a communication from the Accountant General to the College Authorities dated 12.04.2022, available at Annexure-C to the affidavit filed by the Principal of the College, submits that the benefits of the first financial upgradation of the petitioner was withheld because for similar category of posts, the Accountant General had raised a issue with regard to the fixation of pay in case of a person of similar category, wherein a higher grade pay was shown, which, according to the Accountant General, was not the revised pay scale

coming into operation for such category of posts in terms of the Revision of Pay Rules, 2017.

8. I have heard the learned counsel for the parties and have perused the materials available on record.

9. The grievance of the petitioner as projected in the writ petition pertains to the action on the part of the respondent authorities in denying to him the benefits of the second financial upgradation under the MACPS although he had achieved all the requisite eligibility criterion for being granted to the same. It is also the projected case that since the date of his initial appointment, which was effected on 20.04.1992, the petitioner was not extended with any promotional benefit. Accordingly, the petitioner's case is covered by the provisions of the MACPS holding the field.

10. The records reveal that the petitioner was granted his first financial upgradation w.e.f. 01.01.2011 vide an order dated 07.01.2013. The benefits flowing from the said order of upgradation was, however, subsequently withheld on account of the fact that the Accountant General (A&E), Assam had taken objection with regard to the Grade Pay authorized to one Sarat Chandra Kalita, another Grade-IV employee of the College, who was held to have been authorized a higher Grade Pay than what was applicable and his pension papers were not processed for the said purpose. The petitioner being a Grade-IV employee and also drawing a higher Grade Pay, which was held to be erroneous by the Accountant General in the case of the said Sarat Chandra Kalita, the College authorities stopped the benefits flowing from the first financial upgradation granted to the petitioner.

11. The petitioner, who was subjected to a departmental proceeding and was placed under suspension, was on conclusion of the departmental proceeding imposed with a penalty of withholding of 1(one) annual increment vide order dated 07.04.2014. Vide the said order, the period of suspension from 20.11.2012 to 03.04.2014 was regularized as on duty. However, at the time of processing the application of the petitioner for grant of second financial upgradation, it was erroneously held that the period of suspension of the petitioner was not considered and on the said ground, the second financial upgradation due to the petitioner in the year 2021 was denied to him.

12. The materials available on record highlight that the action of stoppage of the benefits of first financial upgradation granted to the petitioner w.e.f. 01.01.2011 was so done on an erroneous view of the matter that he was authorized a scale of Grade Pay higher than what he was entitled to receive basing on an observation of the Accountant General (A&E), Assam in his communication dated 12.04.2022 in case of one Sarat Chandra Kalita, another Grade-IV employee of the College, who had already retired. This stand of the respondents is clearly perverse and could not have been projected to deprive the petitioner of the benefits flowing to him on account of the first financial upgradation. Accordingly,

it is held that the petitioner is entitled to receive the first financial upgradation granted to him w.e.f. 01.01.2011.

13. The second financial upgradation was apparently denied to the petitioner on the ground that the period of his suspension w.e.f. 20.11.2012 to 03.04.2014 was not regularized. The said assertion is clearly perverse inasmuch as the appointing authority, i.e. the Director of Higher Education, Assam, vide his order dated 07.04.2014, while imposing a penalty of withholding of 1(one) annual increment upon the petitioner and reinstating him in service, had duly regularized the said period of suspension of the petitioner as on duty and the said order was never modified.

14. In the said view of the matter, the denial of the second financial upgradation to the petitioner is unsustainable and it is declared that the petitioner is entitled to his second financial upgradation on completion of 20 years of service from the date of his initial joining.

15. In view of the above, the following directions are issued:-

(i) the respondents shall release to the petitioner his due benefits in terms of the first financial upgradation granted to him w.e.f. 01.01.2011 vide order dated 07.01.2013 and release to him all his arrears accruing on account thereof.

(ii) the respondent authorities shall consider the case of the petitioner for the second financial upgradation w.e.f. the date he completes 20 years of service, from the date of his initial joining and grant to the petitioner his second financial upgradation from such date as is due and release to the petitioner the arrears becoming available on account of the same.

(iii) the respondents having imposed a penalty of withholding of 1(one) annual increment on the petitioner vide order dated 07.04.2014, the said aspect would also be taken into account while determining the date from which the petitioner would be eligible for grant of his second financial upgradation.

16. The processing involved for implementation of the said directions be made by the respondents expeditiously and completed within a period of 3(three) months from the date of receipt of a certified copy of this order. The arrears of pay accruing to the petitioner in terms of the said directions be released to the petitioner within the said period of 3(three) months.

17. The writ petition stand allowed to the extent indicated above. There shall be no order as to costs.