

(2016) 02 GAU CK 0057
In the Gauhati High Court
Case No : WP(C) 6241 of 2015

Durjoy Paul and Ors.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Citation : (2016) 4 GauLJ 331 : (2016) 3 GauLT 165

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : Mr. R.P. Kakoti, Sr. Advocate and Mr. A.K. Dutta, Advocate, for the Appellant; Mr. S. Saikia, Sr. SC Education (Secondary) Department, for the Respondent

Final Decision : Allowed

Judgement

A.K. Goswami, J.— Heard Mr. R.P. Kakoti, learned Senior counsel, appearing for the petitioner. Also heard Mr. S. Saikia, learned Senior Standing counsel, Secondary Education Department.

2. The petitioners are graduate teachers in different secondary schools in various districts in the State of Assam. At the time of their appointment, Assam Secondary Education (Provincialisation) Service Rules, 1982 (for short, "the Rules"), was in force. Graduate Assistant Teachers, who the petitioners describe themselves to be, are graduate teachers, as defined in Rule 3 of the Rules, having Bachelor Degree as general qualification. Graduate Teachers are placed in Grade-IV in Rule 3 of the Rules, which deals with class and cadre. The academic qualification for candidates of direct recruitment is specified in Schedule 2 of the Rules and, for the post of Graduate Teacher, the qualification prescribed is Bachelor Degree in Arts, Science or Commerce. Rule 9 of the Rules, dealing with recruitment by promotion, provides that preference shall be given to candidates having post-graduate degree in teaching/a degree in post-graduate teaching, i.e., B. Ed. or B.T. None of the petitioners had B. Ed. or B.T. degree at the time of their entry into service. It is the case of the petitioners that the Secondary

Education Department of the Government of Assam deputed some teachers of High and Higher Secondary Schools, every year, on deputation to undergo B. Ed. or B.T. course. During the course of B.Ed. or B.T. course, normal teaching duties of the teachers are not disturbed. The petitioners, after availing requisite permission, had obtained the qualification of B. Ed. during the academic sessions 2012-2013 and 2013-2014. Their further case is that an advance increment is given to a graduate teacher of secondary schools, who successfully completes B. Ed. course either prior to his appointment or during his service period, basing on the duration of the course he has gone through.

3. This writ petition is filed challenging a notification dated 22.10.2014 (Annexure-6 to the writ petition) issued by the Additional Chief Secretary to the Government of Assam, Secondary Education Department. It will be relevant to extract the said notification for better appreciation of the arguments of the learned counsel for the parties. The same reads as follows:

"Government of Assam

Secondary Education Department, Dispur

Notification

Dated Dispur the 22nd October, 2014

ASE.229/2013/153: Whereas as per Assam Secondary Education (Provincialised) Service Rules, 1982, the B.T./B. Ed. Degree was then not essential qualification for the post of teachers in Secondary Schools, as per Finance Department's OM No. FEG.1/98/1 dated 07.03..1998, one Advance Increment is admissible to the Teachers of Secondary Schools who have BT/B.Ed. Degree.

And whereas as per the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2012, the B.T./B.Ed. Degree is now compulsory essential for the post of teachers in Secondary schools, the Government is satisfied that no additional incentive/benefit i.e. Advance Increment for B.T./B.Ed. Degree is now required to be given to the teachers of Secondary Schools as it is an essential minimum qualification.

Now, therefore, after considering all aspects the Governor of Assam is hereby pleased to order that henceforth no Advance increment for Degree of B.T./B.Ed. of the teachers in Secondary Schools shall be admissible.

Sd/-

Additional Chief Secretary to the Govt. of Assam

Secondary Education Department"

4. A perusal of the said notification goes to show that from the date of the notification, no advance increment shall be payable to the teachers in secondary schools for possessing the degree of B. Ed./B.T. as, in view of the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2012 (for

short, "Amendment Rules, 2012"), B. Ed./B.T. degree is an essential qualification for the post of Graduate Teacher.

5. Mr. Kakati, learned Senior counsel for the petitioners, by drawing attention of the Court to the notification dated 04.02.2010, issued by the Finance (Pay Research Unit) Department, has submitted that the Government had accepted the major recommendations of the Assam Pay Commission, 2008. The notification is issued under the heading "Resolution on the report of the Assam Pay Commission, 2008 and the report of the Committee". Mr. Kakati has drawn attention of the Court to Clause 32 of the recommendations to submit that the existing provisions regarding advance increments is continued till the matter is further examined by the Administrative Reforms and Training Department and such examination or consideration had not taken place in the Administrative Reforms and Training Department and no decision had been taken to withdraw the advance increment granted. He has drawn the attention of the Court to Clause 39 to submit that the concerned departments are to examine and take further action on the recommendations in terms of which the Administrative Reforms and Training Department is required to examine the recommendations regarding advance increments for acquiring higher academic qualification in detail. He has pointed out the report of the Assam Pay Commission, 2008, with particular reference to Clauses 3.2.18, 3.2.19 and 3.2.20 under the heading of "Advance Increments for Acquiring Higher Academic Qualification". The contention of Mr. Kakati is that at the time when the petitioners had pursued B. Ed. course, no notification was issued withdrawing advance increment granted to the teachers on acquiring of B.Ed. Degree and, at any rate, having regard to the recommendations of the Assam Pay Commission, 2008, which was accepted by the State Government and pursuant to which the notification dated 04.02.2010 was issued, the Department of Education could not have, on its own, altered the existing position with regard to grant of advance increment. He has also submitted that advance increment to be given is a one-time increment, which is calculated on the basis of 3% of the basic pay subject to a minimum of Rs. 297/- and maximum of Rs. 705/-. Even after the Amendment Rules, 2012, had come into force, the State was giving the benefit of advance increment to all those who had acquired B. Ed./B.T. Degree and to demonstrate the same, he has taken me through an order dated 25.06.2014 (Annexure-5) permitting one advance increment for acquiring B.Ed. Degree. An Office Memorandum dated 07.03.1998, issued by the Commissioner and Secretary to the Government of Assam, Department of Finance, which is referred to in the notification dated 22.10.2014, was also produced during the course of the proceedings.

6. Mr. S. Saikia, learned Senior Standing counsel, Secondary Education Department, has submitted that as the Degree of B. Ed. is no longer a higher qualification having regard to the Amendment Rules, 2012, it cannot be construed that B. Ed. is a higher qualification. It is submitted by him that the recommendations of the Assam Pay Commission nowhere delineates as to what is higher qualification and, therefore, it is to be understood that it is the

department concerned which has to decide whether a particular qualification is a higher qualification or not and, therefore, by virtue of the amendment effected in the extant Rules, B.Ed. Degree no longer remains in the realm of higher qualification for the post of Graduate Teacher and, therefore, the notification issued by the Secondary Education Department is perfectly valid in law. He has also submitted that it was not necessary for the Education Department to have gone either to the Finance Department or to the Administrative Reforms and Training Department because it is the Education Department, which is to take a call on the matter. According to him, even notification was not required to be issued for that purpose as the Amendment Rules, 2012, make it very clear that the entry-level qualification for the post of Graduate Teacher is B. Ed. at the minimum as per the Schedule appended to the Amendment Rules, 2012. While it is not in dispute that the teachers having acquired B. Ed. Degree subsequent to the coming into force of the Amendment Rules, 2012, were also given advance increment, Mr. Saikia submits that a wrong cannot be perpetuated and, therefore, there is no illegality, on the part of the Education Department, in issuing a notification withdrawing advance increment, albeit at a subsequent date. In support of his submission, Mr. Saikia has placed reliance on the judgements rendered by the Apex Court in the cases of Wazir Singh, JBT Teacher and Others v. State of Haryana through its Secretary, Education Department and Others, reported in (1995) Supp (3) SCC 697, and Chhattisgarh Rural Agriculture Extension Officers Association v. State of M.P. and Others, reported in (2004) 4 SCC 646.

7. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. The Government of Assam, vide notification dated 30.05.2008, had constituted Assam Pay Commission, 2008, to examine and recommend changes that would be desirable in pay structures, emoluments and conditions of service of different classes of State Government employees, to examine the existing amenities and facilities relating to death-cum-retirement benefit, etc., to suggest re-organization of existing services with a view to rationalising the work load and efficiency etc., to examine and suggest the principles to be followed in granting relief due to increase in consumer price index to the State Government Pensioner and also to examine any other connected and incidental questions as may be referred to the Commission by the Government. The Commission submitted its report to the Government on 15.10.2009 recommending on a large number of issues relating not only to new pay structure, allowances and pension related matters but also on issues relating to leave matters, reorganisation of services as well as specific issues relating to different departments.

9. The Government of Assam had constituted a Committee on 26.10.2009 to examine the report of the Assam Pay Commission, 2008 and to concretise the action points and to submit them to the Government. The report was submitted by the Committee on 30.11.2009. Consequent upon the acceptance of the major

recommendations of the Assam Pay Commission, the Government issued a notification on 04.02.2010 dealing with the recommendations of the Assam Pay Commission. The report of the Assam Pay Commission, 2008, contained 11 chapters and Chapter 3 dealt with, amongst others, advance increments for acquiring higher academic qualification.

10. Position as was obtaining at the time of consideration by the Pay Commission regarding advance increment for acquiring higher academic qualification is available at Clause 3.2.18 of the report. On analysis of the position, at Clause 3.2.19, Pay Commission observed that advance increment should not be given only on acquiring higher qualification, but only after evaluating actual contribution to the public good by the employee owing to the additional qualification acquired, as it was observed that in many cases acquiring additional qualification had no necessary correlation with improved performance etc. At Clause 3.2.20, the Pay Commission recommended as follows:

"3.2.20. Recommendation ? After due consideration of all the relevant factors, the Commission recommends the following:

(a) Acquisition of additional qualification, during the course of employment be allowed by the department concerned, wherever required, only if such additional qualification has tangible utility in discharge of public service.

(b) Once an employee is allowed to acquire higher qualification, the department shall place him/her in suitable positions where the employee can make adequate use of his/her increased expertise to achieve improved performance.

(c) After 3 years of acquiring higher qualification, the performance of the employee during that period shall be evaluated. If the evaluation indicates that additional qualification has actually resulted in better performance, the employee may be given advance increment at the rate of 1% as follows:

(i) One advance increment for any qualification which requires one year of study.

(ii) Two advance increments for any qualification which requires two years of study.

(iii) Four advance increments for any qualification which requires minimum three years of study.

(d) The following categories of employees is illustrative of eligible employees who may be allowed advance increment for acquiring higher educational qualification:

(i) All teachers/instructors including teachers in schools, educational, professional and training institutions such as DIET, SCERT, Medical Colleges, Sanskrit Tols, Survey School, ITI etc.

(ii) Librarians only for obtaining Master Degree in Library Science.

(iii) Medical, Ayurvedic, Homeopathic and Veterinary Doctors.

(iv) Scientific Officers of Directorate of Forensic Science only for acquiring Ph.D. degree.

(v) Scientists/Technical personnel in Research Institutes.

(vi) Agriculture, Fishery and Sericulture officers.

(e) The qualification must be obtained from or approved by a statutory body or a nationally recognised institute.

(f) Benefit of Advance Increment shall not be given to employees who have acquired the higher qualification with financial assistance from the Government."

11. It is to be noticed that advance increment was granted to the teachers on acquiring of B. Ed. Degree, which was also considered to be a higher qualification. The Court will understand that as advance increment was given all along, the qualification of B. Ed. had tangible utility in imparting of education to the students as if it would not have contributed to the betterment of teaching, the State would have stopped granting such benefit on acquiring of such higher qualification.

12. Clause 32 of the notification dated 04.02.2010 deals with advance increment and the same reads as follows:

"Clause 32:- Existing provisions regarding Advance Increment shall continue till the time of further examination and decision on the Commission's various recommendations in this regard. Administrative Reforms and Training Department is entrusted with the responsibility of examining the recommendations of the Commission in detail."

13. A perusal of Clause 32 would go to show that no finality had been attached to the recommendations of the Committee in this regard though the notification dated 04.02.2010, at the outset, commented that the Government had accepted the major recommendations of the Assam Pay Commission. Advance increment was to be continued till the time of further examination and decision by the Administrative Reforms and Training Department. Clause 39 of the notification dated 04.02.2010 also provided that all concerned departments may conduct detail examination of the recommendations in Chapter 10 of the Commission's report related to their department in the light of past references, judicial pronouncements in that regard, effect on present equilibrium between different posts, etc., and submit the proposal to the Finance Department with detail justification for implementation of those recommendations. The role assigned to the Administrative Reforms and Training Department, amongst others, is to examine the recommendations regarding advance increment for acquiring higher academic qualification in detail. Materials on record do not indicate that any decision had been taken by the Administrative Reforms and Training Department on the recommendations regarding advance increment for acquiring higher academic qualification.

14. Now, a question arises as to what is to be considered as "higher academic qualification" ? Higher academic qualification is to be understood qua essential qualification prevalent at the time of entry into service. In the context of the Amendment Rules, 2012, certainly B. Ed. is no longer a higher academic qualification as it is an essential qualification for being appointed to the post of Graduate Teacher. But there is no denying of the fact that when the petitioners were appointed, B. Ed. was not the essential qualification for appointment to the post of Graduate Teacher and from the standpoint of the petitioners, acquiring of B. Ed. Degree certainly results in a higher qualification for them. When the issue is yet to be decided by the department concerned in an appropriate manner, in terms of the Government's own notification dated 04.02.2010 regarding justifiability or otherwise of continuance of the grant of advance increment to the teachers for acquiring higher academic qualification, I am of the considered opinion that the impugned notification cannot be sustained.

15. Office Memorandum dated 09.03.1998, issued by the Finance Department, goes to show that advance increments are given to Government servants of some cadres as per Assam Service (Revision of Pay) Rules. Finance Department was also not consulted before issuing the impugned notification dated 22.10.2014. So long as a decision is not taken by the appropriate department(s), the benefit of advance increment cannot be curtailed by the Department of Education on its own accord.

16. In Wazir Singh (supra), on which Mr. Saikia has placed reliance upon, the appellants had challenged the policy instruction of the Government of Haryana, dated 09.03.1990, wherein the Government had expressed its intention to retract from the earlier principle that teachers acquiring the B.T. or B. Ed. degree would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. The Apex Court accepted the stand of the State that as the appellants before the Apex Court had not acquired B.T./B.Ed. degree before 09.03.1990, they cannot claim the benefit of higher grade of pay automatically.

17. In Chhattisgarh Rural Agriculture Extension Officers Association (supra), the Apex Court held that though the Pay Commission is considered to be an expert body, the recommendations of the Pay Commission are not binding on the State and the State cannot be compelled to accept the recommendations of the Pay Commission by issuing a writ of or in the nature of mandamus and that the State can make rules in exercise of powers under Proviso appended to Article 309 of the Constitution of India contrary to the recommendations by evolving policy decision.

18. The principles enunciated in Wazir Singh (supra) and Chhattisgarh Rural Agriculture Extension Officers Association (supra) are not applicable in the facts of this case inasmuch as the procedure prescribed, according to the own stand of the Government, as reflected in the notification dated 24.02.2010, had not been complied with.

19. Consequently, the impugned notification dated 22.10.2014 is set aside and quashed. The writ petition is allowed. No cost.