

(2003) 11 GAU CK 0024
In the Gauhati High Court
Case No : W.A. No. 431 of 1999

Golap Chandra Chetia

APPELLANT

Vs

Assam Administrative Tribunal and Others

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Citation : (2004) 2 GLR 329 : (2004) 1 GLT 5

Hon'ble Judges : P.P. Naolekar, C.J.; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : B.N. Sharma and L.R. Dutta, for the Appellant; A. Hazarika, Addl. Sr. G.A., for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, C.J.—The appellant/petitioner was allowed to hold full charge of the post of Financial Adviser in the Health & Family Welfare Department in addition of his own duty of the Finance and Accounts Officer in the Directorate of Geology and Mining, Government of Assam. The appellant/petitioner held the additional charge from 23.4.1983 to 11.4.1986. Thereafter the petitioner was again directed to hold the additional charge as Financial Adviser in the Flood Control Department with effect from 17.5.86 to 30.5.1988. On 7.12.1988 the Accountant General, Assam issued pay slip of the petitioner fixing his pay as Officiating Financial Adviser at Rs. 1860 p.m. from 17.5.1986. According to the petitioner it should have been fixed at Rs. 1980. The appellant/petitioner has further made claim for fixation of pay in accordance with the provisions of fixation of salary as he was holding the post of Financial Adviser in the Health & Family Welfare Department till he has been regularly promoted to the post of Financial Adviser.

2. The petitioner being aggrieved by the non-fixation of his salary, filed petition before the Assam Administrative Tribunal, the Tribunal has rejected the claim made by the appellant/petitioner. Against the order dated 29.8.1990 of the Tribunal the petitioner filed a writ petition (Civil Rule No. 1746/91), the learned Single Judge by judgment and order dated 22.4.1996 has upheld the view taken

by the Tribunal and that has made the appellant/petitioner to approach this Court by filing the present appeal.

3. It is contended by the counsel for the appellant, before us, that by virtue of FR 49 he having worked on the post of Financial Adviser for more than 39 days he is entitled for fixation of the salary on the basis of FR 49. The relevant portion of FR 49 reads as under :

"FR 49 - The State Government may appoint one Government servant to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time. In such cases his pay is regulated as follows:

(a) Where a Government servant is formally appointed to hold full charge of the duties of a higher post or posts which is or are in the same office as his own and in the same cadre line of promotion, in addition to his ordinary duties, he shall be allowed the pay of the higher post, or the higher post if he holds full charge of more than one post, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days:

Provided that the concurrence of the Finance Department shall be obtained for making such arrangement and for payment of the additional pay"

4. It is amply clear from the FR 49(a) that a Government servant can be asked by the Government to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time and in that case his pay shall be regulated as provided under Clause (a) of FR 49 on fulfilling other conditions mentioned therein. The necessary condition for application of FR 49 is appointment on two or more independent posts at one time. We have gone through the orders issued by the Government wherein the appellant was directed to hold the charge of the Financial Adviser in the Health & Family Welfare Department, from this it is clear that he has not been appointed on the post of Financial Adviser but he has been directed to hold the charge of the post. In the absence of any appointment in the post, FR 49 has no application as it stood before its amendment in 1991. That being the case, we do not find any infirmity in the orders passed by the Tribunal as well as by the learned Single Judge.

5. The appeal stands dismissed accordingly.