
(2001) 11 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 6567 of 1998

Jibeswar Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-11-2001

Acts Referred:

Citation : (2003) 1 GLR 654 : (2003) 2 GLT 83

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : B.K. Sharma and U.K. Nair, for the Appellant; A. Thakur, GA, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. B.K. Sarma, Learned Sr. Counsel assisted by Mrs. R. Bora, Learned Counsel for the petitioners and also heard Mr. A. Thakur, Learned Govt., Counsel appearing on behalf of State respondents.

2. The only grievance of the petitioner's in this writ petition is that they have been deprived of their correct revised scale of pay on refixation as given with effect from 9.3.1990. The petitioners were appointed as Sericulture Demonstrators in the month of March, 1990 under the Respondent No. 3, the Director of Sericulture, Assam, Guwahati-22. The Initial pay of the petitioners have been re-fixed with effect from 9.3.1990 in the scale of pay as Rs. 1205 p.m. from Rs. 1188 p.m. vide order dated 23.4.1998. A specimen copy of the order dated 23.4.1998 has been annexed as Annexure-1 to this writ petition which reads as follows :

".....

GOVERNMENT OF ASSAM OFFICE OF THE ASSTT. DIRECTOR OF
SESERICULTURE GOALPARA: ASSAM

Consequent upon the revision of pay scale on the strength of Govt. publication

vide No. FPC 24/90/128, Dt. 6.12.1990, the initial pay of Shri Narayan Ch. Das, Sericulture Demonstrator, Budlang pahar Naga VGR has been re-fixed in the revised Scale of pay Rs. 1125-20-1225-30 1435-EB-40-1635-50-2035-60-2215 p.m. as per rule No. 11(2) of revision of pay 1990 & fundamental Rule 22(a) with effect from 9.3.1990.

The incumbent is also allowed to draw his subsequent increments with effect from the date as shown below in the scale of pay as mentioned above

Name & Desg-Naction of the incumbent Total emolument in the existing scale as on 9.3.90. i.e.. of joining Initial pay refixed date revised scale as on 9.3.90 Date of subsequent increment Pay after Increment

Sri Narayan Cy. Rs. 1188/- p.m. Rs. 1205 p.m. 1.3.91 1225

Das, S.D. 1.3.92 1235

Budiungpahar 1.3.93 1285

VGR. 1.3.94 1215

1.3.95 1345

1.3.96 1375

1.3.97 1405

1.3.98 1435

Sd/- H. Ch. Kalita

Asstt. Director of Sericulture Goalpara: Assam

Memo No. ADSGE 65/90-91/RSP/46 Dated Goalpara the 23rd April/98

....."

3. It clearly appears from the above order that the total emoluments as on 9.3.1990, i.e., the date of initial joining of the petitioner was at Rs. 1188 per month. Be it mentioned herein that prior to revision of pay scale, the petitioner's total emolument as at Rs. 1188 per month with the break up : (1) Basic Rs. 490, (2) D.A. Rs. 597 @ 121.8 as per Annexure-A to the affidavit-in-reply filed by the petitioner (3) Special relief Rs. 21 and (4) Interim relief Rs. 80 total being Rs. 1188 as reflected in paragraph 5 of the writ petition. As per Rule 11(2) of the Revision of Pay Scales, 1990 the initial pay cannot be less than the total emoluments. It is contended by Mr. Sarma, Learned Sr. Advocate for the petitioners that the petitioners' entitlement for the re-fixation of the revised pay is Rs. 1188 per month as total emolument in the existing scale as on 9.3.1990 and the same has been protected vide order dated 23.4.1998. But suddenly without giving any opportunity and/or assigning any reason whatsoever to the petitioners, the respondent vide order dated 16th September, 1998 cancelled the earlier refixation of pay so made vide order dated 23.4.1998 and altered the

initial pay of the petitioners from an amount of Rs. 1205 to Rs. 1125 which is lesser than the total emoluments of Rs. 1188 existing as on 9.3.1990. The impugned order dated 16th September, 1998 is reproduced hereunder :

"

GOVERNMENT OF ASSAM OFFICE OF THE ASSTT. DIRECTOR OF SERICULTURE
GOALPARA: ASSAM

ORDER

In pursuance to the letter No. SDP 45/97/2, Dt. 20.8.1998 from the Directorate read with office memorandum No. FPG 41/90/6, Dt. 1.2.2001 from finance Department, Dispur Guwahati under rule 4(iii) the re-fixation of pay made vide this office letter cited below is hereby cancelled.

(1) No. ADSGE 65/90-91/RSP/56 Dt. 21.7.98 (2) No. ADSGE 65/90-91/RSP/55 Dt. 29.6.98 (3) No. ADSGE 65/90-91/RSP/54 Dt. 29.6.98 (4) No. ADSGE 65/90-91/RSP/53 Dt. 20.6.98 (5) No. ADSGE 65/90-91/RSP/52 Dt. 20.6.98 (6) No. ADSGE 65/90-91/RSP/51 Dt. 4.5.98 (7) No. ADSGE 65/90-91/RSP/53 Dt. 2.5.98 (8) No. ADSGE 65/90-91/RSP/54 Dt. 29.4.98 (9) No. ADSGE 65/90-91/RSP/52 Dt. 28.4.98 (10) No. ADSGE 65/90-91/RSP/50 Dt. 28.4.98 (11) No. ADSGE 65/90-91/RSP/49 Dt. 24.4.98 (12) No. ADSGE 65/90-91/RSP/48 Dt. 24.4.98

(13) No. ADSGE 65/90-91/RSP/47 Dt. 24.4.98 (14) No. ADSGE 65/90-91/RSP/46 Dt. 23.4.98 Sd/- H. Ch. Kalita Asstt. Director of Sericulture Goalpara: Assam

No. ADSGE/65/98-99/RSP/65 Dated Goalpara the 16th Sept/98"

4. The State respondents have responded to the claim made by the petitioners by filing response. The stand of the Govt. is that as per order dated 1.2.1991 issued by that Finance Department, pay Scale of the Sericulture Demonstrator are required to be fixed at Rs. 1125, i.e., the minimum of the revised pay Scale of Rs. 1125 to Rs. 2215 p.m. Further while admitting the pre-revised basic pay at Rs. 490, the D.A. has been calculated at Rs. 504 @ 121.8 per cent (as already indicated above vide Annexure-A to the rejoinder filed by the petitioners) and taking into account such calculation, according to the Govt., the petitioners are entitled to a total emoluments in the existing scale of pay as on 9.3.1990 at Rs. 1095. In paragraph 11 of the affidavit-in-opposition, the State respondent have stated as follows :

"

11. That with regard to the statements made in paragraph 14 and 15 to the writ petition, the deponent says that the total emoluments of a Sericulture Demonstrator appointed during March, 1990 under the pre-revised pay of Rs. 490 comes to Rs. 1095. According to the orders issued by the Finance Department dated 1.2.1991 pay scale of the sericulture demonstrator are required to be fixed at Rs. 1125 to, i.e., minimum of the revised scale of pay of

Rs. 1125 Rs. 2215 p.m. prescribed for the post of Sericulture Demonstrators under the R.O.P. Rules, 1990.

....."

5. The petitioners rejected such calculation of the D.A. by the Govt. by filing their rejoinder against the affidavit-in-opposition and in paragraphs 4 and 6 it is stated that if DA is calculated @ 121.8 per cent upon the basic pay of Rs. 490 as on 3.3.1990 the P.A. will come to Rs. 597 instead of Govt.'s determination of Rs. 504. So, the Govt. has faulted in making the calculation of the DA as mentioned above. If there would have been a correct calculation on DA, then this anomaly would have been avoided inasmuch as the petitioners have already been satisfied with the re-fixation vide order dated 23.4.1998.

6. Mr. Sarma, Learned Sr. Counsel has submitted that this cancellation of refrxation of pay scale of the petitioners without giving any opportunity itself is contrary to the settled law. In support of this submission, he has cited three decisions of the Apex Court, namely--(i) Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others, (ii) H.L. Trehan and Others Vs. Union of India (UOI) and Others, and (iii) Bhagwan Shukla Vs. Union of India and others, The ratio laid down in those cases is that there is a flagrant violation of principles of natural justice in reduction/alternation of the basic pay of the employees without giving any opportunity of being heard to the petitioner. This is what has exactly happened in this case. On a bare perusal of the impugned order dated 16.9.1998 it clearly goes to show that same has been passed without giving any opportunity to the petitioners or without assigning any reason whatsoever.

7. Having regard to the above cited cases and after hearing Learned Counsel for the parties and on perusal of the materials on record, this court is of the considered view that the impugned order deserves to be interefered with on the count of violation of principle of natural justice alone. Besides, the fixation of revised pay scale of the petitioners at Rs. 1125 as stated in para 11 of the Govt.'s affidavit is appeared to the contrary of Rule 11(2) of the Revision of Pay Scale, 1990 providing that the initial pay cannot be less than the total emoluments which is admittedly Rs. 1188 as on 9.3.1990. Accordingly, the impugned order dated 16.9.1998 shall stand quashed. In the result, this writ application is allowed. No costs.

8. It is made clear that the petitioners shall be given all the consequential benefits in view of the refixation of the revised pay scale in terms of order dated 23.4.1998, Annexure-1 to the writ application.