
(2016) 12 GAU CK 0035
In the Gauhati High Court
Case No : WP(C) No. 4971 of 2015

Kapil Uddin Barbhuiya

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLT 165

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

Bench : Single Bench

Advocate : Mr. A. Deka, SC, Secondary Education, for the Respondents; Mr. M.H. Laskar, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Ujjal Bhuyan, J. (Oral) - Heard Mr. M. H. Laskar, learned counsel for the petitioner and Mr. A. Deka, learned Standing Counsel, Secondary Education Department, Govt. of Assam.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to grant him regular scale of pay and consequential pay benefits of the post of Principal with effect from 02.05.2012 when he was made in-charge Principal of P.C. Barjalenga Higher Secondary School, Cachar.

3. Case of the petitioner is that he was appointed as Assistant Teacher of P.C. Barjalenga High School on 01.12.1993. In the course of his service, he was promoted to the post of Headmaster by order dated 21.06.2013 issued by the Director of Secondary Education, Assam.

4. It appears that the Higher Secondary section of the said School was started and was provincialised as P.C. Barjalenga Higher Secondary School with effect from 01.01.2013 under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 pursuant to Government order dated

13.08.2014. In the consequential order issued by the Director of Secondary Education, Assam on 22.09.2014, 7 posts of Subject Teacher, 1 post of Senior Assistant and 1 post of Grade-IV were allotted to the P.C. Barjalenga Higher Secondary School and the services of the incumbents holding the said posts were provincialised with effect from 01.11.2013.

5. By a subsequent order of the Director of Secondary Education, Assam dated 18.11.2014, serving Headmasters of High Schools in which venture Higher Secondary Schools were opened and later on provincialised were designated as in-charge Principal and invested with financial power under FR 49 (c) to draw and disburse salary of the staff of the newly provincialised Higher Secondary Schools. In the said order, 21 such schools were mentioned including the P.C. Barjalenga Higher Secondary School.

6. It is stated that petitioner being the Headmaster of P.C. Barjalenga High School was made in-charge Principal of the Higher Secondary School prior to provincialisation with effect from 02.05.2012. Petitioner submitted representation before the Director of Secondary Education, Assam to appoint him as regular Principal of P.C. Barjalenga Higher Secondary School and to provide him pay-scale of Principal since he was discharging functions of the Principal. Since no decision was taken, present writ petition came to be filed seeking the reliefs as indicated above.

7. Notice in this case was issued on 24.08.2015.

8. Joint Director of Secondary Education, Assam has filed an affidavit. In the said affidavit, it is stated that petitioner was allowed to function as in-charge Principal of the P.C. Barjalenga Higher Secondary School under FR 49(c) to draw and disburse salary of the said Higher Secondary School. It is stated that petitioner's in-charge appointment is governed by FR 49(c) which clearly states that a Government servant would not be entitled to additional pay for holding current charge of higher post.

9. Petitioner has filed additional affidavit placing on record a notification dated 07.06.2016 issued by the Director of Secondary Education, Assam initiating process of selection of regular Principal of Higher Secondary Schools. It is stated that P.C. Barjalenga Higher Secondary School has not been included in the notification. Petitioner has also stated that it is very difficult to manage the school administration being the in-charge Principal.

10. Mr. Laskar, learned counsel for the petitioner, submits that right from the provincialisation of the P.C. Barjalenga Higher Secondary School, petitioner has been rendering additional duties as in-charge Principal. In a case of this nature, petitioner would be entitled to pay and allowances of regular Principal by applying the doctrine of "equal pay for equal work". Referring to a decision of a Single Bench of this Court dated 12.02.2009 passed in WP(C) No.7669/2004 (Suhanlal Agradhary v. State of Assam), he submits that petitioner is entitled to salary of Principal of a Higher Secondary School. Adverting to FR 49(c), he

submits that the said provision does not visualize continuation of in-charge engagement for an indefinite period. Finally, learned counsel has placed reliance on a recent decision of the Supreme Court in the case of *State of Punjab v. Jagdish Singh*, disposed of on 26.10.2016, by contending that since petitioner is rendering service as Principal of P.C. Barjalenga Higher Secondary School, he cannot be denied salary of the higher post, i.e., the post of Principal.

11. On the other hand, Mr. Deka, learned Standing Counsel, has placed reliance on the provision of FR 49(c) and contends that there is a clear bar under the said provision for a Government servant from being conferred salary of a higher post on discharge of additional duty. He submits that a Full Bench of this Court in *Assm Tombi Singh v. State of Manipur*, 2006 (4) GLT 608, has categorically held that an employee simply placed in charge of the higher post without any appointment therein is not entitled to claim the pay and allowances of such higher post in terms of FR 49. Possibly, this Full Bench decision was not placed before the Single Bench which delivered the order in *Suhanlal Agradhary* (supra). Therefore, petitioner is not entitled to higher salary of the post of Principal.

12. Submissions made by learned counsel for the parties have been considered.

13. Before proceeding further, it would be apposite to briefly highlight the essential facts necessary for adjudication of the present lis.

14. It is not disputed that the substantive post of the petitioner is Headmaster of P.C. Barjalenga High School and he is drawing salary as Headmaster of the said School. The Higher Secondary section of the said School called P.C. Barjalenga Higher Secondary School was provincialised with effect from 01.11.2013 but in the provincialisation order, only 7 posts of Post-Graduate Teacher, 1 post of Senior Assistant and 1 post of Grade-IV were allotted to the said Higher Secondary School whereafter services of the incumbents were provincialised. It is thus evident that the post of Principal was not allotted to the P.C. Barjalenga Higher Secondary School. Petitioner being the Headmaster of the High School was allowed to be the in-charge Principal of the Higher Secondary School in terms of the Director's order dated 18.11.2014. As per the said order, this arrangement was made under FR 49 (c) of the Fundamental Rules and Subsidiary Rules (FR & SR).

15. Firstly, when the post of Principal of the P.C. Barjalenga Higher Secondary School is not in existence having not been allotted to the said School, question of anyone drawing salary of the said post does not arise, not to speak of being appointed as Principal. The internal arrangement made by allowing the petitioner, being the Headmaster of the High School, to discharge the function of the Principal of the Higher Secondary School is only to ensure that there is no disruption in the administration of the Higher Secondary School and that such arrangement would be governed by the provisions of FR 49(c).

16. Since FR 49 (c) is central to the debate, the said provision is extracted hereunder:-

"F.R. 49. The State Government may direct a Government servant to hold charge of one or more independent posts at one time in addition to the post he holds substantively or in officiating capacity. In such cases, his pay shall be regulated as follows:-

(a) *** **

(b) *** **

(c) No additional pay shall be admissible to a Government servant who is directed to hold current charge of the routine duties of a higher post irrespective of the duration of the additional charge."

17. A careful analysis of the aforesaid provision would go to show that State Government may direct a Government servant to hold the charge of one or more independent posts at one time in addition to his substantive post, which he is holding. In such an eventuality, no additional payment would be admissible to a Government servant holding the current charge of even a higher post irrespective of the duration of the additional charge. Therefore, under FR 49 (c), there is a clear bar for payment of additional pay to a Government servant holding the current charge of higher post irrespective of the duration of such additional charge.

18. In *Assm Tombi Singh* (supra), a Full Bench of this Court was confronted with the question as to whether an employee holding higher post without any appointment to such higher post would be entitled to the pay-scale of the higher post. Two other questions relatable to the prime issue were also framed, namely, whether an incumbent holding the higher post on in-charge basis under an order containing specific conditions that it would be without extra remuneration would be entitled to get the pay-scale attached to the higher post and whether the incumbent delegated the power of the higher post without any order for appointment to the higher post would be entitled to get any scale attached to the higher post. On due consideration, the Full Bench held as under:-

"18. From the aforesaid discussion, we find that it is beyond the civil of any doubt that in order to get the benefit of a higher post, the nature, terms and conditions of the relevant order is the pivotal factors to be considered. The language of FR 49 is undoubtedly clear that the Government is entitled to appoint an employee as a temporary measure or to officiate in two or more independent posts and on such contingencies the Govt. servant is not entitled to the pay of the higher post, unless the order speaks otherwise.

19. On proper consideration of the ratio of the two lines of decisions of this Court, we hold that the decisions rendered by the Division Bench in *Gopal Ch. Chetia* to be laying down the correct principle of law applicable in such cases.

20. In view of the aforesaid discussion, we hold that an employee simply placed in charge of the higher post, without any appointment therein, in terms of FR 49 is not entitled to claim pay and allowances for such higher post. Similarly, an

incumbent holding a higher post on in charge basis under an order which contains specific conditions that it would be without extra remuneration, is not entitled to read in the order more than what it discloses. Likewise, such employee who is simply delegated the power of the higher post, while serving in the lower cadre, is also not entitled to get the higher pay scale, unless directed by the authority, otherwise. The reference is answered accordingly."

19. Thus, the categorical finding of the Full Bench is that an employee holding the charge of a higher post would not be entitled to pay and allowances of the higher post in terms of FR 49(c).

20. A perusal of the order of the Single Bench in Suhanlal Agradhary (supra) would go to show that though the said decision was rendered later in point of time, the Full Bench decision was perhaps not placed before the Single Bench. That apart, even factually, Single Bench had noticed in the facts of that particular case that in the order allowing the petitioner to function as in-charge Principal, there was no reference to FR 49 (c). The State respondents had also not pleaded in specific terms against the entitlement of claim by the petitioner in return of his service rendered by him in the higher post. Therefore, the decision in Sohanlal Agradhary (supra) would be of no assistance to the petitioner.

21. Therefore, in view of the clear and unambiguous language of FR 49(c) and the Full Bench decision in Assm Tombi Singh (supra), claim of the petitioner is without any substance and is accordingly rejected. Writ petition is devoid of any merit and is thus dismissed. However, there shall be no order as to cost.