

(2008) 04 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (Civil) No, 2982 of 2007

Mantu Lal Modak

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Citation : (2008) 4 GLR 392

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : K.M.Talukdar, A.Hazarika, B.K.Das, M.K.Mishra, S.D.Bhuyan, U.Bhuyan, B.Chakraborty, Advocates appearing for Parties

Judgement

1. The petitioner's grievance in essence, is projected against the denial of regular pay scale to him for the services rendered as a Language Teacher in Assamese at Bongaigaon Vidyamandir High School ("the School") since 30.10.1980. He has sought for a writ of mandamus for the release of his arrear dues pending with effect from 2.11.1987 computable on the basis thereof.

2. I have heard Mr. B. Chakraborty, learned counsel for the petitioner and Mr. M.K. Mishra, learned Standing Counsel, Education Department for the official respondents.

3. Briefly stated, the petitioner's case is that, he is a graduate in Arts and possesses the requisite qualifications for appointment as a Language Teacher in Assamese in graduate scale/cadre. On 30.10.1980 he was appointed as such in the school by the Managing Committee thereof. He joined the services immediately thereafter. The Government of Assam on 2.11.1987 created posts of Assamese Language Teachers on ad hoc basis with a lump sum pay of Rs. 620 for some schools and thereafter the Director of Secondary Education, Assam on 27.1.1988 allotted the same to the institutions mentioned therein. The petitioner's school figured in the list. Subsequently by order dated 25.3.1998 the petitioner's services in the aforementioned capacity was regularized with effect

from 2.11.1987 against the post allotted to the school. The Joint Director of Secondary Education, Assam by his communication dated 7.9.1998 conveyed the decision of the government sanctioning normalization of the posts mentioned in the order dated 27.1.1988 with effect from 1.3.1998 though the retention was made thereby up to 28.2.1999. The same was thereafter extended from time to time. As in spite thereof, the regular scale of pay was not accorded, the petitioner submitted representations before the concerned departmental authority to the said effect. Though official correspondences were exchanged whereby the proposal for release of the lump sum amount was made and eventually an amount of Rs. 56,800 was paid to the petitioner, the issue of sanctioning pay scale to him remained to be finalized. In the meantime, the Inspector of Schools, Bongaigaon District Circle, by his communication dated 17.1.2003 recommended the revision of the rate of pay at Rs. 3,580. No final decision thereon was, however, taken. According to the petitioner, even his above mentioned fixed rate is not being paid monthly, though the same by all means is even less than the minimum rate of wages paid at present to the government employees holding posts subordinate to that of Assistant Teacher.

4. The Director of Secondary Education, Assam in his affidavit while admitting the facts pertaining to the allotment of posts, regularization of the services of the petitioner as well as the normalization of the posts, has in essence, pleaded that the petitioner's claim for the regular pay scale is untenable as his school has not yet been provincialised. The answering respondent however, has disclosed that the issue with regard to the fixation of pay had been referred to the government by his letter No. PC/SEC/22/84/PtV/92 dated 3.5.2002 and the same is under process.

5. Mr. Chakraborty has urged that the petitioner's services having been regularized against the post of Assamese Language Teacher sanctioned by the government, he is entitled to the corresponding scale of pay having regard to the long years of service rendered by him. He has contended that in the facts and circumstances of the case, the plea of non provincialisation of the petitioner's school is not sustainable in law. According to the learned counsel, in any view of the matter, the rate of Rs. 620 per month being much lower than the minimum rate of wage payable in the State service, a writ of mandamus for granting the regular pay scale to the petitioner is warranted. Mr. Chakraborty has submitted on instructions that the petitioner's pay at the rate of Rs. 620 per month has not been paid since 1.6.1999.

6. Mr. Mishra, while reiterating the pleaded stand of the respondents has urged that as the petitioner's school has not been provincialised, his claim for regular pay scale is misconceived. In support of his submission, the learned Standing Counsel has produced the supplementary written instructions in the form of communications dated 16.2.2008 and 20.2.2008 of the Deputy Secretary to the Govt. of Assam, Education Department and the Director of Secondary Education, Assam respectively.

7. I have carefully considered the rival pleadings and the arguments advanced. The facts relating to the petitioner's appointment and the allotment of the post of Assam Language Teacher in the school and the his continuance in service since 30.10.1980 till date are admitted. It is also not in dispute that the petitioner is being paid at the rate of Rs. 620 per month though the said sum, according to the petitioner, is not released monthly, but together in lump sum. According to him, the arrears even at the said rate have not been released to him with effect from 31.5.1999.

8. The plea of the official respondents that for want of provincialisation of the petitioner's school the regular pay scale as contemplated in law cannot be accorded to him on principle, is unimpeachable. Noticeably, the post against which the petitioner is continuing as on date had been sanctioned and allotted by the government amongst others for his school. However, the respondent authorities had made the arrangement on ad hoc basis indicating that the same would carry a consolidated pay of Rs. 620 per month. The affidavit by the Director of Secondary Education, Assam as well as the letter dated 20.2.2008 written by him to the learned Standing Counsel, Education Department and produced in course of the hearing, however, disclose in clear terms that on the letter dated 3.5.2002 referred to hereinabove, the follow up steps have been taken, but the decision of the government on the issue of enhancing the rate of pay is pending as on date. The said letter reveals the contention that the employees of the recognized institutions are not entitled to the regular scale of pay as of those in provincialised institutions along with other facilities available to the government employees. The letter however, reveals that the slab of ad hoc grant sanctioned for the recognized schools for maintenance of staff (teaching and non teaching) for High schools imparting education upto Class X is at the rate of Rs. 2,000 per month. The petitioner has asserted in the writ petition that though for similarly situated persons serving as Bodo Language Teachers in various schools of the State the rate of their salary at Rs. 1,375 per month has since been revised to Rs. 3,850 per month, but the petitioner is still languishing at the old rate of Rs. 620 per month till date. The Inspector of Schools, Bongaigaon District Circle, Bongaigaon vide his letter dated 17.1.2003 had recommended the pay at the revised rate of Rs. 3,580 for the petitioner as well, but the said proposal as on date has not been acted upon.

9. The facts as stated hereinabove therefore, demonstrate that the issue with regard to enhancement of the rate of pay to the petitioner and the other similarly situated persons holding the posts sanctioned on 2.11.1987 is under the active consideration of the government, though no decision thereon has yet been taken. Admittedly, the rate of ad hoc grant for the recognized institutions in the State for the maintenance of their staff for imparting education up to Class X is Rs. 2,000. The petitioner's contention that persons similarly situated have been favoured with the higher rate of pay at Rs. 3,850 per month as pleaded by him in the facts and circumstances cannot be brushed aside. By any standard, the rate of Rs. 620 per month, is lower than the minimum rate of wage payable to the

persons holding posts subordinate to that of the Assistant Teachers in State service.

10. True, it is that a decision to provincialise an academic institution is one which normally lies in the exclusive domain of administrative discretion. This Court therefore refrains from issuing any mandamus to the said effect. The petitioner is left at liberty to submit or cause to be submitted a representation before the appropriate departmental/State authority for the provincialisation of his school and consequent sanction of scale of pay. If such a representation is filed, the concerned State authority would take an appropriate decision considering the factual background involved.

However, as admittedly, the process with regard to the grant of higher rate of pay to the petitioner and other similarly situated candidates/ persons is under consideration at the appropriate level of the government, this Court considers it expedient to fix a timeframe for the completion thereof. As the letter dated 20.2.2008 referred to hereinabove in clear terms mentions that the recognized schools imparting education upto Class X have been paid the ad hoc grant for the maintenance of the staff? Rs. 2,000 per month, in the opinion of this Court, the petitioner as a temporary measure is entitled to be paid at that rate. Ordered accordingly. The petitioner would be sanctioned the pay at the above rate from the month of May 2008. The respondent authorities would also take expeditious steps for computation of his arrear dues at, the rate of Rs. 620 per month from 1.6.1999 and release the same at an early date. The exercise as above, pertaining to the enhancement of pay pending decision of the government and computation of the arrear dues as ordered, having regard to the facts and circumstances of the case, should be completed within a period of two months from the date of receipt of the certified copy of this order. Needless to mention that in the event of a decision to provincialise the petitioner's school, he would be accorded a pay scale commensurate with his post and his service dues thereafter would be computed and released on the basis thereof. No costs.