

(2021) 03 GAU CK 0044

In the Gauhati High Court

Case No : Writ Petition (C) No. 4886 Of 2015

Mohesh Deka

APPELLANT

Vs

Union Of India And 8 Ors

RESPONDENT

Date of Decision : 30-03-2021

Acts Referred:

Citation : (2021) 03 GAU CK 0044

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : S Das

Final Decision : Allowed

Judgement

1. Heard Mr. Ashish Dasgupta learned senior counsel assisted by Ms. S. Das, learned counsel for the petitioner. Also heard Mr. S.K. Medhi, learned CGC appearing for all the respondents.

2. This is the second time the petitioner is before this Court. The earlier writ petition being WP(C) 1394/2006 was disposed of vide order dated 04.06.2010, with a direction to the respondents to consider the grievance of the petitioner filed by him in the form of an appeal before the Management Council of the North East Regional Institute of Water and Land Management (NERIWALM).

3. Projected grievances of the petitioner is that he entered service as Library Assistant in the year 1992 under NERIWALM and in terms of the Assured Career Progression Scheme (ACPS) notified vide Office Memorandum dated 09.08.1999 (Annexure-A), he is entitled to pay up-gradation upon completion of 12 years of service in the pay scale of Rs. 5500-9000/-per month. Further, he is entitled to second pay up-gradation upon completion of 24 years of service. The petitioner was given the first financial up-gradation vide Office Order dated 31.03.2005 with his pay fixed at Rs. 4500-125-7000 per month w.e.f 01.03.2004. According to the petitioner, he is entitled to the pay of Rs. 55000-9000/- per month in terms of the 5th Central Pay Commission Report. It is the case of the petitioner

that in respect of other posts under NERIWALM, the recommendation of the 5th Central Pay Commission Report was accepted and therefore, the same should be implemented in respect of the post of the Assistant Librarian which he was holding and that the financial up-gradation given to him was not in the correct pay scale. Accordingly, he submitted his representation before the respondent authority concerned. However, as the same was not considered, he approached this Court through WP(C) No. 1394/2006.

4. As already stated herein above, the writ petition was disposed of by directing the Management Council, NERIWALM to consider the appeal of the petitioner. The case of the petitioner came to be considered by the Management Council, NERIWALM in its 36th meeting held on 26.11.2010 (Annexure-D) wherein it was resolved to upgrade the post of Library Assistant held by him to the post of Library & Information Assistant w.e.f. from the date of the resolution and to fix his pay and allowances in the said post be fixed w.e.f. the date of joining in the post by him in due course. In terms of the said resolution, the respondent authority, NRIWALAM passed the Office Order dated 31.01.2011 (Annexure-C) by which the post of Library Assistant held by the petitioner was upgraded to Library and Information Assistant in pay band-2 i.e Rs. 9300-34800 plus grade pay of Rs. 4200/- per month

5. It is the case of the petitioner that vide Office Memorandum dated 19.05.2009 (Annexure-B), the Modified Assured Career Progression Scheme (MACPS)/for Central Government Civilian Employees came to be published by which instead of two financial up-gradation after 12 and 24 years, permissible under ACPS, three financial up-gradation on completion of 10, 20 and 30 years was introduced. According to the petitioner, he was given his first financial up-gradation on 31.03.2005 w.e.f. 01.03.2004 but not in the correct pay scale of Rs. 5500-9000/-. After his representation was considered as directed by this Court in his earlier writ petition, the pay scale given to him came to be rectified vide Office Order dated 13.01.2011 (Annexure-E) but with prospective effect. Therefore, the first financial up-gradation given to him was vide Office Order dated 31.03.2005 (Annexure-C) which was rectified vide Office Order dated 13.01.2011 (Annexure- E), he is now entitled to second up-gradation after completing 20 years of service i.e w.e.f. 01.03.2012.

6. The petitioner then submitted two representations before the respondent authority concerned on 24.12.2014 and thereafter, on 27.01.2015 praying for the financial up-gradation due to him under the MACP Scheme. The representation of the petitioner was then disposed of on 21.05.2014 with an observation that the pay scale of the petitioner was already up-graded in terms of the direction of the High Court in the 36th meeting of the Management Council on 26.11.2010, by upgrading his designation to Library & Information Assistant with the scale of pay applicable to the designation and therefore he is not entitled to further up-gradation. Being aggrieved, the petitioner is again before this Court.

7. Mr. Ashish Dasgupta, learned Senior Counsel submits that the petitioner was

given his first pay up-gradation vide Office Order dated 31.03.2005, but his pay was fixed in a lower scale and that the same came to be rectified through the 36th Management Council resolution and the resultant Office Order dated 13.01.2011. The said rectification is not a pay up-gradation in terms of the MACP Scheme. As such, upon completion of 20 years of service as on 01.03.2012, the petitioner is entitled to be given his second pay up-gradation.

8. Mr. S.K. Medhi, learned CGC, on the other hand, by referring to the affidavit-in-opposition filed by the respondent nos. 6 to 8 submits that the petitioner was granted financial up-gradation w.e.f. 01.03.2004 on completion of 12 years of service in the post of Library Assistant and as per MACP Scheme 1999. Thereafter, the said post of Library Assistant was up-graded and re-designated as Library & Information Assistant in a higher pay scale w.e.f. 13.01.2011 and therefore, the petitioner is not entitled to further up-gradation of pay on 01.03.2012 as claimed by him.

9. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

10. As may be noticed, the claim of the petitioner is that he should be given the second up-gradation of pay in terms of the MACP Scheme upon completion of 20 years of service i.e. w.e.f. 01.03.2012. According to him, he has only been given one up-gradation of pay vide Office Order dated 31.03.2005 and that the Office Order dated 13.01.2011 is only an order by which he has been given the correct pay scale entitled to him. The materials on record go to show that the petitioner was given his first financial up-gradation w.e.f. 01.03.2004 vide Office Order dated 31.03.2005 (Annexure-C). On his up-gradation, the petitioner was given the pay scale of Rs. 4500-125-7000/-. It was, however, the claim of the petitioner that he was entitled to get the pay scale of Rs. 5500-9000/- per month in terms of the 5th Central Pay Commission Report. The petitioner then submitted his representation before the Management Council which however was not considered and thereby prompting him to file WP(C) No. 1394/2006.

11. The writ petition was disposed of vide Office Order dated 04.06.2010 with a direction that the appeal of the petitioner be considered by the Management Council. Pursuant to the disposal the writ petition, the Management Council in its 36th Meeting held on 26.11.2010(Annexure-D) took a resolution to upgrade the post of Library Assistant held by the petitioner to Library & Information Assistant, with effect from the date of the said resolution and is also to fix his pay and allowances against he said post. Subsequent thereto, Office Order dated 13.01.2011 (Annexure-E), upgrading the post of Library Assistant held by the petitioner to Library & Information Assistant in the pay band of Rs. 9300-34800+grade pay of Rs. 4220/- per month came to be passed.

12. As per the MACP Scheme of 2009, the employees covered under the Scheme can be given 3 (three) financial up-gradation i.e. upon completion of 10 years and thereafter, upon completion of 20 years and finally upon completion of 30

years of service. The petitioner admittedly was given the first financial up-gradation in terms of the Office Order dated 31.03.2005 (Annexure-C) but in so far as the Office Order dated 13.01.2011 (Annexure-E) is concerned, the same was passed pursuant to the resolution of the meeting of the 36th Management Council of NERIWALM held on 26th November, 2010 (Annexure-D) where it was decided to up-graduate the post of Library Assistant held by the petitioner to Library & Information Assistant. The same however in the considered opinion of this Court, cannot be understood to be an up-gradation under the MACP Scheme, which otherwise provides for financial up-gradation after completion of every 10 years of service in 3 (three) stages.

13. It may be noticed that the respondent Nos. 6 to 8 in their counter affidavit had taken the stand that the petitioner was granted the benefit of higher pay scale of Rs. 4500-7000 per month instead of the next higher pay scale of Rs. 4000-100-6000 per month which was due to him under ACP Scheme of 1999. But the fact remains that in terms of the Order dated 31.03.2005 (Annexure-C), the financial up-gradation given to the petitioner was in the next higher grade as applicable under the Scheme i.e. in the pay scale of Rs. 4500-125-7000. Therefore, the contention of the respondents in the counter affidavit particularly at paragraph No. 9, contradicts their own document i.e. Order dated 31.03.2005 (Annexure-C).

14. Upon due consideration, this Court is of the view that by upgrading the post held by the petitioner, the same does not amount to granting him the benefit of financial up-gradation in terms of the MACP Scheme and under the circumstances, I find merit in the writ petition.

15. Accordingly, the writ petition is disposed of with the direction to the respondent authorities, more particularly respondent Nos. 6 & 7, to grant the petitioner the second financial up-gradation in terms of the MACP Scheme of 2009 in the post of Assistant Library Information Officer w.e.f 01.03.2012 i.e. the date on which he completed 20 years of service. The same shall be done expeditiously as possible and preferably within a period of 3 (three) months from the date of receipt of a certified copy of this order.

16. Writ petition accordingly stands allowed. No Cost.