

(2025) 03 GAU CK 0460
In the Gauhati High Court
Case No : WP(C) Of 7021 Of 2018

Mrinmay Kumar Das And Anr.

APPELLANT

Vs

The Gauhati High Court And 4 Ors.

RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 39(d), 229(2)

Citation : (2025) 03 GAU CK 0460

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : F. Faridi, H.K. Das, J. Handique, R. Borpujari

Final Decision : Disposed Of

Judgement

Devashis Baruah, J

1. Heard Mr. F. Faridi, the learned counsel appearing on behalf of the petitioners. I have also heard Mr. H. K. Das, the learned counsel appearing on behalf of the respondent Nos.1, 4 & 5; Mr. J. Handique, the learned counsel appearing on behalf of the respondent Nos.2 as well as Mr. R. Borpujari, the learned counsel appearing on behalf of the respondent No.3.

2. The short question which arises for consideration in the instant writ petition is as to whether the petitioners herein who are working as Library Assistants would be entitled to the equal Grade Pay to that of the Judicial Assistants?

3. The petitioner No.1 was appointed to the post of Library Assistant on 19.07.2013 and the petitioner No.2 was appointed to the said post of Library Assistant on 14.03.2014. At the time of appointment, the scale of pay for both the petitioners were Rs.5200-20,200 (PB-II) with Grade Pay of Rs.3000/- per month. It is further relevant to take note of that at that relevant point of time, the Judicial Assistants of the Registry of the Gauhati High Court were also drawing the same scale of pay with Grade Pay of Rs.3000/-. However, with the implementation of the Assam Services (Revision of Pay) Rules, 2017 (ROP,

2017), the petitioners' Grade Pay was reduced to Rs.7,400/- whereas the Grade Pay of the Judicial Assistant was raised to Rs.8,700/-.

4. From the materials on record, it is further seen that the petitioners, immediately upon the issuance of the notification dated 17.03.2017 by the Government of Assam was given the Grade Pay of Rs.8,700/- for the month of June, 2017 but subsequently, the same was reduced back to Rs.7,400/- on the ground that the upgradation of the Grade Pay of the Library Assistant was done without any express authority. It is seen that the petitioners herein represented before the Gauhati High Court. However, the grievances of the petitioners remained unaddressed for which the instant writ petition has been filed challenging the Resolution dated 09.04.2018 as well as the communication dated 22.05.2018. In addition to that, the petitioners had also sought for a writ in the nature of mandamus thereby to place the petitioners in the pay scale of Rs.14,000-49,000 with Grade Pay of Rs.8,700/- w.e.f. the month of July, 2017 with arrear monetary benefits since the date of implementation of the Assam Services (Revision of Pay) Rules, 2017.

5. It is relevant to take note of that pursuant to the filing of the instant writ petition, the Gauhati High Court had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that historically there was a parity in the pay scale of Judicial Assistant with the post of Library Assistant. However, with the notification dated 17.03.2017 notifying the Assam Services (Revision of Pay) Rules, 2017, the Pay Band and the Grade Pay of the Junior Administrative Assistant in the Assam Secretariat was revised from Rs.5200-20200 plus Grade Pay of Rs.3000/- to the Pay Band of Rs.14,000-49,000 with Grade Pay of Rs.8700/-. It was further mentioned that before the implementation of the ROP 2017, the scale of pay of Judicial Assistant and Library Assistant were the same of Rs.5200-20200 plus Grade Pay of Rs.3000/- and the corresponding revised Grade Pay of Rs.3000/- is the Grade Pay of Rs.7400 as per the Rules of 2017. Be that as it may, the Grade Pay of Junior Administrative Assistant in the Assam Secretariat was enhanced from Rs.3000/- to Rs.3300/- in the light of the Government of Assam's Resolution accepting the recommendation of the 7th Assam Pay and Productivity Pay Commission, and therefore, as per the ROP 2017, the revised Grade Pay of Junior Administrative Assistant in Assam Secretariat was fixed at Rs.8,700/- instead of Rs.7,400/- which is corresponding to old Grade Pay of Rs.3,000/-. It was further mentioned that as per the communication of the Government of Assam dated 13.06.2017, the officers and staff of the Registry of this Court were also drawing the revised pay as per the ROP 2017 and as an interim measure, the Principal Seat of the Gauhati High Court taking into consideration that the post of the Judicial Assistant in the Registry of the Gauhati High Court is equivalent to the post of Junior Administrative Assistant in Assam Secretariat, and to maintain parity, the revised pay fixation of the Judicial Assistant of the Gauhati High Court was done taking into consideration of Rs.8,700/- as Grade Pay. It was further mentioned that there is no post of Library Assistant in the Assam Secretariat, and therefore, in

the case of Library Assistant, the revised Grade Pay corresponding to Rs.3000/- was Rs.7,400/-had been taken into account resulting in less pay to the Library Assistant in comparison to the Judicial Assistant.

6. It is very pertinent herein to mention that in terms with Article 229(2) of the Constitution, the Chief Justice of the Gauhati High Court had made the Gauhati High Court (Revised Pay) Rules, 2013 (herein after referred to as the "Draft Rules") and taking into account the proviso to Article 229(2) of the Constitution, the same was placed before the State Government for its approval.

7. It appears from the submission from both the parties that there is some dispute as regards the approval granted to the Draft Rules. However, the question which is of vital importance that in the said Draft Rules, the Chief Justice, who is the had equated the pay scale in respect of the post of Library Assistant with the post of Judicial Assistant. This aspect of the matter is important in view of the fact that the employer of the petitioners who is Chief Justice had equated the services of a Library Assistant with that of a Judicial Assistant.

8. This Court further finds it pertinent to take note of the affidavit so filed by the Finance Department. In the said affidavit so filed, it was an admitted fact that in the Assam Secretariat, there is no post of Judicial Assistant or Library Assistant, but the post which is there is the post of Junior Administrative Assistant which was upgraded to Pay Band-II of Rs.14,000-60,500 plus Grade Pay of Rs.8,700/-. It was further mentioned that the pay structure of the Judicial Assistant in the Gauhati High Court was revised to Pay Band-II of Rs.14,000-60500 plus Grade Pay of Rs.8700/- at par with Junior Administrative Assistant of the Assam Secretariat. In the said affidavit filed by the respondent No.3, there were further details provided in respect to the various establishments/Departments under the State of Assam in respect to the scale of pay to the post of Library Assistant. In the Directorate of Library Science, the scale of pay of the Library Assistant is in Pay Band-II of Rs.14000-60,500 plus Grade Pay of Rs.8,700/- which is again equivalent to the pay scale of Junior Administrative Assistant in Assam Secretariat and the Judicial Assistant in the Gauhati High Court. However, in respect to other establishments such as Assam Administrative Reforms and Training Department, Cultural Affairs Department, State Council of Education Research and Training, Government Law College, Sanskrit College, Health and Family Welfare Department, Industrial Training Institute and Panchayat, the Library Assistants although was the post of Library Assistant in Pay Band-II but their Grade Pay varied from Rs.5,600/- to Rs.7,600/-. It was further mentioned that there being no recommendation of the 7th Assam Pay and Productivity Pay Commission for upgradation of Grade Pay of Library Assistant, the Grade Pay of Library Assistant cannot be increased and brought at par with Judicial Assistant.

9. In the backdrop of the above pleadings, this Court has heard the learned counsels appearing on behalf of the parties at length. In addition to that, this Court has also perused the materials on record. From the materials on record, it

is seen that there was a historical parity in the pay scale in the post of Library Assistant with that of Judicial Assistant in the Gauhati High Court. The change only happened with the implementation of the ROP 2017. It is also very relevant to take note of that there is also no recommendation in the 7th Assam Pay and Productivity Pay Commission in respect to Judicial Assistant. The recommendation was only in respect of Junior Administrative Assistant of the Assam Secretary. It is also seen that the Junior Administrative Assistant prior to the ROP 2017 was drawing the equal pay scale along with the Grade Pay to that of the post of Library Assistant as well as Judicial Assistant and the Grade Pay was Rs.3000/-. On account of a decision being taken by the Government of Assam to increase the Grade Pay of the Junior Administrative Assistant from Rs.3000/- to Rs.3300/- and the corresponding increase in the Grade Pay to Rs.8700/-, the Judicial Assistant in the Gauhati High Court were also given the same Grade Pay.

10. This Court further takes note that the Gauhati High Court (Revised Pay) Rules, 2013 was made by the Chief Justice of the Gauhati High Court and the same was placed before the State for the approval of the Governor. The question whether it has been approved or not is not relevant for the purpose of the instant dispute. But, what is relevant is that the employer of the petitioners, i.e. the Chief Justice of the Gauhati High Court has put the posts of Library Assistant and Judicial Assistants to be entitled to the same pay scale on the basis of equal work and for which recommended for equal pay.

11. This Court finds it relevant to take note of the judgment of the Supreme Court in the case of Manmatha Nath Ghosh &

Others vs. Baidyanath Mukherjee & Others, reported in (2005) 13 SCC 630 wherein the Supreme Court categorically observed that the assessment of the quality of work done by the two categories of employees must necessarily be left to the judgment of the employer, i.e. the High Court in question.

12. This Court further in this regard finds it relevant to take note of the judgment of the learned Division Bench of this Court in the case of Shyamal Saikia & Others vs. State of Assam & Others, reported in (1984) 1 GLR 144 wherein the learned Division Bench of this Court opined that when the Appointing Authority, namely, the Chief Justice had held their employees under him did equal work and should get equal pay, an outside agency cannot nullify the conclusion and hold to the contrary. Paragraph No.5 of the said judgment is reproduced herein under:-

"5. There is no semblance of doubt that since 1962, the High Court and the Government considered that the LDAs and the LAs of the High Court should get the same scales of pay on the principle of equal pay for equal work. Since 1964 there was only one post in the High Court designated as Lower Division Assistants including Library Attendants and the LDAs including LAs enjoyed the same scales of pay on the basis of equal pay for equal work. Until the Govt. by their unilateral action raised the scales of pay of the LDAs, the status of the LDAs

and the LAs was the same. There was no question of getting promotion from LA to LDA. In fact, along with raising the pay scale of "LDAs" there should have been proportionate revision of pay scales of other ministerial staff of the High Court and it appears that their cases were completely overlooked. Indeed, the post of Asstt. Librarian was a promotional post when the pay scale of LDAs and LAs was the same. In view of the withholding of the increase in the pay scale of the LAs, the Asstt. Librarians were getting higher scales of pay and it was a promotional post at all relevant time when the enquiries were made. However, the crucial question was whether on the revision of pay scales of the LDAs, the pay scales of the LAs, who were all along treated at par insofar as status, pay scale, qualification and quantum of work were concerned, should have been altered and raised or not. When "the appointing authority", namely, the Chief Justice held that the employees under him did equal work and should get equal pay, we feel that no other outside agency can nullify the conclusion and hold to the contrary. Any such contrary opinion or conclusion of such agency must be held arbitrary and perverse, unless strong reasons are coming. In fact in many respects, as is revealed from the records placed at our disposal, we find that the work done by "the LAs" are more rigorous and need more expertise than that of the LDAs. In any view of the matter the petitioners rightly contended that when the Chief Justice, the appointing authority, had made the recommendation for revision of pay scale of "the LAs" that is, their scales of pay should be at par with the LDAs and the Govt. could not have Violated the mandates of Articles 14, 16 and 39(d) and 229(2) of the Constitution in turning down the recommendation of the Chief Justice. When the employer opines that the employees were doing equal work and they were entitled to equal pay, as held by the Supreme Court in Randhir Singh (supra), the principles enunciated were violated in not granting the petitioners the scales of pay as desired by the Chief Justice."

13. Taking into account the above proposition of law, this Court is of the opinion that the petitioners herein who are the Library Assistants are entitled to the equal Grade Pay to that of the Judicial Assistants w.e.f. the date on which the Judicial Assistants were granted Grade Pay at the rate of Rs.8,700/-.

14. Consequently, all decisions which are contrary to the above observations and findings are set aside and quashed and the respondent authorities are directed to take appropriate steps for release of the arrear amounts to the petitioners as per the above observed entitlement.

15. Accordingly, the instant writ petition therefore stands disposed of with the following observations and directions:-

(i) The petitioners herein who are the Library Assistants would be entitled to the Grade Pay of Rs.8,700/- which is equal to that of the Judicial Assistants w.e.f. the date on which The Judicial Assistants have been granted the Grade Pay of Rs.8,700/-

(ii) All decisions which are impugned in the instant proceedings are set aside and

quashed.

(iii) The respondent authorities are directed to re-compute the arrears of the petitioners on the basis of the above observations and thereupon pay the arrears to the petitioners within 4(four) months from the date of a certified copy is served upon the respondent No.1.