

(1999) 07 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 83 of 1997

Nandini Sarma

APPELLANT

Vs

Assam Administrative Tribunal and Others

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Assam Public Service (Ad-hoc) Appointment Rules, 1986 — Regulation 3(1), 3(1)
Assam Services (Revision of Pay) Rules, 1990 — Rule 7
Constitution of India, 1950 — Article 14, 226

Citation : (1999) 3 GLT 7

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.K. Phookan, G.K. Bhattacharjee and M. Bhuyan, for the Appellant;
T.C. Chutia, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—Smt. Nandi Sarma, the writ Petitioner herein, being aggrieved with the Notification No. FPC. 1/91/154 dated 20th September, 1995 issued by the Secretary to the Government of Assam and the order dated 9.9.1996 passed by the Assam Administrative Tribunal in Case No. 65 ATA/95 has filed this writ petition under Article 226 of the Constitution.

2. The Petitioner's case is that she had passed M.Sc. in Physics in 1989 obtaining 1st Class and also Post Graduate Diploma in Computer Science. She was appointed as Programmer for the Computer Division of the Assam Administrative Staff College under Rule 3(1) of the Assam Public Service Commission (Adhoc) Appointment Rules, 1986 vide office order dated 12.9.1990 issued by the Respondent No. 4. She was given pay scale of Rs. 850 to 1175/- per month. It was indicated in the appointment letter that the scale of pay was likely to be revised. The Petitioner joined the said post on 21.9.1990. In course of time, it was found that the scale given to her was lower than the scale of pay which was proposed by the Director of Training, Assam Administrative Staff College and that

it was not at par with the scale of pay given to the Programmers of other departments. Further, the scale was also not at par with the scale recommended in Schedule A" to the Assam Services (R.O.P) Rules, 1990. The R.O.P. Rules recommended the scale of Rs. 2275 to 4450/- per month against pre-revised scale of Rs. 1125 to 1975/- per month paid to the Programmers. The Petitioner submitted a representation before the Respondent No. 4 to extend the scale as in the R.O.P. Rules of 1990. The Respondent No. 4 recommended to the Respondent No. 2 to take steps for extending the scale as was payable before revision as well as after revision. While forwarding the representation, the Respondent No. 4 also informed that the Petitioner was already selected by the Assam Public Service Commission for appointment to the post of System Analyst-cum-Programmer in the Planning and Development Department in the scale of Rs. 2275 to 4450/-. In view of the aforesaid recommendation by the Respondent No. 4 and assurance having been given to her, the Petitioner did not join the planning and Development Department on the expectation that the anomaly in respect of her pay scale would be duly corrected. The Respondent No. 4 also reminded the appropriate authority of the Government by a series of letters to expedite the decision on the aforesaid representation submitted by the writ Petitioner. The Petitioner again submitted a representation on 16.10.1995 informing the Respondent No. 4 that the initial pay scale given to her was in fact the scale meant for the Assistant Programmer of other departments. It was also indicated in the said representation that the minimum qualification required for the post of Assistant Programmer is graduation while the qualification for the post of Programmer of the Assam Administrative Staff College is post-graduation. Eventually, vide letter No. TRG./7/95/12 dated 20.10.1995 the scale of pay of Programmer in the Assam Administrative Staff College was fixed at Rs. 1785 to 4200/- instead of Rs. 2275 to 4450/- per month and the Petitioner was accordingly given the scale vide letter dated 31.10.1995. Being aggrieved with the aforesaid decision, she had preferred an appeal before the Assam Administrative Tribunal, Guwahati. The Assam Administrative Tribunal disposed of the appeal (Case No. 65 ATA/95) rejecting her claim for enhanced scale vide judgment dated 9.9.1996. The Petitioner's case is that the scale granted to her vis-a-vis the pay scale granted to similarly situated persons in other departments is contrary to the principles of "equal pay for equal work" and, therefore, the action taken by the Respondents is illegal and not sustainable in law. Assailing the action as a classification without tangible grounds and being violative of Article 14 of the Constitution, the Petitioner has prayed for quashing the notification dated 20.9.1995. The Petitioner's next contention is that, at any rate, the pay scale prescribed in the Assam Services (R.O.P.) Rules, 1990 cannot be denied to her. Describing the State action as an unreasonable classification made from a well-defined class, it is submitted that the order dated 20.9.1995 is violative of principles of natural justice since no opportunity of being heard prior to the passing of the said order was given to her.

3. The Respondents plea as is evident from the affidavit-in-opposition filed by the

Respondent No. 2 is that by a notification issued in the State Gazette on 20th September, 1995, the pay scale in respect of the Programmer which was wrongly quoted has been rectified. The Respondents also relied upon Rule 7 of the R.O.P. Rules of 1990 in order to justify the fixation of pay of the writ Petitioner in the aforesaid scale. It is submitted that when the Petitioner applied for the post of Programmer in June, 1990 she did not possess any post-graduate diploma recognised by the Government nor did she have any experience. According to them, considering the duties and responsibilities of the Programmer attached to the Assam Administrative Staff College the post was created in the scale of Rs. 850 to 1775/- with the approval of the Finance Department. The applicant was selected and appointed although she did not have requisite qualification due to non-availability of qualified and experienced persons to run the in service training in Computer in Assam Administrative Staff College. The scale before the revision as appeared in the Schedule to the Assam Services (R.O.P.) Rules, 1990 was inadvertently shown as Rs. 1125 to 1975/- instead of Rs. 850 to 1775/-. As a result, the revised scale was mis-quoted to be Rs. 2275 to 4450/- in place of Rs. 1785 to 4200/-. This mistake has been rectified by notification dated 20th September, 1995. The Petitioner is, therefore, not entitled to the revised scale of Rs. 2275 to 4450/- as claimed by her.

4. The writ Petitioner in her reply to the affidavit-in-opposition, however, reiterated the averments made in the petition and submitted that there was no condition in the advertisement that a candidate must possess post-graduate diploma in Computer Science from a Government recognised institution. That apart, she had also one year experience in Computer Programme Writing etc. Therefore, she has a legitimate claim to the scale of Rs. 2275 to 4450/-.

5. I have heard Mr. A.K. Phookan, learned Counsel for the writ Petitioner as well as Mr. T.C. Chutia, learned Govt. Advocate for the Respondent-State.

6. Annexure-1 is the proposal given by the Director of Training to the Government of Assam requesting for creation of two posts of Programmer for Computer Training. Eventually, on consideration thereof, the State Government created some posts including the post of Programmer in the scale of Rs. 850 to 1175/-. In this letter dated 15.12.1989 according sanction to the creation of the aforesaid post the minimum qualification required for the post of Programmer has not been indicated. However, from the proposal given by the Director, it appears that the qualification prescribed is as follows:

7. The Petitioner was appointed under Regulation 3(1) of the Assam Public Service Commission (Adhoc) Appointment Rules, 1986 as Programmer in the scale of Rs. 850 to 1775/- with endorsement in bracket that the scale is likely to be revised. This shows that the Petitioner was offered appointment on the recommendation of the Assam Public Service Commission to the scale of Rs. 850 to 1775/- as sanctioned by the Government of Assam. The Petitioner accepted the appointment without any reservation. After publication of R.O.P. Rules of 1990 she submitted a representation on 14.2.1991 insisting for the revised scale

of Rs. 2275 to 4450/-. On her claim, the Director of Training referred the matter to the Government with a request to refer the matter to the Anomaly Committee. The Director of Training also forwarded Anr. representation submitted by the writ Petitioner on 21.4.1994 to the State Government for consideration. On 29.6.1994, the Director of Training again recommended her case for higher scale as claimed by her. On 20th October, 1994, the Under Secretary to the Government of Assam addressed a letter to the Accountant General indicating the pay scale of the Programmer and retention of the post for a period upto 29.2.1996 in the scale of Rs. 1785 to 4200/-. In this letter, it has been written that the post was created vide order dated 15.12.1989 (Annexure-2). Before this letter was written on 20th October, 1995, it appears that the Government notification dated 20th September, 1995 correcting the mistake in the R.O.P. Rules was issued. By this notification the scale of Programmer in the Assam Administrative Staff College has been shown to be Rs. 850 to 1775/- before revision and Rs. 1785 to 4200/- after revision. It is important to note here that the post of Programmer initially was created in the scale of Rs. 850 to 1775/-. This was so done considering the various factors, namely qualification, nature of duties and responsibilities of the Programmer in the Assam Administrative Staff College. The propriety of this order of sanction cannot be questioned by this Court since it was issued on consideration of various factors as indicated above. The Petitioner had the option either to accept or to reject the offer of appointment. Once the Petitioner accepted the appointment in the scale of Rs. 850 to 1775/-she is bound by the scale prescribed by the Government vide notification dated 15th December, 1989. The said scale was wrongly quoted by the Pay Commission in their recommendation and as a result the revised scale was shown to be Rs. 2275 to 4450/- against the pre-revised scale of Rs. 850 to 1775/-. This mistake having been corrected by the State Government vide notification dated 20th September, 1995, the Petitioner does not appear to have any claim to get the scale which was wrongly printed in the R.O.P. Rules of 1990. It may be mentioned here that the Court has no powers to direct the State to fix a particular scale of pay for any post as it is a matter exclusively for the Executive to decide. The Court does not have the necessary expertise to prescribe a scale of its own which may have far reaching repercussion on the policy involved.

8. The Petitioner has also alleged discrimination on the ground that the Programmer of other departments has been given higher scale of pay of Rs. 2275 to 4450. But the Respondents in their affidavit-in-reply have made it clear that the post was created after taking into consideration the duties and responsibilities attached. According to them, the Petitioner did not possess any post-graduation diploma as recommended by the Government and did not have any experience as required and that she had to be selected as no other suitable candidate was available.

9. The sanction letter dated 15.12.89 (Annexure-2) shows that the qualification required for the post is not mentioned. The qualification as suggested by the

Director in his letter dated 2.6.1989 (Annexure-1) quoted hereinbefore does not mention of post-graduation diploma in Computer Science. In spite of that, a lower pay in the scale of Rs. 850 to 1775/- was sanctioned. It was obviously done considering the duties and responsibilities attached to the post in the administrative Staff College. This action on the part of the State, therefore, cannot be unsettled by this Court unless it is established on record that the decision is not tenable in law. On this contest, the doctrine of "equal pay for equal work" cannot be invoked in this case. In fact, the materials do not suggest of any hostile discrimination between the Programmers of Assam Administrative Staff College vis-a-vis the Programmers of other departments. The claim of the Petitioner for the pre-revised scale of Rs. 1125 to 1975/- and the revised scale of Rs. 2275 to 4450/- is based on mistake in the printing in the R.O.P. Rules of 1990. The Petitioner cannot be allowed to reap any benefit out of the printing mistake.

10. The Assam Administrative Tribunal in their impugned order dated 9.9.1996 held that since the pay scale was fixed at Rs. 850 to 1775/- with the concurrence of the Finance Department, the administrative department had no option but to grant the said scale. According to them, the aforesaid scale was also mentioned in the advertisement and the Petitioner was offered an appointment in the approved scale. According to the Tribunal, the character of the duties and responsibilities and the pay scale of the Programmer in the Assam Administrative Staff College were not comparable with those in other departments. The organisational set up of the Computer Wing and the methods of recruitment are also not uniform. According to the Tribunal, the organisational set up in Agricultural Directorate, Engineering College, Economic and Statistics Department are not same with that of the Administrative Staff College and, therefore, it would be unjust and unfair to grant identical scale of pay as claimed by the writ Petitioner.

11. A careful scrutiny of the order passed by the learned Tribunal shows that all the relevant factors have been taken note of before rejecting the appeal preferred by the writ Petitioner. The reasons shown therein appear to be just and proper in view of the discussion made by this Court in the preceding paragraphs. The impugned order of the Tribunal, therefore, warrants no interference by this Court.

12. In the result, the writ petition is dismissed.