
(2010) 09 GAU CK 0009
In the Gauhati High Court
Case No : Writ Appeal No. 299 of 2008

Nazir Hussain Sarkar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Citation : (2010) 09 GAU CK 0009

Hon'ble Judges : Madan B. Lokur, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : M.H. Choudhury, L.N. Choudhury, A. Ali, K. Lahkar and H. Chakraborty, for the Appellant; V.M. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. M.H. Choudhury, learned Counsel appearing for the Appellant (writ Petitioner). Mr. V.M. Thomas, learned standing Counsel of the Education Department represents the Respondents.

2. The Appellant challenges the judgment and order dated 1.4.2008 rendered in WP (C) No. 7694/05, whereby the Appellant's claim for UGC pay scale granted to lecturers fulfilling UGC norms, was held to be unjustified because of want of the prescribed qualification of the writ Petitioner.

3. The Appellant was initially appointed on 4.3.1986 as a tutor in the Assamese Department in Kharupetia College on a consolidated pay of Rs. 300 per month, with the qualification in Master of Arts (MA) in, Assamese with 49.7% marks, Subsequently through betterment examination he bettered his marks to 50.8%. At the time of Appellant's appointment in 1985, the Kharupetia College was a venture college which was yet to be taken over by the Government under the grants in aid scheme.

4. After serving for a few years in the college, the service of the Appellant was terminated on 9.8.1988 for some misconduct. Therefore, when the college was brought under the grants in aid scheme w.e.f. 29.8.1998, the name of the

Appellant was not amongst the list of lecturers, whose services got provincialised with the takeover of the college. However, by a later resolution dated 28.11.1999 the Governing Body of the college allowed the Petitioner to rejoin his service as lecturer. A further resolution was passed by the Governing Body to regularize his break in service during the period from 9.8.1998 to 30.11.1999. But the approval of the Director of Higher Education (Respondent No. 3) was not secured for regularising the said service break period.

5. When a regular post of lecturer became available in the Assamese Department, the Appellant was adjusted against a regular post but with a lesser pay scale. Aggrieved the Appellant preferred a writ petition seeking direction for payment of UGC scale of pay being received by lecturers possessing UGC prescribed qualification.

6. The learned Single Judge recorded that the Appellant is not entitled to hold the post of lecturer in a deficit college for want of necessary nondemic attainment and was permitted to continue as a lecturer under a special scheme for unqualified lecturers. Accordingly the Petitioner's claim for UGC pay scale was found to be unjustified and the writ petition was dismissed.

7. Before us the Appellant contends that when he renders the same service as the lecturers with UGC qualifications, he should be granted the UGC pay scale receded by other lecturers. Alternatively the Appellant contends that, some under qualified lecturers in other colleges have been granted UGC pay scale and, therefore, to prevent discrimination, the Appellant too should be considered entitled for the UGC pay scale.

8. The stand of the Respondents is that the Appellant has no UGC norms in his Master Degree and therefore, his case can be covered only by the relaxed norms (prescribed for such under qualified lecturers, who were appointed by the Governing Body at the venture stage of the college), only to enable them to continue in service but with a truncated pay package.

9. As regards the contention that the Appellant is on the same footing as few under qualified lecturers serving in other colleges, the stand of the Respondents is that since there was a break in his service, unlike the other lecturers who were continuously serving from the date of their initial appointment, the case of the Appellant can not be treated to be at par with those continuously serving lecturers.

10. We find from the impugned judgment that the only point urged by the Appellant before the writ Court was that he is at par with other lecturers who are getting the UGC scale of pay and, therefore, there is no reason to grant him a truncated scale of pay. However, the learned Court having recorded that the Appellant does not fulfil the UGC prescribed qualification held that the granting of lower pay scale to the Appellant for want of necessary UGC proscribed academic standards, cannot be said to be a discriminatory act. We see no error in the said conclusion reached by the learned Single Judge.

11. As regards the further contention of the Appellant based upon the circular dated 5.12.1987 issued by the Government for lecturers lacking the UGC prescribed norms, although this point was not urged before the learned. Single Judge, we find that there was a break in service in the Appellant's career and the circular of 5.12.1987 cannot apply to the Appellant and would apply only to the continuously serving under qualified lecturers, who were in service since prior to 5.12.1987. After the service break, when the Appellant was reappointed on 30.11.1999, the UGC prescribed norms of 55% in M.A. was squarely applicable and the benefit of the circular dated 5.12.1987 would not be available to the Appellant who had only 50.8% in his M.A. Therefore, we see no merit in the contention that on the application of the Government Memorandum dated 5.12.1987, prescribing relaxed norms for under qualified lecturers the Appellant is entitled to claim for UGC prescribed pay scale. The memorandum enables an under qualified lecturer to keep his job as a special concession and does not confer any right to claim equal salary like that of a qualified lecturer.

12. When the Appellant does not possess the UGC prescribed qualification, he cannot advance a legitimate claim to salary at the UGC proscribed pay scale. The Appellant is in a different class as compared to lecturers with UGC norms and accordingly we record our concurrence with the view taken by the learned Single Judge.

13. For the forgoing reasons, we find no merit in the appeal and the same is dismissed. No cost.