

(2023) 02 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5658 Of 2015

Neepjyoti Das And 3 Ors

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 20-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2023) 02 GAU CK 0048

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : G Goswami

Final Decision : Disposed Of

Judgement

1. Heard Mr. R. Mazumdar, the learned counsel for the petitioners and Mr. B. Gogoi, the learned counsel appearing on behalf of the Finance Department. Also heard Mr. C. S. Hazarika, the learned counsel appearing on behalf of Town & Country Planning Department, Assam as well as Mr. S. K. Medhi, the learned counsel appearing on behalf of the respondent No.7.

2. The case of the petitioners herein is that pursuant to the advertisement dated 29.09.2011, the petitioners applied for the post of Assistant Director in the Directorate of Town & Country Planning, Assam under the Urban Development Department. In terms with the said advertisement, the scale of pay was mentioned as Rs.12,000 - 40,000 with Grade Pay of Rs.5,900/- per month. Subsequent thereto, by the notification dated 07.08.2012, the petitioners were temporarily appointed to the vacant sanctioned posts with the scale of pay of Rs.12,000 - 40,000 with Grade Pay of Rs.5,900/- plus other allowances as admissible under the Rules from time to time. Although as per the advertisement as well as by the appointment order, the petitioners were entitled to the Grade pay of Rs.5,900/-, but the petitioners were only given the Grade Pay of Rs.5,400/- for which the petitioners had submitted representations to the respective authorities. Upon such representations, the Senior Accounts Officer of

the Office of the Accountant General (A&E) had sent a communication to the Secretary to the Government of Assam (Pay Research Unit) Department seeking a clarification as to whether the petitioners are entitled to the Grade Pay of Rs.5,400/- or Rs.5,900/- taking into account the notification dated 12.12.2011, issued by the Finance Department.

3. At this stage, this Court deems it proper to quote the relevant portion of the said notification dated 12.12.2011 which is reproduced herein below:-

NOTIFICATION

Dated Dispur the 12th December, 2011

No.FPC.12/2000/145: The Governor of Assam is pleased to allow Grade Pay of Rs.5,900/- as personal to the present incumbents in the post of Asstt. Director, Town & Country Planning under Urban Development Department. All future recruits to the said post shall enjoy pay structure of Pay band-4 + Grade pay of Rs.5400/-. While advertising for the said post, Department shall clearly bring out this fact.

(M. Rahman)

Deputy Secretary to the Govt. of Assam,

Finance (Pay Research Unit) Department

4. A perusal of the said notification stipulates that the Governor of Assam was pleased to allow Grade Pay of Rs.5,900/- as personal to the present incumbents in the post of Assistant Director, Town & Country Planning under the Urban Development Department. All future recruits to the said post shall enjoy pay structure of PB-4 plus Grade pay of Rs.5400/-. It was also mentioned that while advertising for the said post, Department should clearly bring out this fact.

5. At this stage, it is relevant to take note of that the said notification was issued subsequent to the advertisement which was issued on the basis of which the petitioners were appointed.

6. The Finance Department has filed an affidavit-in-opposition. In the said affidavit-in-opposition it has been mentioned that pursuant to the Assam Services (ROP) Rules, 2010, the Anomaly Pay Committee had given a recommendation that the Finance Department should issue necessary notification correcting the anomalies to stop the Assistant Directors' continued drawal of Grade pay of Rs.5,900/- which is more than the Grade Pay fixed for the Assistant Engineer. It is, however, relevant to take note of that in the said affidavit-in-opposition so filed by the Finance Department, there is no mention as to whether pursuant to the Anomaly Committee's Report there was any amendment carried out to the Assam Services Revision of Pay Rules, 2010.

7. The learned counsel for the petitioners has also drawn the attention that while appointing subsequent persons as the Assistant Director under the Directorate of

Town & Country Planning, Assam, the said incumbents have been given the pay of Rs.30,000/- to Rs.1,10,000/- per month with Grade Pay of Rs.13,300/-. The learned counsel for the petitioners has further drawn the attention to the resolution of the 7th Assam Pay and Productivity Pay Commission and the report of the Committee with the Assam Service (Revision of Pay) Rules, 2017 and invited the attention of this Court in respect to the pay structure in the Directorate of Town & Country Planning Organization. The learned counsel for the petitioners submitted that a perusal of the said document would clearly show that in respect to the post of the Assistant Director which is in Pay Band-4, the then existing pay structure was Rs.12,000-40,000/- with Grade Pay Rs.5,900/- and the same has been revised to Rs.30,000/- to Rs.1,10,000/- with Grade Pay Rs.13,300/-. However, in the case of Assistant Engineer which is also in the Pay Band-4, the then existing pay structure as Rs.12,000/-40,000/- with Grade Pay of Rs.5,400/- and the present pay structure is Rs.30,000/- to Rs.1,10,000/- with Grade Pay of Rs.12,700/-. The learned counsel for the petitioners submitted that the Service Rules applicable to the petitioners are the Assam Town & Country Planning, Town Planners Service Rules, 2016 wherein also the pay structure mentioned as against the Assistant Director is Rs.12,000/-40,000/- with Grade pay of Rs.5,900/-. The learned counsel for the petitioners, therefore, submitted that the petitioners being Assistant Director are entitled to Grade Pay of Rs.5,900/-, i.e. the present Grade Pay of Rs.13,300/-. However, similarly situated persons who have been appointed prior to the petitioners appointment and after the petitioners appointment initially were given the Grade Pay of Rs.5,900/- and now being given Rs.13,300/-. The learned counsel for the petitioner has, therefore, submitted that the Assam Services (ROP) Rules, 2010 are the Rules made under the provision of Article 309 of the Constitution. The said Rules cannot be overridden by way of executive instructions. The only manner by which the respondent Finance Department would have not granted the benefits to the petitioner is by amending the Rules which has however been not done.

8. This Court, vide the order dated 14.02.2023, directed the Standing Counsel for the Finance Department to obtain instructions as to any amendments were carried out to the Assam Services (ROP) Rules, 2010.

9. Today, Mr. B. Gogoi, the learned counsel appearing on behalf of the Finance Department has obtained instructions that there has been no amendment to the Assam Services (ROP) Rules, 2010. In that view of the matter, the respondents cannot, in the opinion of this Court, deprive the petitioners of the scale of pay of Rs.12,000-40,000/- with Grade Pay of Rs.5,900/- plus other allowances as admissible under Rules.

10. This Court further is also of the opinion that pursuant to the Assam Services (ROP) Rules of 2017 coming into effect, the applicable pay scale of the petitioner would be Rs.30,000/- to Rs.1,10,000/- with Grade Pay of Rs.13,300/-.

11. Accordingly, the instant writ petition stands disposed of with the following

observations and directions:-

(i) The petitioners would be entitled to the Grade Pay of Rs.5,900/- from the date of initial appointment. Taking into account that the petitioners were already paid Grade Pay of Rs.5,400/-, this Court directs that the remaining Grade Pay of Rs.500/- per month be paid to the petitioners till the coming into effect of the Assam Services (ROP) Rules, 2017.

(ii) It is further made clear that pursuant to the Assam Services (ROP) Rules, 2017 coming into effect, the petitioners Grade Pay would be Rs.13,300/-. However, it was stated as already observed that the petitioners were paid the Grade Pay of Rs.12,700/-. Accordingly, with the date of coming into effect of the Assam Services (ROP) Rules of 2017, the petitioners would be further entitled to the remaining Grade Pay of Rs.600/- per month till the date of the instant judgment and henceforth, the petitioners would be entitled to the Grade Pay of Rs.13,300/- till further revision of pay.

(iii) The communication No.FPC.15/2000/157 dated 09.09.2014 is set aside and quashed.