
(2003) 12 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 1187 of 1999

Pabin Ch. Barman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Citation : (2003) 3 GLT 585

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R.C. Saikia and D.C. Borah, for the Appellant; B.J. Talukdar, for the Respondent

Judgement

B.K. Sharma, J.—The Petitioner's grievance made in this writ petition is in respect of non-fixation of pay of the Petitioner at Rs. 640/- w.e.f. 1.10.78 in the pay scale of Rs. 500-1225/-. As per the averments made in the writ petition, the Petitioner was initially appointed as an Assistant Graduate Teacher way back in 1965 i.e. 26.6.1965. He was appointed as the Headmaster-in-charge of the said School on 3.8.67. The School was brought under deficit system of grants in aid w.e.f. 1.7.1977 and the Petitioner was appointed as Headmaster- in-Charge. At that relevant point of time the substantial grade in which the Petitioner was working was Assistant Graduate Teacher in the pay scale of Rs. 325-650/-. The School was provincialised by Annexure-1 order dated 28.3.1979 w.e.f. 1.10.78 and the Petitioner was made the regular Headmaster of the School. This position is well reflected from the fact that the Petitioner was granted the pay scale of Rs. 500-1225/- as was admissible to the headmaster of provincialised High School.

2. The grievance made by the Petitioner is that at the time of provincialisation of the School w.e.f. 1.10.78, his pay was fixed at the initial stage of the pay scale of Rs. 500-1225/- instead of at the stage of Rs. 640/- as was admissible as per the recommendation of the R.O.R Rules of 1973. In this connection Mr. R.C. Saikia, learned Counsel for the Petitioner has brought to my notice the relevant provision relating to the fixation of the pay of the Headmaster of the High School

at the stage of Rs. 640/- in the pay scale of Rs. 500-1225/-. The said provision is incorporated in para 29.12 of the Rop Rules which is quoted below:

29.12. Assam School Service (Junior) consists of two classes - Assistant Headmaster of the High Schools in Class 1 and Graduate teachers and Sub-Inspectors of Schools in Class II. Besides these posts, Head Masters of High Schools, Deputy Inspectors of Schools, Additional Deputy Inspectors and Principal Basic Training Centre from the selection posts under the service. For teachers of the High Schools, the present arrangement of one advance increment for honours graduates and two advance increments for post Graduate degree or B.T. degree may continue. In the corresponding revised scale of Rs. 500-1225/-, laid down for Head Master of High Schools, the Head Master appointed on promotion may start at a minimum of Rs. 640/-

Mr. Saikia, learned Counsel has further given example of other similarly situated Headmasters whose pay have been refixed at the pay scale of Rs. 640/- in the pay scale of Rs. 500-1225/- p.m. from the date of provincialisation.

3. No affidavit-in opposition has been filed controverting the above position. The claim of the Petitioner was rejected by the impugned orders at Annexure-9 and 10 dated 2.2.98 and 20.2.98 respectively. By Annexure-9 communication, the Government of Assam, Education (Secondary) department had informed the Director of Secondary Education, Assam that the Petitioner was not entitled to the fixation of his pay as was claimed by him on the ground that the Petitioner has worked as Headmaster before and after provincialisation of the School. It appears that no final opinion was expressed by the said communication dated 2.2.98 rather a request was made to dispose of the matter at the level of the Government. Thereafter the Annexure-10 communication was issued by the Addl. Director of Secondary Education, Assam to the Inspector of Schools, N.D.C., Nalbari stating that the Petitioner was not entitled for higher initial pay as per rule. I find that the ground given for rejection of prayer of the Petitioner is totally vague and does not disclose any reason whatsoever. Further by Annexure-9 communication dated 2.2.98 a request was made by the Director of Secondary Education, Assam to the Govt. of Assam in the Education (Secondary) Department but nothing has been done till date. It is under these circumstances the writ petition has been filed making a prayer for issuance of a writ in the nature of certiorari in quashing the Annexure-9 and 10 order dated 2.2.98 and 20.2.98 and for the direction for re-fixation of the pay of the Petitioner at the stage of Rs. 640/- in the pay scale of Rs. 500 to 1225/-. It is the categorical statement of Mr. Saikia as would be evident and on perusal of the writ petition that the pay of the Petitioner was fixed at the initial stage in the pay scale of Rs. 500/- to 1225/- and he has been enjoying such pay scale w.e.f. 1.10.78 when the School was provincialised by Annexure-1 order.

4. From the above quoted provision as could be found in the ROP Rules 1973, the pay of the Petitioner was required to be fixed at the stage of Rs. 640/- in the pay scale of Rs. 500 to 1225/- Prior to provincialisation of the School w.e.f. 1.10.78

admittedly the Petitioner was in the cadre of Assistant Graduate Teacher enjoying the pay scale of Rs. 325 650/- pm. and with the provincialisation of the School the Petitioner became the Headmaster and he was granted pay scale of Rs. 500-1225/- meaning thereby that he was regularly promoted to the post of Headmaster. Accordingly the contention raised in Annexure-9 communication on the face of it is perverse and not sustainable.

5. In view of the above the Annexure-9 and 10 orders dated 2.2.98 and 20.2.98 are set aside and the Respondent more particularly the Respondent No. 1 and 2 are hereby directed to refix the pay of the Petitioner in the initial stage of Rs. 640/- in the pay scale of Rs. 500-1225/- from the due date i.e. 1.10.78. This shall be done within a period of two months from the date of receipt of a certified copy of this order. It is needless to say that the Petitioner shall be entitled to all the arrears as may be admissible in view of the order passed.