
(2013) 08 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No. 115 and 217 of 2012

Parikshit Medhi and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 4 GLT 770

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S.K. Medhi, for the Appellant; B. Gogoi, SC, Finance Department and Mr. A. Deka, SC, Education Department, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. S.K. Medhi, learned counsel appearing for the petitioners. The Standing Counsel, Finance, Mr. B. Gogoi and the Standing Counsel, Education Mr. A. Deka appear for the respondents. The petitioners are Subject Teachers of Govt. Higher Secondary Schools of Assam and are encadred as Class-I Jr. in the Assam School Service. The Subject Teachers in Govt. Higher Secondary Schools are appointed on recommendation by the Assam Public Service Commission (hereinafter referred to as "the APSC"). They challenge the report of the Pay Anomaly Committee (Annexure-C), whereby the Committee rejected the petitioners' claim for up-gradation from Pay Band-3 to Pay Band-4, as was done for similar posts, under the 6th Pay Commission report.

2. The Assam Govt. through the Govt. notification dated 04.02.2010 (Annexure-A), notified the new pay structure for the government employees wherein the system of running Pay Band-1 to Pay Band-4 with corresponding Grade Pay was notified. Under the new pay structure, 30 separate pay scales spread across 5 Pay Bands were provided with corresponding pay for each pay band. Through this notification at point No. 37, the Govt. has upgraded to Pay Band-4, the pay structure of the APS Jr., DTOs, ACS, Superintendent of Taxes, Superintendent of Excise, ARCS, Instructors of Forest College, Botanist and Labour Officers. The corresponding pay band of these category during the 3rd Pay Commission, 4th

Pay Commission and 5th Pay Commission were similar to the petitioners. But in the Assam Services (Revision of Pay) Rules, 2010, (hereinafter referred to as the "ROP Rules, 2010") published in the Assam Gazette on 04.02.1010, the Subject teachers of Govt. Higher Secondary Schools were left out from upgradation benefits to Pay Band-4.

3. Mr. S.K. Medhi, learned counsel submits that until the 5th Pay Commission, the petitioners' pay scale was Rs. 4300-11025, which was at par with the Asstt. Instructors of Forest College as well as Asstt. Registrars of Co-operative Societies etc. and yet while pay up-gradation was granted to employees of similar status, the Subject Teachers of the Govt. Higher Secondary Schools were kept at the lower Pay Band-3. The petitioners contend that there is no intelligible difference between those who have been upgraded to Pay Band-4 and accordingly discrimination in pay structure is alleged by the learned advocate.

4, The reason for rejection of the pay up-gradation incorporated at Sl. No. 4 (Annexure-C) in the Pay Anomaly Committee's report is contended to be irrational and Mr. Medhi projects that since the petitioners too are recruited through competitive examination conducted by the APSC, there is no justification to refuse them the up-gradation benefits, which was granted for the other similar category colleagues, like Asst Instructors of Forest College, Asstt. Registrars of Co-operative Societies and Medical Officers of Ayurvedic Colleges.

5. However, Mr. A. Deka, Standing Counsel, Education submits that the Directorate of Secondary Education is not competent to decide on pay up-gradation. However, the representation received from the Assam Govt. Higher Secondary Subject Teachers Association (PGT) was forwarded by the Directorate for consideration of the Government. But no specific stand on merit is taken by the Respondent No. 3.

6. The Under Secretary in the Finance (PRU) Department has filed a counter affidavit on behalf of the Respondent No. 1 and Mr. B. Gogoi, on the basis of the averments in the affidavit submits that other employees who were recruited through Combined Competitive Examination of the APSC were considered for up-gradation. But on granting of pay up-gradation benefit to the Ayurvedic Medical Officers, the Standing Counsel projects that their pay was upgraded to Pay Band-4 on the basis of the recommendation of the Pay Anomaly Committee. The Finance Department allowed that equalizing of pay of all posts recruited through Combined Competitive Examination conducted by the APSC as was recommended by the Pay Anomaly Committee and on that basis, pay up-gradation was granted for certain categories, like Ayurvedic Medical Officers who were earlier at par with the petitioners, in the previous pay structures.

7. The respondents try to justify different treatment for the Subject Teachers of the Govt. Higher Secondary Schools by contending that they are not recruited through Combined Civil Service Examination. But this justification in my view cannot be considered to be rational inasmuch as Asstt. Lecturers of Forest

College, Botanists of Forest College and Ayurvedic Medical Officers are also not recruited through Civil Service Examination conducted by the APSC and yet they were considered for pay up-gradation.

8. Moreover, under the ROP Rules, 2010, although previously the above categories of Govt. employees were bracketed in the same scale of pay in the 3rd, 4th & 5th Pay Commissions, the 485 Subject Teachers serving in 31 Govt. Higher Secondary Schools in Assam, after being selected by the APSC are being ignored. It may be noted that Subject Teachers are recruited by observing all the codal formalities as is usually done by the common recruitment authority i.e. APSC for Civil Service Officers. Therefore, the process of recruitment can not be a distinguishing factor for denying pay parity to the petitioners, only because they are not Civil Service Officers who enter service through Combined Competitive Civil Service Examination. As is earlier recorded the petitioners are also recruited through Competitive Examination conducted by the APSC and the process of recruitment is substantially same for the petitioners and others recruited through Combined Civil Service Examination. Therefore the differential treatment for the petitioners on the basis of their mode of recruitment vis-?-vis others who were granted pay up-gradation, is declared to be irrational and unjustified.

9. The pay structure applicable since 1983 to 2006 prior to the ROP Rules, 2010 demonstrates that several categories of employees were bracketed in the same pay scale as the Subject teachers of Govt. Higher Secondary Schools until the revised pay structure notified by the ROP, 2010. The following chart will demonstrate the precise position for 9 categories of employees, who had the same pay scale as the petitioners until 2006:-

10. But when the revised pay scale was brought into effect under the ROP Rules, 2010 as can be seen from the above chart, the Subject Teachers of Govt. Higher Secondary Schools were placed at Pay Band-3, whereas all the other categories were placed at Pay Band-4 with scale of Rs. 8000-35000 with Grade Pay of Rs. 5100/-. Therefore, it is clear that all the 9 categories of employees who were hitherto treated at par with the petitioners were placed in the Pay Band-4 with Rs. 12000-40000 and Grade pay of Rs. 5400/- p.m.

11. But it is obvious that the differentiation cannot be discriminatory and must have a rational basis for it to be legally acceptable. Since it is already held that mode of recruitment cannot be the distinguishing factor, unless other acceptable principles must be presented for treating them as a separate class. But no other feature is indicated by the respondents and therefore merely because Subject Teachers are not recruited through Combined Civil Services Examination, they cannot be treated differently from others who were treated similarly since 1983.

12. That apart, up-gradation of Pay Band considered for the Asstt. Instructors of Forest College, Botanists of Forest College, Ayurvedic Medical Officers who too are non Civil Service Officers clearly suggest that the petitioners have been

discriminated. Therefore, I am of the view that direction should be issued to the departmental authorities to consider pay up-gradation for the Subject Teachers of Govt. Higher Secondary Schools.

13. However, since the issue has financial implication and formal procedure will have to be followed, the nodal department i.e. the Education Department is directed to take note of the grievances of the petitioners and frame suitable proposal for consideration by the Finance Department to grant up-gradation to Pay Band-4. To facilitate the exercise, in addition to the pending representation, the petitioners will furnish this order and fresh representation through their association to the Commissioner and Secretary to the Education (Secondary) Department. Thereafter, the proposal will be considered on merit by the Finance Department. The requisite exercise should be made expeditiously and preferably within 6 months after receipt of intimation from the petitioners. Both cases are disposed of accordingly with the above direction without any order on cost.