
(2002) 07 GAU CK 0006
In the Gauhati High Court
Case No : Write Appeal No. 457 of 1999

Ramesh Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 3 GLT 377

Hon'ble Judges : P.G. Agarwal, J; Amitava Roy, J

Bench : Division Bench

Advocate : A.S. Choudhury and N.N. Ahmed, for the Appellant; A.M. Bujar Baruah, for the Respondent

Judgement

Amitava Roy, J.—The present appeal is laid against the judgment and order dated 8.12.99 passed by the learned Single Judge in Civil Rule No. 3671 of 1996 dismissing the writ petition. The Appellant herein is the writ Petitioner and had approached this Court alleging discrimination against the State Respondents in the matter of granting him U.G.C. scale of pay and consequential benefits on the basis thereof.

2. We have heard Mr. A.S. Choudhury, learned senior Counsel assisted by Mrs. N.N. Ahmed, Advocate for the Appellant and also Mr. A.M. Bujar Baruah, learned State Counsel for the Respondents.

3. The relevant facts can be summarised as hereinbelow:

The Appellant after doing his graduation with Honours in Assamese also passed M.A. Examination in the same subject i.e. Assamese (Group-B) in the year 1977 securing 46,1%. Thereafter, he passed M.A. in Assamese (Group-A) in the year 1988 from the Gauhati University securing 53.4%. The result of the latter examination was published on 5.12.88. In the meantime the Appellant was appointed as a lecturer in Assamese in Nalbari Commerce College on 13.8.79. Being so appointed by the President of the Managing Committee of the said

College, he has been serving as lecturer in Assamese in the said college since then till date. The college was brought under the Deficit Grants in Aid system of the Government of Assam with effect from 1.4.92 vide, communication No. PC/HE/Col. 19/90/55 dated 24.2.93. It was mentioned therein that the appointments of the incumbents holding the posts of lecturers in different departments of the said college fulfilling the then U.G.C. norms for appointment as lecturers as per Government of India letter dated 17.6.87, the Government of Assam, Education Departments" letter dated 15.12.88 etc. were thereby provisionally approved with effect from 1.4.92. In the statement enclosed to the said communication disclosing the particulars of the posts vis-a-vis the departments and the incumbents thereof, the posts of lecturers in Assamese, Hindi and Economics were shown to be vacant. Against the remarks column corresponding to the Department of Assamese, it was mentioned that the existing incumbent was under qualified. The communication dated 24.2.93 also mentioned about the said fact. According to the said letter, the posts shown as vacant were either actually vacant or the incumbents thereof did not possess the then U.G.C. norms. As such, the said communication along with the statements enclosed therewith suggested that the Appellant did not possess the U.G.C. norms in force on the date of the communication. Thereafter, the Respondent No. 2 by communicated dated 7.2.94 (Annexure 11 to the writ petition) provisionally approved the services of the Appellant at a fixed pay of Rs. 2200/- P.M. plus other allowances as admissible under the Rules with effect from 1.10.93 subject to two (2) conditions:

1) He would be entitled to enjoy the incremental benefit in the U.G.C. scale of pay of Rs. 2200-4400/- only after obtaining of M. Phil/Ph.D. Degree within eight years failing which his services will not be continued.

2) He would not be eligible for Senior Selection Grade scale of pay till he fulfilled the conditions as laid down in the U.G.C. Scheme.

The Appellant is aggrieved by the denial of the U.G.C. scale of pay of Rs. 2200-4000/- and further by imposition of these above mentioned two conditions.

4. In the meantime, the Government of Assam had decided to implement the revised U.G.C. norms in the matter of appointment to the posts of lecturers as well as revised U.G.C. scale of pay w.e.f. 1.1.1986. This was communicated inter alia, by a letter dated 30.12.1988. Annexure 14 to the writ petition issued by the Respondent No. 2 to the Principals of all Deficit Grants in Aid College in Assam. It would be evident from the said letter that the minimum qualification for appointment to the post of lecturers in terms of the revised norms was Master Degree in relevant subject with at least 55% marks or its equivalent grade and good academic record. The case of the Petitioner is that prior to 30.12.88, the U.G.C. norms for a college teacher was 52.5% marks in MA/M.Sc./M.Com Degree with Honours in the first degree level and as the Appellant Petitioner had secured 53.4% marks in M.A. Examination in Assamese (Group A) prior to that date, he was entitled to the revised U.G.C. pay scale w.e.f. 1.1.1986 and further the

requirement of 55% marks in terms of the revised U.G.C. norms was not applicable to him.

5. According to the Appellant, there were other serving lecturers similarly situated like him who possessed the pre-revised U.G.C. norms on 52.5% or above marks (but below 54.5% marks) in Master Degree at the time when the Government of Assam had decided to implement the revised U.G.C. norms and the U.G.C. scale of pay with effect from 1.1.1986. As a matter of fact, the Respondent No. 2 by communication dated 11.2.92, Annexure 13 to the writ petition brought to the notice of the Commissioner, Education Department, Government of Assam, the cases of 16 such lecturers who had joined their service before the decision of the Government introducing revised U.G.C norms and scale of pay as above. By the said letter, a request was made by the Respondent No. 2 to regularised their services under the Deficit system of Grants in Aid as special case by allowing them the revised U.G.C. scale of pay of Rs. 2200-4000/- per month plus other allowances as admissible under the Rules. A statement containing the particulars of the said 16 lecturers was also forwarded along with the said letter. Thereafter, the Government of Assam approved the appointments of the said 16 lecturers as per prevailing U.G.C. norms and this is evident from the communications dated 24.9.92, 27.4.94 and 24.6.94, Annexures 15,16 and 16A respectively to the writ petition. The Appellant, therefore, alleged that he being similarly situated like the aforementioned 16 lecturers, the action of the said Respondents in excluding him from consideration for the purpose of approving his services and for granting him the revised U.G.C. scale of pay w.e.f. the date his college was taken under the Deficit system of Grants in Aid was illegal, arbitrary and discriminatory.

6. In the affidavit-in-opposition submitted by the State Respondents, it was inter alia, stated that the U.G.C. revised scale of pay of the lecturers as well as the norms of educational qualification were implemented w.e.f. 1.1.1986, the revised scale of pay being Rs. 2200-4000/- per month. It was further mentioned that the existing norms were Honours in B.A./B.Sc./B.Com and 52.5% marks in Master Degree with good academic records whereas, the revised norms were 55% marks in Master Degree with good academic record. It was further stated that the Government of Assam by communication dated 15.12.88 accepted the aforesaid U.G.C. pay scale and norms w.e.f. 1.1.1986. The further stand of the Respondents is that the college of the Petitioner was brought under the Deficit system of Grants in Aid w.e.f. 1.4.92 i.e., more than 3(three) years after the introduction of the U.G.C. revised norms of qualification and pay scale and as the Appellant was not qualified in terms of the revised U.G.C. norms, his services were approved provisionally subject to the conditions as mentioned in the letter dated 7.2.1994, Annexure 11 to the writ petition. The affidavit discloses that the Appellant would be eligible to enjoy all benefits as per U.G.C. guidelines/procedures on fulfillment of the conditions contained in the letter dated 7.2.1994. With regard to the 16 lecturers whose cases were taken up for consideration as per the communication dated 11.2.92, Annexure 13 to the writ petition, the stand of the Respondents was that the 8 colleges to which they belonged were

brought under the Deficit system of Grants in Aid just after the acceptance of the U.G.C. revised pay scale and norms and as they possessed the pre-revised U.G.C. norms prior to 15.12.88 i.e. the date of acceptance of the revised U.G.C. norms and scale of pay by the Government of Assam, their services were approved as a special case. As at that time, the Appellant's college was not brought under the Deficit system of Grants in Aid, according to the Respondents, he cannot claim to be treated similarly.

7. In the reply affidavit filed by the Appellant he reiterated his statements made in the writ petition that in various colleges receiving Deficit Grants in Aid from the State Government, fresh lecturers having pre-revised norms had been appointed till the introduction of the revised norms of qualification. Citing specific instances as mentioned in the reply affidavit, where the services of such lecturers had been approved by the Government without imposing any condition as in the case of the Appellant, he contended that the State Respondents had resorted to pick and choose policy in the matter and their stand in the affidavit that as because the colleges to which 16 lecturers belonged were brought under the Deficit Grants in Aid system immediately after 15.12.88, was also otherwise factually incorrect in as much as out of eight such colleges, 3 (three) were brought under such system on 1.7.89 and the rest on different dates viz 1.4.90, 28.8.90 and 1.1.91. The Appellant in his reply affidavit further stated that the Respondent No. 2 by communication dated 16.2.93 annexure-7 to the reply affidavit had forwarded the cases of 11 lectures in 6(six) colleges including him who possessed pre-revised norms of 52.5% with a request to regularise their service under Deficit system of Grants in Aid as special Case, referring to therein the cases of 16 lecturers whose services had already been similarly regularised. The statement of particulars of lecturers accompanying the said communication indicates that the case of the Appellant was forwarded for such consideration. The Government, however, by communicated dated 1.12.93 addressed to the Respondent No. 2 conveyed its decision to approve the services of the said 11 lecturers at a fixed pay of Rs. 2200/- per month subject to two conditions as contained in the letter dated 7.2.1994 as mentioned hereinabove. The statement of particulars of the lecturers accompanying the communication indicates that the case of the Appellant was approved subject to the above conditions. The grievance of the Appellant as projected in the reply affidavit is that thereafter the services of one Smti. Pranati Talukdar whose case was forwarded along with the Appellant and Ors. by the communication dated 16.2.93 was approved in the pay scale of Rs. 2200-4000/- w.e.f. 1.4.1992 without insisting fulfillment of the two conditions subject to which her services were approved at the fixed pay of Rs. 2200/- per month earlier. The grievance of the Appellant is that Smti. Pranati Talukdar had not in the meantime obtained M. Phil/Ph.D Degree, being one of the conditions subject to which her services were approved provisionally like that of the Appellant, but the State Respondents had chosen to approve her services by granting her the revised pay scale of Rs. 2200-4000/- while excluding the Appellant without any justification whatsoever.

8. As mentioned above, the learned Single Judge after hearing the parties by the impugned judgment and order dismissed the Petitioner holding inter alia, that the revised U.G.C. norms were to be effective from 1.1.1986 and not from 15.12.88 as contended by the Appellant/writ Petitioner and though he was not qualified in terms of the said revised norms, he was afforded an opportunity to acquire the necessary qualification to be entitled to the revised pay scale. With regard to the grievance of the Appellant/writ Petitioner that the services of the persons similarly situated like him had been approved but he had been left out, the learned Single Judge was of the opinion that if he approaches the appropriate authorities by filing a representation, it would be for them to consider his case sympathetically. The learned Single Judge held that both the revised U.G.C. norms and the revised U.G.C. pay scale were effective from 1.1.1986 and that in the facts and circumstances of the case, no injustice had been caused to the Appellant/writ Petitioner.

9. In the Writ Appeal, the Appellant has filed an additional affidavit wherein it has been stated that the State Respondents have not only approved the appointment of the lecturers similarly situated like him having pre-revised U.G.C. norms of 52.5% but also have similarly approved the appointments of lecturers possessing State relaxed pre-revised U.G.C. norms i.e. 47.5% in M.A. in language subject and 50% in Master Degree in all other subjects. He mentioned specific instances in connection therewith and supported the same by annexing related documents being Annexures 1, 2 and 3. Annexure-2 which is a communication dated 4.8.98 inter alia, discloses that the Respondent No. 2 had requested the Commissioner and Secretary, Govt. of Assam, Education (Higher) Department requesting the Government to reconsider the appointment of Smti Praniti Talukdar as lecturer in Assamese in the U.G.C. scale of pay of Rs. 2200-4000/- p.m. w.e.f. 1.4.92 considering her past services in the college since 9.12.88. In the additional affidavit, the Appellant also annexed a communication dated 12.8.97 addressed by the Respondent No. 2 to the Secretary, Government of Assam, Education (Higher) Department (Annexure-5) on the same subject requesting the Government to take a policy decision to allow the U.G.C. scale of pay of Rs. 2200-4000/- to the existing lecturers of the Deficit Colleges possessing pre-revised U.G.C. norms of 52.5% and State relaxed norms on the ground that they possessed the said norms before 15.12.88, the date of introduction of the revised U.G.C. norms and that there was no provision for sending such lecturers on deputation so as to enable them to obtain M.Phil/Ph.D Degree keeping in view the limited scope for pursuing such degree in the Universities within the State.

10. Mr. A.S. Choudhury, learned senior Counsel appearing for the Appellant while assailing the judgment and order of the learned Single Judge has strenuously argued that as would evident from contemporaneous documents, more particularly, the communication dated 30.12.88, Annexure-14 to the writ petition, the Government had decided to implement U.G.C. scale of pay w.e.f. 1.1.86 and the revised U.G.C. norms of qualification from the date of that letter i.e. 30.12.88 and, therefore, as the Appellant-Petitioner possessed the pre-

revised norms of 52.5% on the said date, he was entitled to the benefit of the revised UGC scale of pay w.e.f. 1.1.86 and in any case not after 1.4.92, the date on which his college was brought under the Deficit system of Grants in Aid. He further argued that the impugned action of the State Respondents in provisionally approving his services vide, communication dated 7.2.94, Annexure-11 to the Writ petition at the fixed pay of Rs. 2200/- p.m. subject to the two conditions mentioned therein is wholly illegal, arbitrary and discriminatory in as much as, the services of persons similarly situated like him had been approved by the Respondents granting them the revised UGC scale of pay of Rs. 2200-4000/- w.e.f. the date on which their respective colleges had been brought under the Deficit Grants in Aid system without insisting on the aforesaid two conditions as made applicable in the case of the Appellant. He emphatically urged that not only the lecturers possessing pre-revised norms of 52.5% but also the lecturers possessing State relaxed norms of 47.5%/50% had also been favoured by approving their services granting them the revised UGC scale of pay though some of them were appointed latter than the Appellant and that, therefore, the impugned action of the State Respondents in denying the same benefited to him is ex-facie, arbitrary, whimsical and amounts to malafide exercise of power. He argued that though initially by the communication dated 16.2.93. Annexure C to the reply. Affidavit, his case along with 10 Ors. similarly situated were forwarded for approval of the Government and the Government by communication dated 1.12.1993, Annexure D to the reply affidavit had approved the services of the said 11 lecturers including the Appellant at the fixed pay of Rs. 2200/- P.M. subject to the conditions mentioned therein, the services of one of such lecturer namely, Smti Pranati Talukdar was later on approved by the communication dated 27.05.99, Annexure E to the reply affidavit without insisting on the compliance of the aforesaid two conditions. This, the learned senior Counsel submitted was grossly discriminatory in as much as, the Appellant though similarly situated like Smt. Talukdar, was arbitrarily excluded from being granted the same benefit without any rhyme or reason. He argued that the facts and circumstances of the case thus clearly demonstrate that the state Respondents have resorted to pick and choose policy to favour a chosen view an approach which is destructive of the basic tenets of fair play in State action. The learned senior Counsel contended that the instant case unequivocally proclaimed that the State Respondents have failed in their public duty so far as the Appellant is concerned without any jurisdiction whatsoever and, therefore, he is entitled to a Writ of Mandamus from this Court directing them to approve his service w.e.f. 1.4.1992, the date on which his college had been brought under the deficit system of Grants in Aid by granting him U.G.C. revised scale of pay of Rs. 2200-4000/-. He further submitted that it is a fit case where a Writ of certiorari may be issued by this Court to set aside and quash the two conditions contained in the impugned letter dated 7.2.94, Annexure 11 to the writ petition. The learned senior Counsel contended that the learned Single Judge in dismissing the writ petition left out of consideration the above aspects of the matter and, therefore, in the interest of justice, the same needs to be interfered with in this

appeal.

11. As against this, the learned State Counsel drawing the attention of this Court to the letter dated 24.2.93, Annexure 8 to the writ petition, whereby the Appellant's college was taken over under the Deficit system of Grants in Aid contended that as would be apparent therefrom, the appointment of the incumbents holding the posts of lecturers in the said college was provisionally approved subject to fulfilling of UGC norms then in force. He argued that as admittedly on the date of the said communication, the Petitioner did not possess the revised UGC norms of 55% he cannot claim as a matter of right to have his appointment approved at par with those who fulfilled the said revised norms. With regard to the plea of discrimination as put forward on behalf of the Appellants, the learned State Counsel argued that the dates of taking over of the colleges of the other lecturers whose services were approved were much earlier than that of the Appellant's college and that, therefore, it cannot be said that the Appellant, can in the above facts and circumstances, claim himself to be similarly situated like them. He therefore argued that the allegation of discrimination was wholly unfounded.

12. The contentions raised on behalf of the Appellant therefore can broadly be categorised under 2 (two) heads, firstly - the State Government had accepted only the revised UGC pay scale from 1.1.86 and not the revised UGC norms from the date and the Appellant was entitled to the revised UGC scale of pay as he possessed the pre-revised UGC norms of 52.5% on 30.12.88, the date on which the Government took the decision to implement the revised UGC norms and the revised UGC scale of pay and Secondly - as the services of several lecturers possessing pre-revised UGC norms of 52.5% like the Petitioner had been approved granting them the UGC revised pay scale of Rs. 2200-4000/-, the Appellant was also entitled to be treated in the like manner.

13. We are afraid, we are not in a position to accept the first contention of the learned senior Counsel for the Appellant. Primarily, no such intention of the Government is discernible from the communication dated 30.12.88, Annexure 14 to the writ petition. Even if the contention is accepted, it would lead to an anomalous situation namely, persons with lesser qualification would have to be treated at par with those possessing higher qualifications for the purpose of revised UGC scale of pay. This will amount to treating unequals as equals, a situation not countenanced by Article 14 of the Constitution of India. The other materials on record also support our view. The above contention of the learned Counsel for the Appellant therefore fails.

14. The second contention of the learned senior Counsel may have some substances. As would be apparent from the communications dated 11.2.92, Annexure 13 to the writ petition and the one dated 16.2.93, Annexure-C to the reply affidavit of the Appellant, the case of the Appellant as well as other similarly situated lecturers of Deficit colleges were forwarded to the Government for the purpose of approving their services under the Deficit system of Grants in

Aid an special cases so as to allow them the revised UGC scale of pay. Whereas, in case of the lecturers whose cases were forwarded by the communication dated 11.2.92, their services were so regularised as proposed, the services the Appellant along with 10 Ors. as forwarded by the communication dated 16.2.93 were approved at a fixed pay of Rs. 2200/- subject to, two conditions. However, later on the service of one Smti. Pranati Talukdar whose name was forwarded along with the Appellant vide, communication dated 16.2.93 was approved and she was granted the revised pay scale of Rs. 2200-4000/- p.m. whereas, the Appellant though otherwise similarly situated was not favoured with the said benefit. The statements made in additional affidavit of the Appellant to the effect that the State Respondents have similarly approved the services of other lecturers in Deficit colleges who possessed not only the pre-revised UGC norms of 52.5% but also the State relaxed norms of 47.5%/50% cannot be lost sight of. We cannot but have to mention that the statements made in the affidavit filed by the Appellant had remained uncontroverted. Even the statements made in the reply affidavit with regard to the approval of the services of Smti. Pranati Talukdar have not been countered by the State Respondents. There may be good reasons for treating the Appellant differently, may be not. However, in view of the dearth of sufficient facts on records, we are not in a position to conclusively hold that the impugned action of the State Respondents in not approving the services of the Appellant like Smti Pranati Talukdar and other similarly situated lecturers, is arbitrary, unfair and discriminatory as alleged by the Appellant. However, the attending facts and circumstances together with the documents annexed by the Appellant in support of his plea on discrimination persuade was to hold that the case of the Appellant deserves a fresh consideration by the State Respondents in similar lines like that of Smti. Pranati Talukdar and other lecturers similarly situated and in case the grounds on which the services of Smti. Pranati Talukdar and other similarly situated lecturers, have been so approved, are available to the Appellant, he is entitled in law to be treated alike.

15. The Appellant has alleged discrimination on the part of the State Respondents thus infringing his right to equality under Article 14 of the Constitution of India. In this context, we feel impelled to refer to the observations of the Apex Court in a recent decision reported in Ashutosh Gupta Vs. State of Rajasthan and Others, , we extract hereinbelow the relevant portion of the judgment:

The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoys that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to

be treated equally, is rather a vexed question.

Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from Ors. who are left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved.

16. What is thus guaranteed under Article 14 is a similarity of treatment and not identical treatment and the State has the power to make the classification provided it is founded on intelligible differentia and the basis of classification has a rational nexus with the object sought to be achieved thereby. If the impugned classification fails to pass these tests, it cannot be sustained in law. The facts of the instant case suggest that there has been a classification but, the materials on record are not sufficient enough for this Court to conclude that such classification is not permissible.

17. The plea on discrimination taken on behalf of the Appellant can be said to be founded on the doctrine of "legitimate expectation" as well. Though the said doctrine is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner and does not give rise to an enforceable right, but in testing the action taken by the government authority whether arbitrary or otherwise, it would be relevant as has been held by the Apex Court in *State of W.B. and Ors. Appellant v. Niranjan Singha, Respondent* reported in (2001) 2 SCC 326. In other words, though the doctrine of legitimate expectation does not confer an enforceable right in a citizen, it is relevant for the purpose of ascertaining as to whether the action of the State authorities is fair, just and proper. Keeping in view the fact that the case of the Appellant had been forwarded along with 10 other similarly situated lecturers for the purpose of regularisation of their services, under the Deficit Grants in Aid system and for granting the revised UGC scale of pay, the above doctrine appears to be relevant for the purpose of judging whether the subsequent action of the State Respondent in approving the services of Smti. Pranati Talukdar (one of such 11 lecturer) while excluding the Appellant from such consideration is fair, rational, logical and bonafide. For the order which we propose to pass hereafter, we are not inclined to make any further comments on this aspect of the matter. Suffice it to mention that every action of the State authorities has to be fair, just and proper in order to pass the test of constitutionality.

18. In the light of the above discussions, we are therefore inclined to dispose of the appeal with a direction to the state Respondents, more particularly, the Secretary, Education (Higher) Department, Government of Assam, Dispur and the Director of Public Instruction (Higher Education), Assam, Respondent Nos. 1

and 2 herein to take up the case of the Appellant with utmost expedition and examine the tenability of his claim to be treated at par with Smti. Pranati Talukdar and other similarly situated lecturers for the purpose of approving his services under the deficit Grants in Aid system of the Government and for granting him the revised UGC scale of pay as done in case of Smti Pranati Talukdar and Ors. and if the Appellant is found entitled to the same reliefs, to grant him the same without further delay, the Appellant in order to enable the said authorities to do the needful in terms of the directions of this Court, would submit a copy of the Writ application, affidavit in opposition of the State Respondents, affidavit in reply and the additional affidavit filed by him in the appeal along with the supporting documents together with a certified copy of this judgment and order before the above named authorities and if the same is done, the said authorities would initiate the process of examining the claim of the Appellant as directed above and completes the whole exercise within a period of 6 (six) weeks from the date of receipt of the pleadings and the certified copy of the judgment and order as aforesaid, it is needless to say that the said authorities in taking their decision on the matter would bear in mind the observations made by this Court as above and communicate their decision in writing to the Appellant.

With the above observations and directions, the appeal is partly allowed. However, there would be no order as to costs.