
(1998) 12 GAU CK 0002
In the Gauhati High Court
Case No : Writ Appeal No. 163 of 1996

Regional Engineering College and Ors.	APPELLANT
Vs	
Ashoke Kumar Purkayastha and Ors.	RESPONDENT

Date of Decision : 16-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 14

Citation : (1999) 1 GLJ 1

Hon'ble Judges : N.C.Jain, C.J. and P.G.Agarwal, J

Bench : Division Bench

Advocate : B.P.Bora, B.Goyal, A.K.Goswami, M.Nath, N.Dutta, K.N.Choudhary, S.S.Dey, N.M.Lahiri, Advocates appearing for Parties

Judgement

P.G. Agarwal, J.—Civil Rule No.3082 of 1993 was preferred by 27 Class IV employees of the Regional Engineering College, Silchar seeking higher pay scale. The case of the respondent petitioners is that Regional Engineering College, Silchar is a society registered under the Societies Registration Act and is managed by an Autonomous Board of Governors. The said Board vide resolution No. 18 dated 30.10.81 resolved to grant Directorate scale of pay of the Govt of Assam to the non teaching employees of the college with effect from 1.11.1981. Consequently the Grade III employees were given the above benefits; but the benefits were denied to the Class IV employees. However, on 24.6.93 the Principal of the college granted higher pay scale of Rs.490840/- to the Class IV employees. Unfortunately it was short lived and after three months the Board stayed the said benefits. The petitioners therefore prayed for cancellation of the subsequent Board resolution and extension of the pay scale of Rs.490840/-. The writ petition was disposed of by the learned Single Judge on 1.9.95, the direction reads as follows :

"7. Accordingly, I dispose of this writ application as follows :

(i) that if the Directorate pay scale has been paid to the ministerial staff of the Regional Engineering College, the same scale i.e. Directorate pay scale shall also

be paid to the petitioners. The Govt of Assam shall bear 50% of the expenditure necessary for this purpose inasmuch as the Govt of Assam cannot make discrimination between the Grade III and Grade IV staff.

(ii) if the ministerial staff have not been paid the Directorate pay scale in the college, the question of paying that scale i.e. Directorate pay scale to the petitioners shall not arise.

(iii) I had to pass this vague order inasmuch as the learned counsel failed to point out whether the Directorate pay scale has been paid to the ministerial staff i.e. nonteaching staff of the college, which is left to scrutiny of authority."

2.The present appellant, Regional Engineering College thereafter preferred a Review Application No.76 of 1995 praying for clarification/review of the order passed by the learned Single Judge on 1.9.95. The review application was dismissed vide order dated 11.3.96 which reads as follows :

"Heard Mr. SS Dey, learned counsel for the petitioner and Mr. NM Lahiri, learned counsel for the respondents.

On perusal of the materials on record, I do not find that there is any error apparent on the face of record and accordingly this review application stands rejected. In the judgment there is a mention regarding letter dated 31.3.93 by which it was stated that these persons are entitled to the Directorate scale of pay and even recommendation was made for the same."

3. Feeling aggrieved, the appellants have filed the present appeal.

4. We have heard Mr. N.Dutta, learned counsel for the appellants and Mr. NM Lahiri, Senior Advocate for the respondents.

5. The main contention of the appellants is that vide resolution dated 30.10.81 the Board of Governors granted Directorate pay scale to the not teaching employees of the college and the Board is willing to implement the said resolution. As a matter of fact, the Directorate pay scale was extended to the Grade III employees but the same could not be extended to Class IV employees because of the fact that there is no separate Directorate/Heads of Department pay scale for Class IV employees. In other words the pay scale for Class IV employees of the Govt of Assam is one and the same for all the employees working in the District level or Directorate/Heads of Department.

6 We have perused the resolution and the report of the Assam Pay Commission, 1988 for short "ROP" and find that it does not provide any separate pay scale for District level staff and Directorate/Heads of the Department staff so far Class IV employees are concerned. So far Grade in staff that is LD Assistants, UD Assistants are concerned there is separate pay scale for District level office and Heads of the Department staff. This may be for the reason that so far class IV employees are concerned the nature of the work is same whether Peon, Chowkidar, Mali, Sweeper is working in District level office/Directorate level

office. The difference for the Grade III employees is due to the fact that the eligibility criteria/educational qualification is different for the District level staff and Directorate/Heads of Department staff.

7. Learned counsel for the appellants has further submitted that the maximum basic pay of Class IV employees under the ROP is Rs. 1,735/-. If the pay scale of Rs.490840/ as prayed for by the writ petitioners is allowed it will exceed the maximum limit as the said pay scale now stands revised as per ROP, 1988 to Rs. 1,1252,2157. According to Mr. Duttathe above pay scale is meant for the Grade III staff and cannot be extended to Class IV employees as there was no resolution by the Board that the Class IV employees will also get Grade III pay scale.

8. In the impugned judgment learned Single Judge gave direction on the ground that the Board cannot make discrimination between Grade III and Class IV staff in extending the benefits of District level pay and Directorate level pay. However, at the time of passing the impugned order it was not made known to the Court that the non teaching staff of the college has got two or three grades and so far Class IV is concerned there is no separate or higher pay scale for the Directorate level staff. This is clear in view of clause III of the directions as stated above. Further vide impugned order the learned Single Judge granted Directorate pay scale to the c Ministerial staff of the Regional Engineering College. But when there is no Directorate pay scale for the Class IV employees the said order cannot be implemented.

9. Mr. NM Lahiri on the other hand submits that as per letter of the Principal the pay scale of the Agricultural Directorate was extended to all the 27 Class IV staff of the college and this may be maintained. So far the above letter of the Principal is concerned, we will revert back to it later on. The entire claim is based on the resolution of the Board of Governors dated 30.10.81. The resolution finds place in paragraph 4 of the writ petition which reads as follows :

"The Board considered the report of the Principal in respect of granting of the Directorate pay scale (pay scales of the Heads of Departments) of the Govt of Assam to the nonteaching employees of the college and approved by the introduction of the Directorate pay scale (pay scales of the Heads of Department) of the State Govt in place of District pay scale of the Govt of Assam, as at present for nonteaching staff of the college. The Board, however, resolved that this new scale would have no retrospective effect and would be granted with effect from 1 st November, 1981."

10. Thus, on perusal of the above it is clear that there was no decision by the Board of Governors that the pay scale of the Directorate of Agricultural shall be xtended to the employees of the college. The name of the Agricultural Directorate for the first time finds mention in the letter dated 24.6.93 issued by the Principal of the college. Admittedly, the Principal had no such authority. Learned counsel for the appellants has submitted that the Principal acted against

the policy of the Board of Governors for which necessary action is being taken. It is also submitted that the Principal was pressurised by the employees for which the impugned letter was issued by him. On perusal of Annexure I we find that vide letter dated 24.6.93 the learned Principal superseded the earlier letter of the previous day, that is, dated 23.6.93. The pay scales prescribed for the Directorate of Agriculture are listed at page 83 to 95 of ROP and it contains as many as 200 different posts. The post of Laboratory Attendant (Fruit Preservation) with existing scale of Rs.490 840/ was given the revised scale of pay of Rs. 1,1252,215/. The writ applicants have prayed for this scale. Learned counsel for the appellants has submitted that the above Laboratory Attendant is a technical person and the minimum educational qualification is Higher Secondary pass whereas the educational qualification for the writ petitioners was Class IV pass. Hence, in view of the requirement of higher education qualification if special/higher pay is given to the employee of a particular post, the same cannot be generalised and extended to all other categories of employees because of the nomenclature of the Laboratory Attendant. At page 95 of the ROP it is seen that LD Assistant cum Typist and Sectional Assistants of Agriculture Directorate were given the pay scale of Rs.1,0652,095/ (existing pay Rs.470800/). There is no dispute at the Bar that the posts of LD Assistant is a Class III posts and when Laboratory Attendant (Fruit Preservation) has been given higher pay scale than the LD Assistant, it is clear that the said post is a Class III post and is not a Class IV post. If the prayer of the writ petitioners is allowed in that case these Class IV employees will be getting higher pay than even the LD Assistants. Moreover, under the same Agriculture Directorate, another category of Laboratory Attendant/Workman (with basic pay of Rs.380/560/) were given the revised pay of Rs.9151,595/. Hence, considering all aspects of the matter, we have no hesitation to hold that the pay scale given to the Laboratory Attendant (Fruit Preservation) was a special pay for special categories of posts and it is not the pay of Class IV of Directorate pay scale. Moreover, in view of the upper ceiling of the basic pay for Class IV employees provided under the Rules, the writ petitioners are not entitled to pay scale claimed by them. Learned Single Judge also did not award any special pay/ specified pay to the writ petitioners except holding that there cannot be any discrimination between Grade III and Class IV employees and both the classes of employees shall be entitled to the Directorate scale of pay. As there was no Directorate scale of pay for Class IV employees, the impugned direction cannot be complied with. In the result, we direct that the writ petitioners are entitled to the pay of Class IV employees of the State of Assam and they are not entitled to the pay scale of Rs.490840/ which was revised to Rs. 1,1252215/. The learned counsel for the appellant has submitted that the above pay scale has since been revised but in view of the pendency of the case no action has been taken. The disposal of the writ appeal will be no bar for the authorities to consider the case of the Class IV employees of the college in proper perspective.

11. In the result the impugned order of the learned Single Judge stands modified

to the extent mentioned above. The writ appeal is disposed of without any order as to costs.