
(2021) 03 GAU CK 0028
In the Gauhati High Court
Case No : Writ Petition (C) No. 8834 Of 2018

Sharbari Ray

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Citation : (2021) 03 GAU CK 0028

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Dev

Final Decision : Allowed

Judgement

1. Heard Mr. J. Roy, learned counsel for the petitioner. Also heard Mr. A.R. Tahbildar, learned counsel for the respondents No. 1 2 and 4 and Mr. R. Borpujari, learned counsel for the respondent No.3.

2. The petitioner having completed her post graduate degree in the subject Bengali was appointed as a lecturer of Bengali in the Pandu College on 25.08.1986 on the basis of a competitive selection process. In the year 2003, the petitioner obtained her PhD degree and thereafter the Deputy Director of Higher Education by the communication dated 08.03.2004 informed the Principal of Pandu College that two advance increments had been allowed in favour of the petitioner w.e.f. 01.03.2004 for having the PhD degree.

3. The grievance of the petitioner is that another lecturer namely Mrs. Shirin Banu who was appointed along with the petitioner on 25.08.1986 as a lecturer in History had obtained her PhD degree on 02.09.2011 and was accordingly granted three advance increments w.e.f. 01.07.2012 for acquiring the PhD degree.

4. The petitioner raises a claim of disparity between her and the other lecturer Mrs. Shirin Banu. The petitioner refers to the Office Memorandum No. AHE.50/2014/10 dated 07.07.2014 of the Higher Education Department of the

Govt. of Assam, wherein clause-8 provides that the teachers who had completed their PhD degree while in service shall be entitled to get three non-compounded increments if such PhD degree is in a relevant discipline. The Office Memorandum also refers to some discrepancy that had arisen between the teachers and librarians getting the incentives between 01.01.1996 and 31.12.2005 and again from 01.01.2006 onwards. By referring to the discrepancy the Office Memorandum provides that the senior teachers/librarians, who were eligible to get the incentives for acquiring the PhD/M.Phil degree before 31.12.2005 are getting a lesser pay than the junior teachers who had obtained their PhD/M.Phil degree on or after 01.01.2006. Accordingly, the relevant portion of the Office Memorandum provides as follows:-

"But, there are some discrepancies which have arisen among the teachers and librarians getting incentives during 01-01-1996 to 31-12-2005 and 01-01-2006 onwards. The senior teachers/librarians who were eligible to get incentive for acquiring ph.D/M.Phil Degree before 31-12-2005 are getting less pay then the junior teachers who are eligible to get incentive for ph.D/M.Phil on or after 01-01-2006.

Therefore, the Govt. of Assam has decided to equalize the pay of senior teacher/librarian by stepping up the pay of senior teacher/librarian so as to make the pay equal to the junior when the service conditions in all other respects are similar."

5. The petitioner accordingly by relying on the Office Memorandum dated 07.07.2014 makes a claim that she is entitled to a equalization of pay w.e.f. 01.07.2012 i.e. the date from which the other teacher namely Mrs. Shirin Banu was given the higher scale of pay by including three advance increments. The petitioner is specifically aggrieved by the communication dated 24.07.2018 of the Deputy Director, Higher Education, Govt. of Assam to the Principal, Pandu College which provides that the Directorate had decided not to send any proposal for pay equalization for the disparity that had occurred due to PhD increments until a decision from the Govt. is received.

6. The very language of the communication dated 24.07.2018 of the Deputy Director appears to be in conflict with the provision of the Office Memorandum dated 07.07.2014 which clearly reveals that a decision had already been taken by the Government and depicted in the said Office Memorandum.

7. We have also taken note of that the Office Memorandum was issued in the name of Commissioner & Secretary to the Govt. of Assam in the Higher Education Department. From the said point of view, the communication dated 24.07.2018 of the Deputy Director, Education appears to be a communication made without taking into consideration the Office Memorandum dated 07.07.2014 of the Commissioner & Secretary to the Govt. of Assam in the Higher Education Department.

8. We also take note of that in the instant case the Finance Department has also filed an affidavit in opposition, wherein in paragraph-8 it is stated as follows:-

".... However, when the anomaly of pay arises on account of the senior getting two advance increments for completing Ph.D Degree prior to 31.12.2005 as per Office Memorandum and juniors getting three advance increments for completing Ph.D. degree on or after 01.01.2006, the Office Memorandum No. AHE.396/2010/22 dated 27.04.2012 equalization of pay of the senior with that of the junior is considered. The matter has already been clarified to Higher Education Department."

9. The stand of the Finance Department is also clear that in the instant case the petitioner would be entitled to the benefit of the third advance increments in order to bring her pay at a parity with the other lecturer namely Mrs. Shirin Banu.

10. Accordingly, the writ petition stands allowed by directing the Commissioner & Secretary to the Govt. of Assam in the Higher Education Department to pass necessary order as regards entitlement of the petitioner to the third advance increments so as to bring her scale of pay at a parity with the other lecturer Mrs. Shirin Banu by following the provision of the Office Memorandum dated 07.07.2014 as well as by taking note of the stand of the Finance Department in paragraph-8 of the affidavit in opposition which is extracted hereinabove.

11. The requirement be done within a period of six weeks from the date of receipt of the certified copy of the order.