
(2018) 05 GAU CK 0130
In the Gauhati High Court
Case No : WP(C) No. 5630 of 2010

Shri Biswanath Kalita,

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 22-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0130

Hon'ble Judges : HITESH KUMAR SARMA, J

Bench : Single Bench

Advocate : T.J. Mahanta, P.P. Dutta, S.S. Roy, R. Borpujari

Final Decision : Allowed

Judgement

1. Heard Mr. T.J. Mahanta, the learned Sr. counsel appearing for the petitioners. The respondent Nos.1, 3, 4, 5 and 6 are represented by Mr. S.S.

Roy, the learned Govt. advocate. Mr. R. Borpujari, the learned standing counsel for the Finance Department appears for the respondent No.2.

2. The 45 petitioners are personnel of the Special Branch in the Assam Police and this category who were given the benefit of 2 advance increments

on the basis of PU/Intermediate or other higher qualification through the communication dated 26.10.1978 (Annexure-2) are aggrieved by the

communication dated 03.07.2009 (Annexure-3), whereby, the increments availed by the Special Branch Constables were declared to be unmerited

and on that basis recovery of the excess drawal is ordered by the authorities.

3.1 Assailing the legality of the impugned communication dated 03.07.2009 (Annexure-3), Mr. T.J. Mahanta, the learned Sr. counsel contends that the

petitioners (some of whom have already retired), are drawing the two advance increments either from the date of joining serving or since they

acquired the requisite qualification after their appointment, on the strength of the communication dated 26.10.1978 (Annexure-2) and the withdrawal of the increment for the Special Branch Constables is projected to be discriminatory, since the Constables in other branches of Assam Police are allowed the benefit of the advance increments without interruption.^{3.2} As can be seen from the Annexure-2 circular, the advance increments were granted with concurrence of the Finance Department and accordingly the arbitrary withdrawal of the benefit without hearing the affected Constables, is questioned by the petitioners.

The Sr. counsel cites Syed Abdul Qadir Vs. State of Bihar reported in (2009)³ SCC 475 and State of Punjab Vs. Rafiq Masih (White Washer)

reported in (2015)⁴ SCC 334 to project that since the petitioners had nothing to do with the increment decision, they cannot be penalised by ordering

recovery of the excess amount drawn by the Special Branch Constables, some of whom have now retired from service.

4.1 On the other hand, Mr. R. Borpujari, the learned standing counsel for the Finance Department and the Govt. advocate Mr. S.S. Roy refer to the

counter affidavit filed on 04.05.2011 to contend that because of the Assam Services (Revision of Pay) Rules, 1983 and the Assam Services (Revision

of Pay) Rules, 1990, the police personnel are ineligible for advance increments for possessing higher qualification and that is why the impugned

cancellation decision was taken.

4.2 The respondents justify the impugned order of 03.07.2009 on the basis of the Home Department's circular dated 03.07.1991 and the

consequential communication dated 20.07.1991 by the Police Department and the Govt. advocates argue that since the increments were mistakenly

granted, the recovery thereof, should not be interfered by the Court.

5. While the ineligibility of the police personnel to receive advance increment is projected to be justified on account of the ROP Rules, 1983 and the

ROP Rules, 1990, it can be seen from the respective Clause 7 and Clause 9 of both the ROP Rules that continuation of the advance increment for

higher qualification for certain posts, is supported by the ROP Rules itself. The situation is no different under the ROP Rules, 1998 as Clause 9 of the

later Rules also envisaged continuation of the advance increment. If such be the implications of the ROP Rules, the ineligibility of the police personnel

to receive advance increment on the basis of the ROP Rules as projected by the Govt. counsel, cannot be supported from that perspective.

6. That apart, while the averred stand of the respondent No.6 is that all police personnel are ineligible for advance increment because of the ROP

Rules, the personnel in other police branches are not impacted by the circular dated 03.07.2009, whereas the same is sought to be arbitrarily enforced

against the Special Branch Constables. Such discriminatory treatment by the State, cannot naturally be supported as the State is expected to be fair in

their dealings.

7. The petitioners as can be seen, had no role in getting the advance increments, which was allowed by the authorities with due concurrence of the

Finance Department and therefore the recovery of the alleged excess drawal from the innocent beneficiaries cannot now be supported, in the light of

the ratio in Syed Abdul Qadir (supra) and Rafiq Masih (supra) cited by the petitioners's counsel.

8. The advance increment allowed w.e.f. 26.09.1973 and drawn by the petitioners either from the date of joining service or from the date of acquiring

the requisite qualification have become part of the salary package for the petitioners and those have also been taken into account for determining the

pension for some of the retired Special Branch Constables. In such circumstances, the State could not have ordered for recovery of the alleged

excess drawal without affording hearing to the affected petitioners. Unfortunately no such opportunity was afforded before issuing the impugned

circular dated 03.07.2009 (Annexure-3) and accordingly the same is declared to be vitiated and unsustainable.

9. It may not also be out of place to mention here that while the impugned decision is based upon the Home Department's circular of 03.07.1991

and the consequential circular of the Police Department issued on 20.07.1991, neither of these circulars have been produced by the Govt. advocates to

justify the impugned decision. It may not therefore be appropriate for the Court to comment on these two circulars referred to in the impugned

communication dated 03.07.2009 (Annexure-3). However since withdrawal of the increment benefit will impact the pay package for the Special

Branch Constables, the same cannot be retrospectively enforced against those, who have drawn their emoluments on the basis of the advance

increments allowed by the circular dated 26.10.1978 (Annexure-2). Hence the impugned decision dated 03.07.2009 (Annexure-3) stands quashed with all legal consequences.

10. With the above order, the case stands allowed without any order on cost.