

(1989) 05 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 787 of 1981

Surendra Nath Medhi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 3 LLJ 183

Hon'ble Judges : A. Raghuvir, C.J.; Manisana, J

Bench : Division Bench

Advocate : N.M. Lahiri and M.Z. Ahmed, for the Appellant; C. Chowdhury, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—In this writ petition, the petitioner has challenged an order of 28 March, 1979 of the Governor of Assam by which pay scale of the Assistant Professors of the Engineering Colleges in Assam has been revised, on the ground that the order is in violation of Article 14 of the Constitution.

2. The Assam Engineering College Gauhati was established in the year 1955, and there was no classification of the Lecturers and Assistant Professors of technical and non-technical subjects. But the Government of Assam basing on the resolution of the Assam Pay Committee of 1956 made classification of the teachers into two different categories, namely teachers of technical and non-technical subjects with different pay scales with effect from 1 April, 1958. The teachers teaching Physics, Chemistry and Mathematics are termed as teachers of non-technical subjects.

The petitioner joined the Assam Engineering College in the year 1960 as a Lecturer and his appointment as Assistant Professor was regularised in the year 1963 and since then he has been functioning as Assistant Professor and Head of Physics Department in the said College.

The classification continued under the Revision of Pay Rules of 1964, 1973 and 1979. The petitioner and the Engineering College Teachers Association submitted various representations to the Government of Assam to the effect that there was disparity and discrimination in the classification. Secretary (Scientific and Cultural Affairs) Government of India wrote a letter dated 21 May, 1962 to the Secretary (Education) PTM Department, Government of Assam for maintaining equality of pay scales between technical and non-technical teachers. The Assistant Educational Advisor (Technical), Government of India wrote a letter of 1 May, 1972 to the Secretary, the Engineering College Teachers Association, stating that the All India Council of Technical Education is against any disparity in pay scale between the technical and nontechnical teachers. The Director (Technical Education), Government of Assam by a letter dated 12 March, 1968 suggested by the Secretary (Education) PTM Department. Government of Assam for removal of disparity. The Principal of the Assam Engineering College also requested the Director (Technical Education) by a letter dated 20 April, 1972 for removal of disparity. However, the Governor of Assam issued an order dated 28 March, 1979 revising the pay scales of the Assistant Professors of the Engineering Colleges and others on the recommendation of the University Grants Commission or the All India Council of Technical Education, as the case may be, keeping in view the general pay structure prevailing in the State. In that order, the scale of pay of the Assistant Professor (non-technical) of the Engineering Colleges is Rs. 700/- to 1600/- p.m. plus special pay of Rs. 100/- p.m. and the scale of pay of the Assistant Professors (technical) is Rs. 1200/- to 1725/- p.m. The petitioner did not accept the new scale of pay recommended by the Commission in 1973 and intimated the Principal of the College by a letter dated 5 October, 1974 that he had decided not to accept the new scale of pay. The petitioner has challenged the order of 28 March, 1979 on the ground that the order was violative of Article 14 of the Constitution as there was disparity and discrimination in the classification.

3. The case of the State is that the classification was made on the basis of the recommendation of the Pay Committee. The Pay Committee considered, inter alia, the recommendation of the All India Council of Technical Education and the representation submitted by the Engineering College Teachers Association. The Governor of India by a letter dated 2 November, 1971 suggested that the State Government after taking local conditions into consideration may also decide to their discretion to introduce new scales of pay different, from those adopted by the Central Universities from 1 January, 1973 or of later date. Accordingly the State Government introduced the scale of pay Rs. 700/- to 1600/- with special pay of Rs. 100/- per month for the Assistant Professors (non-technical) of the Engineering College keeping parity to the scale of pay allowed to the Professors of the Government Degree Colleges in consideration of the fact that the scale of pay applicable to the Professors of the Government Degree Colleges and the Assistant Professors (non-technical) of the Engineering Colleges have all along been identical. This decision is due to local condition prevailing in the Degree

Colleges in the State of Assam. The Pay Committee also recommended the post of Assistant Professors and Lecturers of non-technical be included in the main stream of the Assam Educational Services in the cadres of Professors and Lecturers of the General Colleges of the Government to facilitate interchangeability.

4. We are of the view that the classification of posts into different categories with different pay scales is neither the function nor the forte of the Court. The Court is concerned with neither the policy nor the pay scale. It is to be determined by the Government. If the Government for good reasons have classified the posts into two categories with two different pay scales, the Court must generally accept and shall not reevaluate consideration unless it is demonstrated that it was made with extraneous consideration. At this stage, it will be helpful to refer to the decision of the Supreme Court in AIR 1974 753 (SC) There the Supreme Court has observed (Para 16)

"The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration".

5. We have perused the extracts of the Report of the Pay Committee annexed to the counter of the State. We have also perused the Report of the Pay Committee published by the Government of Assam for our satisfaction. The allegations made in the counter of the State are supported by the Report of the Pay Committee as well as the letter of the Government of India dated 2 November, 1971. Therefore, we are of the opinion that the classification with different pay scales was made after considering the representation of the Association, the letter dated 2 November, 1971, the recommendation of the University Grants Commission and/or the All India Council of Technical Education, the general pay structure or the scale of pay applicable to the Professors, of the Government Degree Colleges in Assam and the local conditions prevailing in the Degree Colleges in the State of Assam. Therefore, the Government has not considered any irrelevant or extraneous matter. Keeping in view the decision of the Supreme Court in State of U.P. v. Chaurasia (supra), we are not inclined to interfere with the impugned order.

6. For the foregoing reasons, the petition is dismissed. No costs.

7. A. Raghuvir, C.J., - I agree.