

(1999) 03 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 2758 of 1998

Umesh Sharma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1999) 3 GLT 549

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.K. Goswami, for the Appellant; K.H. Choudhury, for the Respondent

Judgement

A.K. Patnaik, J.—In this writ petition under Article 226 of the Constitution, the Petitioner has prayed for quashing the letter dated 21.1.97 of the Senior Accounts officer Accountant General and for a direction on the Respondents to pay his arrear pension.

2. The facts briefly are that the Petitioner was initially appointed by letter dated 6.6.94 of the Sub-Divisional Officer Mongoldoi to work as Revenue Copyist. With effect from 3.11.79, the Petitioner was paid Rs. 650/- per month. Thereafter by Office Memorandum dated 15.7.98 of the Government of Assam, Finance (Establishment A) Department, the Government of Assam was pleased to prescribe the pay scale of Rs. 470-12-530-EB-12-590-EB-15-680-20-800/- P.M. with effect from 8.5.87 for the existing Copyist/Typist Copyist of various Departments of the State Government, who were already drawing fixed remuneration of Rs. 650/- P.M. On 29.2.96, the Petitioner retired from service pending finalisation of pension and the Petitioner was paid provisional pension of Rs. 177.00 plus other allowances as admissible from time to time with effect from 1.3.96. But by a communication dated 15.1.97, the Senior Accounts Officer of the Accountant General (A&E), Assam intimated the Deputy Commissioner that since the Petitioner has rendered only 8 years 9 months 24 days and less than 10 years of service no pension was admissible to him under the Assam

Services (Pension) Rules, 1969 except service gratuity in lieu of pension and DCRG which came to Rs. 11,687.50 and Rs. 5843.75 respectively. By the said communication dated 15.1.97, the Deputy Commissioner, Darrang was further requested not to make any further payment of provisional pension to the Petitioner and intimate as to how he proposed to recover provisional pension already paid to the Petitioner. Aggrieved by the said communication dated 15.1.97 of the Senior Accounts Officer of the Accountant General (A&E) Assam, the Petitioner has moved this Court for appropriate relief.

3. Mr. A.K. Goswami, learned Counsel for the Petitioner, submitted that by order dated 22.9.96 passed by the Government of Assam, Judicial Department, a copy of which has been annexed as Annexure-9 to the writ petition, the Government has decided that the period spent on fixed pay by the copyist from 3.11.79 to 7.5.97 be treated as regular service for the purpose of granting pensionary benefit to one late Krishna Chandra Lekharu, retired Copyist in the establishment of the District & Sessions Judge, Kamrup. He further submitted that since the Petitioner was also working as a Copyist on fixed pay for the period from 3.11.79 to 7.5.97, he was entitled to similar benefit for the period of fixed pay from 3.11.79 to 7.5.97 as regular copyist for the purpose of granting pensionary benefits to him.

4. Mr. Choudhury, Addl. GA, Assam, on the other hand, submitted that the impugned order dated 22.9.96 was passed by the Government in the Judicial Department and applicable to copyists working under different establishments of Courts, but will not apply to the Petitioner as he was working as Copyist in the Revenue Department. Hence no relief can be granted to the Petitioner on the basis of the said order dated 22.9.96 of the Government of Assam in the Judicial Department.

5. Mr. Choudhury may be right that the order dated 22.9.90 was of the Government of Assam in the Judicial Department and by the said order the Government has decided that the period spent on fixed pay from 3.11.79 to 7.5.97 by late Krishna Chandra Lekharu, retired Copyist in the establishment of District & Sessions Judge may be treated as regular service for the purpose of regular pensionary benefits to him. But the Petitioner stands on the same footing as the said Krishna Chandra Lekharu inasmuch as he was working on a fixed pay as Copyist though under a different department. The object of the order dated 22.9.96 of the Government of Assam in the Judicial Department was to grant pensionary benefits to Krishna Chandra Lakharu by treating the period spent by him on fixed pay with effect from 3.11.79 to 7.5.97 as regular service. The distinction that was made by Mr. Choudhury between the said Krishna Chandra Lekharu and the Petitioner that they were working as copyists in different departments has no rational nexus with the object of the order dated 22.9.96. It is well settled that Article 14 of the Constitution permits classification of different person into different groups but such classification has to be based on intelligible differentia for classifying the persons into different groups and such intelligible

differentia must have rational nexus with the object sought to be achieved. In the instant case, Krishna Chandra Lekharu and the Petitioner both were Copyists and were working on fixed pay for sometime. The differentia suggested by Mr. Choudhury is that while Krishna Chandra Lekharu was working in the establishment of District Judge Kamrup, the Petitioner has been working in Revenue Department. Though this differentia was intelligible, it has absolutely no rational nexus with the object sought to be achieved by the order dated 22.9.96 of the Government which was to allow benefit of regular service for the period spent by Krishna Chandra Lekharu on fixed pay for the purpose of pension. In my considered opinion denying the same benefit to the Petitioner would be discriminatory and violative of Article 14 of the Constitution.

6. For the reasons stated above, I quash the impugned communication dated 15.1.97 of the Senior Accounts Officer, Office of the Accountant General (A&E), Assam to the Deputy Commissioner, Darrang (Annexure-4) and direct that the Government of Assam in the Revenue Department would pass orders for treating the period spent by the Petitioner on fixed pay as regular service for the purpose of granting pensionary benefit to him within a period of 2 months from the date of receipt of a certified copy of this judgment from the Petitioner and I further direct that until such orders are passed by the Government of Assam in the Revenue Department, the Petitioner will be continued to be paid provisional pension at the rate fixed by order dated 26.8.96 of the Deputy Commissioner, Darrang under Annexure-III.