

GAHC010022182023



2024:GAU-AS:12614-DB

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WA/74/2023

NIRAB CHANDRA ADHIKARY,
S/O- SRI TARINI MOHAN ADHIKARY,
ADDRESS- VILL- KHUKCHI, P.O. SAKTIASHRAM,
P.S. FAKIRAGRAM, DIST- KOKRAJHAR, PIN-783354, ASSAM.

.....Appellant

-VERSUS-

1.UNION OF INDIA,
REP. BY THE SECRETARY,
DEPTT. OF SCIENCE AND TECHNOLOGY,
GOVT. OF INDIA,
ADDRESS- TECHNOLOGY BHAVAN, NEW MEHRAULI ROAD,
NEW DELHI, PIN- 110016.

2:THE SECRETARY,
DEPTT. OF SCIENCE AND TECHNOLOGY,
GOVT. OF ASSAM,
ADDRESS- BLOCK-D, 4TH FLOOR, JANATA BHAWAN
DISPUR, GHY, ASSM, PIN-781006.

3:THE SECRETARY,
DEPTT. OF FINANCE,
GOVT. OF INDIA,
ADDRESS- 3RD FLOOR, JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI, PIN-110001.

4:THE COMMISSIONER AND SECRETARY,
DEPTT. OF FINANCE,
GOVT. OF ASSAM,
ADDRESS- ASSAM SECRETARIAT,
DISPUR, GHY, ASSAM, PIN-781006.

5:THE COMMISSIONER AND SECRETARY,
HIGHER EDUCATION DEPTT.,
GOVT. OF ASSAM,
ADDRESS- BLOCK F, 4TH FLOOR, ASSAM SECRETARIAT
DISPUR, GHY, ASSAM, PIN-781006

6:THE DIRECTOR, INSTITUTE OF ADVANCED STUDY IN SCIENCE AND
TECHNOLOGY (IASST),
ADDRESS- VIGYAN PATH, PASCHIM BORAGAON
GHY, ASSAM, PIN-781035.

.....Respondents

- BEFORE -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For the Appellant : Mr. Aziz Khan, Advocate.
: Mr. Abhijit Mena, Advocate.

For the Respondent(s) : Mr. S.S. Roy, Central Government Counsel for respondent Nos.1 & 3.
: Mr. K. Gogoi, Standing Counsel, Education (Higher) Department for respondent No.5.
: Mr. D. Gogoi, Advocate for respondent No.6.

Date of Hearing : 10.12.2024.

Date of judgment : **13.12.2024.**

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

The instant writ appeal is preferred by the appellant/writ petitioner being aggrieved with the judgment and order dated 03.01.2023 passed by the learned Single Judge in WP(C) No.3272/2018.

2. The appellant approached the Writ Court with a prayer to issue direction to the respondents to fix his pay in the Pay Band-3 and grant him Pay Scale of

Rs.15,600-39,100/- along with Grade Pay of Rs.5,400/- with effect from March, 2009. The appellant also prayed to issue a direction to the respondents to pay the arrear of the salaries to him in the revised Pay Scale of Rs.15,600-39,100/- and grade pay of Rs.5,400/- from March, 2009.

3. The learned Single Judge, after hearing the learned counsel for the parties, has dismissed the writ petition vide impugned judgment and order dated 03.01.2023.

4. Assailing the impugned order dated 03.01.2023, the learned counsel appearing for the appellant has argued that the learned Single Judge has erred in concluding that the respondents have rightly fixed the Pay Band of appellant/writ petitioner at Rs.9,300-34,800/- with grade pay of Rs.4,800/- at the time of absorption as a Central Government employee i.e. from 09.03.2009.

5. It is contended that the appellant was an employee of the Assam Government and with the enactment of Assam Services (Revision of Pay) Rules, 2010 (hereinafter to be referred as "the Rules of 2010"), which came into force from 01.01.2006, the pay structure of the appellant on 09.03.2009 ought to have been considered in the revised pay of Rs.12,000-40,000/- with Grade Pay of Rs.5,400/- and he is liable to be fixed in the corresponding Pay Band and Grade Pay provided in the Central Civil Services Revised Pay Rules, 2008.

6. The learned counsel for the appellant has submitted that the learned Single Judge has failed to consider that at the time of his absorption as a Central Government employee, i.e. on 09.03.2009, the appellant was fixed in Pay Band-2 i.e. Rs.9,300-34,800/- with Grade Pay of Rs.4,800/-, and as such the respondents have fixed the appellant in the pay scale which was two steps lower with regard to his earlier pay scale. It is contended that the appellant was

also entitled for pay protection though the said benefit was not granted to him.

7. Learned counsel for the appellant has submitted that with the introduction of the Rules of 2010 which came into force on 01.01.2006, the appellant ought to have been fixed in the Pay Band-3 in the Pay Scale of Rs.15,600-39,100/- along with Grade Pay of Rs.5,400/-.

8. It is further contended that the learned Single Judge has failed to take into consideration the fact that the Pay Scale of Rs.15,600-39,100/- with grade pay of Rs.5,400/- is in fact at par with the scale of pay given to other similarly situated Central Government employees holding the post of Technical Officer Grade -II at Indian Institute of Technology (IIT), Guwahati, IIT, Kharagpur and other Institutes and looking to these facts also, the appellant is entitled for equitable relief on the principle of 'equal pay for equal work'.

9. Learned counsel for the appellant has submitted that the learned Single Judge, without considering the above aspects, has illegally dismissed the writ petition filed on behalf of the appellant and has illegally denied relief to the appellant as prayed in the writ petition.

10. Per contra, learned counsel appearing for the respondents has argued that the learned Single Judge has not committed any illegality in denying relief to the appellant and in dismissing the writ petition. It is contended that the claim of the appellant/writ petitioner to fix him in Pay Band-3 in the Pay Scale of Rs.15,600-39,100/- along with Grade Pay of Rs.5,400/-is not tenable. It is contended that the said claim of the appellant was based on the revision in the Pay Scale of the Assam Government employees with the introduction of the Rules of 2010. It is submitted that though the said Rules of 2010 brought into force on 01.01.2006, but as a matter of fact, the same were notified on

04.02.2010, prior to which the appellant was absorbed as a Central Government employee and as such, his pay was liable to be governed as per the Central Civil Services Revised Pay Rules, 2008 and the respondents have not committed any illegality in fixing the appellant in the Pay Band-2 with Pay Scale of Rs.9,300-34,800 with grade pay of Rs.4,800/-.

11. Learned counsel for the respondents have further submitted that the claim of the appellant/petitioner for fixing him in the Pay Band-3 with the Pay Scale of Rs.15,600-39,100/- along with the Grade Pay of Rs.5,400/- is also not tenable on the ground that the similarly situated Central Government employees are getting the said Pay Scale. It is argued that the mode of recruitment of the appellant in the Central Government Services is distinct from the mode of recruitment by which the appellant was absorbed in the Central Government services and therefore, he cannot claim parity with those Central Government employees who were either directly recruited or promoted.

12. Learned counsel for the respondents has, therefore, submitted that there is no illegality in the impugned judgment and order and therefore, no case for interference is made out.

13. Heard the learned counsel appearing for the parties and also perused the material available on record.

14. The learned Single Judge, after hearing the counsel for the parties, has formulated two issues for consideration which are as follows:

- (i) Whether the petitioner (hereinafter referred as the appellant) is entitled to revised Pay Scale in terms of the Rules of 2010 ?
- (ii) Whether the petitioner is entitled to pay parity on the principle of 'equal pay for equal work'?

15. While deciding the first issue, the learned Single Judge has concluded as under:

“10. To decide the first issue, it would be relevant to take note of the contentions made by the learned counsels for the parties. Mr. F.Khan, the learned counsel appearing on behalf of the petitioner had submitted that the petitioner was enjoying the pay scale of Rs.4,390-90-11,425/- . By virtue of the revision of the pay and in view of the coming into effect the 2010 Rules, the petitioner’s pay scale was increased to the pay band of Rs.12,000-40,000/- with grade pay of Rs.5,400/-. This was brought into effect w.e.f 01.01.2006, and as such after the petitioner have become a Central Government Employee, his pay band could not have been reduced to Rs.9,300-34,800/- with grade pay of Rs.4,800/- inasmuch as the same would violate the principle of pay protection.

11. On the other hand, Mr. D.Gogoi, the learned counsel appearing on behalf of the respondent No.6 had submitted that the petitioner was absorbed as a Central Government employee w.e.f 09.03.2009. The Central Government had accepted the 6th pay recommendation w.e.f 01.01.2009. In terms with the Central Rules of 2008, there was not an exact match to pay the band of Rs.4,390-90-11,425/-, which was enjoyed by the petitioner prior to conversion. However, the corresponding pre-revised pay scale for the Central Government Employee was Rs.7,500-250-12,000/-. Accordingly, in terms with the revision so carried out as per the Central Rules of 2008, the revised pay band for Rs.7,500- 250-12,000/- was Rs.9,300-34,800/- with grade pay of Rs.4,800/-, and accordingly, the petitioner’s pay has been fixed in terms of the Rules of 2008. He further submitted that the question of pay fixation is evaluated and determined by an expert body and interference with the same would have a cascading effect creating all kinds of problem for the Government and the Authorities. In the backdrop of the above contentions, the learned counsel for the respondent No.6 submitted that this Court in exercise of the powers under Article226 of the Constitution of India has kept in mind that granting of pay scale is a purely executive function and the Court ought not to interfere with the same.

12. In the backdrop of the above, it would be seen that the petitioner was enjoying a pay band of Rs.4,300-90-11,425/- at the time of absorption as a Central Government Employee. At that relevant point of time, the Central Government employees were already enjoying the revised pay scale in terms with the 6th pay recommendation. A perusal of the Central Rules of 2008 shows that the there is no corresponding pay band of Rs.4,390-90-11,425/- and the

pay band which can be applied was Rs.7,500-250-12,000/- . Accordingly, the authorities concerned have applied the said pre-revised band of Rs.7,500-250-12,000/- and fixed the revised pay of the petitioner at Rs.9,300-34,800/- along with grade pay of Rs.4,800/- w.e.f March, 2009. Subsequent thereto, the Rules of 2010 of the State of Assam had revised the pay band of Rs.4,300-90-11,425/- in the pay band of Rs.12,000-14,000/- with grade pay of Rs.5,400/- . This came into effect from 01.06.2006 but the Rules of 2010 was brought by way of a Notification on 04.02.2010. Under such circumstances, the petitioner would definitely be entitled for the pay band of Rs.12,400-40,000/- with grade pay of Rs.5,400/- for the period from 01.01.2006 to 09.03.2009. However, for the period after that as the petitioner comes within ambit of the Rules of 2008 and his corresponding pre-revised pay was Rs.7,500-250-12,000/- which was in the similar band with Rs.4,300-90-11,425/-, the petitioner's entitlement to the revised pay band can only be Rs.9,300-34,800/- with grade pay of Rs.4,800/- . Any interference with the same as sought for by the petitioner would have the effect of changing the entire pay bands as notified by the Central Rules of 2008, which was based upon the recommendation by an expert body i.e., the Pay Commission. Under such circumstances, this Court is of the opinion that the respondent authorities more particularly the respondent No.6 have rightly fixed the pay band of the petitioner at Rs.9,300-34,800/- with grade pay of Rs.4,800/- .”

16. On the issue whether the appellant is entitled to claim pay parity on the principle of 'equal pay for equal work', the learned Single Judge, after taking into consideration the judgment rendered by the Hon'ble Supreme Court in the case of the ***State of Bihar & Ors. Vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors.***, reported in **(2019) 18 SCC 301**, has concluded in the following manner:

“15. From the above quoted paragraph of the said judgment, it would transpire that the mode of recruitment can be taken as a factor for the purpose of accepting or rejecting the claim based on the principle of 'equal pay for equal work'. It would also be relevant herein to take note of that the petitioner's service is not transferable whereas, the service of the Technical Officers Grade II are transferable and as such, they fall in a different class from that of the petitioner.

16. Further, the mode of recruitment as a Central Government Employee of

the petitioner with that of other persons who are employed in the IIT's is also distinct and different in as much as the petitioner's services were converted from a Government of Assam employee to a Central Government Employee whereas persons in the IIT's are recruited by either direct recruitment/promotion. It cannot also be lost sight of that the Pay Band No.3 as was sought for by the petitioner is given to the Assistant Professors and services of Technical Grade B cannot be equated with Assistant Professors. Considering the above, this Court is therefore of the opinion that the question of giving pay parity to the petitioner with similarly situated Technical Officers Grade-II of the Indian Institute of Technology, Guwahati or other Institutes of Technology cannot be applied to the case of the petitioner."

17. Having taken into consideration, the findings recorded by the learned Single and after going through the material available on record, we do not find any infirmity in the said findings. The appellant cannot claim the benefit of the Rules of 2010, which were notified on 04.2.2010 only, though came into force from 01.01.2006. The fact remains that prior to the Notification of the Rules of 2010, the appellant was absorbed as a Central Government employee and as such, his services are liable to be governed by the Central Civil Services Revised Pay Rules, 2008.

18. The claim of the appellant regarding pay parity with the Central Government employee is concerned, the learned Single Judge has rightly concluded that since the mode of recruitment in the case of the appellant is distinct from the mode of recruitment of the employees of the other IITs and therefore, on the basis of the law laid down by the Hon'ble Supreme Court in ***Bihar Secondary Teachers Struggle Committee, Munger*** (supra), the appellant is not entitled to get any relief.

19. Apart from that, it is to be noticed that the appellant was absorbed as a Central Government employee in March, 2009 and his pay was fixed in the Pay Band-2 in the Pay Scale of Rs.9,300-34,800/- with Grade Pay of Rs.4,800/-.

However, for the first time, he raised his grievance regarding his pay fixation before the authorities in the year 2011, precisely on 23.06.2011 and considering the same, he was granted personal pay of Rs.280/- on 09.12.2011. Thereafter, the appellant filed another representation on 14.12.2011 and 20.08.2013. However, the same were not responded to. Then after a gap of around 5(five) years, the appellant filed the writ petition, WP(C) No.3272/2018 in the year 2018. The said delay in approaching this Court has not been explained by the appellant.

20. We are of the view that the appellant is not entitled to get any relief on the merits as well as on the ground of delay also.

21. In view of above discussions, we do not find any case for interference in this writ appeal. Hence, the instant writ appeal is dismissed being devoid of merit.

22. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant