



GAHC010120722012

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

Case No. : WP(C)/1680/2012

PRADYUT BARUAH
S/O- SHRI DEBEN BARUAH, TOKALAI GAON, REJABARI, JORHAT- 785014,
ASSAM.

VERSUS

PRINCIPAL SECRETARY GOVERNMENT OF ASSAM and ORS
URBAN DEVELOPMENT DEPTT., DISPUR, GHY- 6.

2:DIRECTOR OF TOWN AND COUNTRY PLANNING
ASSAM
DISPUR
GHY- 6.

3:DY. DIRECTOR
TOWN AND COUNTRY PLANNING
DIST. OFFICE
JORHAT
P.O. and DIST.- JORHAT.

4:COMMISSIONER and SECY.
FINANCE SIU DEPTT.
ASSAM
DISPUR
GHY- 6.

5:UNDER SECY. TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT T DEPTT.
DISPUR
GHY- 6

Advocate for the Petitioner : MR.N J DUTTA



Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri NJ Dutta, Advocate,
Shri KD Sarma, Advocate.

For the Respondents : Shri JK Goswami, GA, Assam,
Shri P Nayak, SC, Finance Department, Assam.

Date of Hearing : 14.09.2023

Date of Judgment : 14.09.2023.

14.09.2023.

Judgment & Order

The instant writ petition has been filed with regard to a claim for pay protection. The petitioner, who is a diploma holder in Civil Engineering, was initially appointed as a Sector Inspector Trainee pursuant to a duly conducted recruitment process initiated by the Jorhat Development Authority (JDA). The said authority is constituted under the Assam Town and Country Planning Act, 1959 (Act of 1959) and is under the Department of Urban Development, Government of Assam.

2. It is the case of the petitioner that his appointment which was made on



08.03.2001 was regularized w.e.f. 01.03.2002. While in service, an advertisement was published by the Assam Public Service Commission (APSC) on 08.10.2007 for filling up 3 numbers of post of Junior Engineer (Civil) in the Department of Town and Country Planning. The petitioner applied for the said post and since, he was already employed with the JDA, the application dated 24.10.2007 was duly forwarded by the JDA. The petitioner was selected in the said recruitment process and vide order dated 03.06.2009, he was appointed as a Junior Engineer (Civil) under the Directorate of Town and Country Planning.

3. The grievance of the petitioner is that while being appointed in the aforesaid capacity, he was not given the pay protection and in this regard, he had made a representation dated 17.07.2009. There was response by the Director of Town and Country Planning by stating that the petitioner was earlier serving in the JDA. The claim of the petitioner was, however, negated in terms of the opinion expressed by the Finance Department that the earlier post in which the petitioner was working was a non-government post.

4. I have heard Shri NJ Dutta, learned counsel for the petitioner. I have also heard Shri JK Goswami, learned Addl. Senior Government Advocate, Assam as well as Shri P Nayak, learned Standing Counsel, Finance Department, Assam.

5. Shri Dutta, learned counsel for the petitioner by referring to the Act of 1959 has submitted that under Section 8A, the constitution of the Authority has been laid down as per which, the Authority would be a body corporate having

perpetual succession and a common seal and sue and be sued in its own name. He submits that for all purposes, the body is a statutory body and is governed by the Act of 1959 and the Rules framed thereunder. Reference has also been made to Section 50 which is with regard to grants, advances and loans wherein it has been laid down that the State Government may make such grants etc. as may be deemed necessary.

6. Under Section 50-C, the accounts of the Authority is subject to audit to be done annually by the Accountant General, Assam. As per Section 57, every officer and servants of the Authority is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

7. Shri Dutta, learned counsel for the petitioner has also referred to Section 3 of the Act of 1959 which pertains to constitution of the Advisory Council. The learned counsel has also referred to FR 22-A which is with regard to pay protection and in this connection, he relies upon a judgment of this Court in the case in **WP(C)/2973/2006 (Shri Ajit Kumar Kakoti Vs. State of Assam & Ors.)** dated 14.06.2013. Shri Dutta, learned counsel submits that though the issue in that case was one with regard to seniority, it was held that the provision of FR 22-A would apply. It may be mentioned that the petitioner in that case was earlier working with Assam Syntex Ltd. and subsequently appointed in the Assam Textile Institute.

8. Shri Dutta, learned counsel has also relied upon the case of **RL Marwaha Vs. Union of India**, reported in **(1987) 4 SCC 31**. The said case though relating to a claim for pension, the Hon'ble Supreme Court has laid down that the earlier

services of the incumbent after absorption is required to be counted.

9. The learned counsel for the petitioner has also referred to the affidavit-in-reply filed on 13.09.2023 with which an order dated 24.05.2021 has been annexed. The said order passed by the Urban Development Department, Government of Assam has declared that all officers and staffs of Urban Development Department and Guwahati Development Department and that of the Directorate of Municipal Administration, Assam, the Directorate of Town & Country Planning etc. are interchangeable. It is, accordingly submitted that the status of the officers and staffs under the Director of Town and Country Planning being equated with the officers and staffs of the Department, the claim of the petitioner stood fortified.

10. *Per contra*, Shri Nayak, learned Standing Counsel, Finance Department, Assam raises the following objections. Firstly, he submits that though FR 22 is with regard to pay protection, the applicability of the said provision is to be read along with FR 2 as per which, the FR is applicable only to Government servants whose pay is debitable to the civil estimates of the State of Assam. Secondly, he submits that the ROP Rules would not apply unless, an autonomous body specifically extends its applicability and the mere fact that the pay scale is similar would not mean that such scale of pay is as per the ROP Rules. He clarifies that the ROP Rules are applicable only to Government servants and not to any other servants who may be of autonomous bodies. The learned Standing Counsel has also referred to Section 8-G (4) of the Act of 1959 which were incorporated vide an amendment of the year 2022. Under the said provision, the method of recruitment, conditions of service, pay and other allowances etc. may

be prescribed. He also draws the analogy of the employees of the GMDA and submits that employees of the GMDA cannot be deemed as Government servants. By contending that a Government Company is different from the Government itself, the learned Standing Counsel, Shri Nayak has relied upon the case of ***AK Bindal & Anr. Vs. Union of India & Ors.***, reported in **(2003) 5 SCC 163**. He submits that employees of Government Company are not Government servants and therefore, no entitled to claim any benefit which are accrued from the Government. The learned Standing Counsel has also relied upon a notification issued by the Finance Department dated 06.07.2017 as per which, past services shall not be counted for the purposes of grant of Modified Assured Career Progression Scheme (MACPS).

11. Shri Goswami, learned Addl. Sr. Government Advocate has submitted that an affidavit-in-opposition has been filed on 20.07.2012 and in paragraph 10 thereof, it has been categorically stated that the earlier post concerned is not a Government post.

12. The rival submissions of the learned counsel for the parties have been duly considered and the materials on record carefully examined.

13. The issue involved is with regard to protection of pay of the petitioner. It is not in dispute that the petitioner was earlier appointed as a Sector Inspector Trainee in the JDA where he was serving from 08.03.2001 with his services regularized w.e.f. 01.03.2002. While in the said service, the petitioner had participated in the recruitment process for the post of Junior Engineer under the



Directorate of Town and Country Planning which was conducted by the APSC and the said participation was through proper channel.

14. The post held by the petitioner as Sector Inspector Trainee in the JDA has been stated to be equivalent to the post of Junior Engineer. The question, therefore, arises is as to whether on being inducted into the services under the Directorate of Town and Country Planning, the petitioner would entitle to a pay protection or not. To answer the said issue, the statutory provisions, as contained in the Act of 1959, may be taken into consideration.

15. The learned counsel for the petitioner has referred to certain provisions of the Act of 1959 regarding the constitution of the Authority, grants, advances, loans by the State Government and also audit by the Accountant General, Assam and also to Section 57 as per which, the officers and staffs of the Authority would be deemed to be public servants within the meaning of Section 21 of the IPC. This Court has further noticed that under Section 8-B, the composition of the Authority itself had been laid down which would show that all the members of the Authority are to be appointed by the State Government and most of them are holding substantive posts under the State Government and are *ex officio* members.

16. FR 22 is with regard to pay protection. Though an objection has been raised on behalf of the Finance Department that for getting benefit of FR 22, one has to fulfill the requirements under FR 2, according to which, the FR applies to all Government servants whose pay is debitable to civil estimates of the State. The meaning sought to be assigned by FR 2 cannot be given a

narrow meaning so as to exclude from its operation, employees/officers under the Authorities which are constituted under the Act of 1959. The aforesaid opinion of this Court is based upon the judgment earlier rendered by this Court in the case of **Shri Ajit Kumar Kakoti** (*supra*) wherein it has been held that the provisions of FR 22 would apply even for employees who were working in an undertaking of the State. In the said case, the petitioner was earlier an employee of the Assam Syntex Ltd. and later appointed in the Assam Textile Institute. This Court has also noted the observation of the Hon'ble Supreme Court in the case of **RL Marwaha** (*supra*) wherein paragraph 8, the earlier services have been directed to be counted. The aforesaid case, however, was with regard to a claim for pension.

17. The aforesaid notification dated 24.05.2021 by which the officers and staffs of the Urban Development Authority have been held to be interchangeable is also in favour of the petitioner as for all purposes, such officers and staffs are held to be at par so far their services are concerned.

18. Shri Nayak, learned Standing Counsel had contended that unless an incumbent is a Government servant is not entitled to the benefits of the revision of pay. However, this Court is of the opinion that the issue in this case being only with regard to the pay protection on being appointed under the Directorate of Town and Country Planning when the petitioner was initially working in the JDA, the said submission may not be relevant. The reliance placed upon the case of **AK Bindal & Anr.** (*supra*) would also not be relevant as there is no dispute to the proposition laid down by the Hon'ble Supreme Court regarding the difference between Government Companies and the Government itself. In

the said case, the findings of the Hon'ble Supreme Court were with regard to protection under Article 311 of the Constitution of India wherein a further observation was made that employees of a Government Company cannot claim salaries from the Government. Though reliance has also been made upon a notification dated 06.07.2017 of the Finance Department wherein it has been laid down that past services would not be counted for the purpose of the MACPS, the present is not with regard to any benefits under the said Scheme and rather, for protection of pay which the petitioner is held to be entitled under the scheme of FR-22. The observation of the Finance Department which has been reflected in the affidavit-in-opposition that the post earlier held by the petitioner is a non-government post would not be relevant in the present context wherein the claim is only for protection of pay and admittedly, the earlier services of the petitioner was with the JDA which is an authority under the Act of 1959.

19. Under the aforesaid facts and circumstances, this Court is of the considered opinion that the petitioner has been able to make out a case for interference and accordingly, this writ petition is allowed by holding that the petitioner is entitled to pay protection and accordingly his initial scale of pay while he had joined the post should be at least equivalent to the substantive pay which he was receiving while working with the JDA.

20. In view of the above, the respondent authorities are directed to give the benefit of such pay protection expeditiously and the aforesaid exercise be completed within an outer limit of 3 months from today.



21. The writ petition is accordingly disposed of.

22. No costs.

JUDGE

Comparing Assistant