



GAHC010109042021

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

Case No. : WP(C)/3967/2021

ARUNABHA GOSWAMI AND 9 ORS.
R/O BARPARA, P.O.-BANGAIGAON, P.S.-BANGAIGAON, DIST-
BANGAIGAON (ASSAM), PIN-783389

2: CHITTARANJAN DEKA
S/O LATE SARAT CHANDRA DEKA
R/O PATHSALA LACHIT NAGAR WARD NO. 1
P.S.-PATACHARKUCHI
DIST- BAJALI (ASSAM)
PIN-781325

3: RAJIB KUMAR GOGOI
S/O LATE BHABEN KUMAR GOGOI
R/O MEGHMALLAR HOUSE
N.N. BARUAH PATH
RUKMINIGAON
P.S.-DISPUR
DIST-KAMRUP(M)
ASSAM
PIN-781022

4: YUSUFUR RAHMAN
S/O LATE MAHIBUR RAHMAN
R/O H/N-91
NEW TOWN SARANIA
GBSS LINK ROAD
GANDHIBASTI
P.S.-CHANDMARI
DIST-KAMRUP(M)
ASSAM
PIN-781003

5: THIL JOHN ROBERT
S/O LATE SANGA HMAR



R/O CIVIL HOSPITAL ROAD
P.S.-HAFLONG
DIST-DIMA HASAO (ASSAM)
PIN-788819

6: SHASHI KANTA TIMUNG
S/O LATE BAMPONG TIMUNG
R/O GOVT. COLLEGE ROAD
WARD NO. 5
P.S.-DIPHU
DIST- KARBI ANGLONG (ASSAM)
PIN-782460

7: BHASKAR BORBORA
S/O LATE GOLAP BORBORA
R/O LNB ROAD
SOUTH HAIBARGAON
P.S.-HAIBARGAON
DIST- NAGAON (ASSAM)
PIN-782002

8: ABINASH SAIKIA
S/O LATE ANANDI SAIKIA
R/O PARIJAT PATH
NEAR Q LANE
WEST MILAN NAGAR
P.S.-DIBRUGARH
DIST-DIBRUGARH (ASSAM)
PIN-786003

9: BIPLAB DEURI BARUAH
S/O LATE BIPUL CH. DEURI
R/O HOUSE NO. 14
RADHASURA BYE LANE
BHETAPARA (NEAR RCC BRIDGE)
BELTOLA BISHNU RABHA PATH
DIST- KAMRUP(M)
ASSAM
PIN-781028

10: DULAL A SARKAR
S/O LATE A.A. SARKAR
R/O GAURIPUR
WARD NO. 4
P.S.-GAURIPUR
DIST- DHUBRI (ASSAM)
PIN-78333



VERSUS

THE STATE OF ASSAM AND 3 ORS.
THROUGH THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI, PIN-781006

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
JURIPAR
PANJABARI
GUWAHATI-781037

3:THE PRINCIPAL SECRETARY
GOVERNMENT OF ASSAM
DEPARTMENT OF FINANCE
DISPUR
GUWAHATI-781006

4:THE PRINCIPAL SECRETARY
GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR A C BORBORA, SENIOR COUNSEL
: MS. N. BEGUM

Advocate for the Respondent : MR. R. BORPUJARI
: MR. N. K. DEBNATH
: MR. C. S. HAZARIKA

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 25-05-2023

Heard Mr. A. C. Borbora, the learned Senior counsel assisted by Ms. N. Begum, the learned counsel appearing on behalf of the petitioners and Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Finance

Department. I have also heard Mr. N. K. Debnath, the learned Standing counsel appearing on behalf of the Panchayat and Rural Development Department and Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the Personnel Department.

2. The issue involved in the instant writ petition is as to whether there has been a disparity in the pay of the petitioners who are working in the cadre of Deputy Chief Executive Officer which is the promotional post from the post of Block Development Officer inasmuch as the Grade Pay is one and the same.

3. The facts involved in the instant case are that the petitioners herein were appointed as Block Development Officer on various dates. The petitioners thereupon were promoted to the post of Deputy Chief Executive Officer on 29.02.2016 and 26.06.2019 vide the promotional orders enclosed as Annexure-1 (series) to the instant writ petition. On 23.02.2021, the Governor of Assam in exercise of powers conferred under the proviso to Article 309 of the Constitution amended the Schedule to the Assam Service (ROP) Rules, 2017 whereby the Block Development Officer was given a revised pay structure in Pay Band-4 of Rs.30,000/- to Rs.1,10,000/- and Grade Pay of Rs.12,700/-. It is the case of the petitioners herein that as the post held by the petitioners are promotional posts from the post of the Block Development Officer, the post of the Deputy Chief Executive Officer cannot have equal grade pay with that of the post of Block Development Officer. Various representations were submitted but nothing constructive happened for which the present writ petition has been filed.

4. It appears on record that this Court vide an order dated 23.08.2021 issued notice making it returnable on 08.11.2021. Further to that, this Court on 18.01.2023 had admitted the instant writ petition by issuing Rule. It appears on



record that on 31.05.2022, the Joint Secretary to the Government of Assam, P&RD Department filed an affidavit-in-opposition, the details of which this Court shall deal at a later portion of the instant judgment but it appears therefrom that the P&RD Department had supported the case of the petitioners insofar as the disparity of the pay. It further appears that the respondent No.3 i.e. the Finance Department had also filed affidavit-in-opposition on 13.09.2022. The gist of the said affidavit-in-opposition reveals that the Government of Assam had duly accepted the report of the Pay Commission and it is in consequence to that wherein there was a recommendation of merger of the post of the Deputy Chief Executive Officer with the post of the Block Development Officer, the revised structure of pay was given to the Block Development Officers vide the notification dated 23.02.2021. In the backdrop of the above, let this Court therefore consider the respective submissions of the learned counsels for both the parties.

5. Mr. A. C. Borbora, the learned Senior counsel during the course of his arguments have drawn the attention of this Court to the Assam Panchayat and Rural Development Officers Service Rules, 2013 (for short the "Rules of 2013") which were made by the Governor of Assam in exercise of powers under the proviso to Article 309 of the Constitution. The learned Senior counsel referred to Rule 3 of the Rules of 2013 and drew the attention of this Court that Rule 3(1) (d) refers to the post of Deputy Chief Executive Officer, Zilla Parishad and Rule 3(1)(f) refers to Block Development Officer, Principal, Gaon Panchayat Secretary Training Centre. Referring to Rule 5 of the Rules of 2013 which stipulates the method of recruitment, the learned Senior counsel submitted that Rule 5(4) of the Rules of 2013 mandates that the recruitment to 100% strength of the Deputy Chief Executive Officer, Zilla Parishad shall be made by promotion



whereas in Rule 5(6), the recruitment to the post of Block Development Officer shall be made (a) 40% by direct recruitment through the Commission and (b) 60% by promotion from the officers in the cadres of Extension Officer (Credit), Extension Officer (Panchayat) and Extension Officer (Women and Children) at the ratio of 20% each equally.

6. Referring to Rule 11 of the Rules of 2013 which relates to recruitment by promotion, the learned Senior Counsel drew the attention of this Court to Rule 11(d) which stipulates that 100% of the strength of the cadre of Deputy Chief Executive Officer shall be filled up by the Block Development Officer who have experience of minimum 10 years continuous service in the cadre. Reference was also made to Rule 11(f) as to how the 60% of the strength of the cadre of Block Development Officer shall be filled up. It was therefore the submission of the learned Senior counsel for the petitioners that from a conjoint reading of the Rules, it would categorically show that the post of Deputy Chief Executive Officer is a promotional post from the cadre of Block Development Officer that too after completion of a minimum period of 10 years.

7. The learned Senior Counsel further drew the attention of this Court to Rule 23 of the Rules of 2013 which relates to pay. A perusal of Rule 23 shows that all appointments in the service shall be made in the time scale of pay as may be prescribed by the Government from time to time. The scale of pay of the posts in the cadres of the service on the date of commencement of the Rules have been shown in Schedule-(I). The learned Senior counsel on the basis of Rule 23 of the Rules of 2013 further drew the attention to Schedule (I) wherein it stipulated at Serial No.10 that the post of the Deputy Chief Executive Officer, Zilla Parishad have been shown in the scale of pay of Pay Band 4 i.e.



Rs.12,000/- to Rs.40,000/- with Grade Pay Rs.5,400/- and in Serial No.11, the cadre of Block Development Officer have been shown that the scale of pay of Pay Band 3 i.e. Rs.8,000/- to 35,000/- with Grade Pay of Rs.4,700/-.

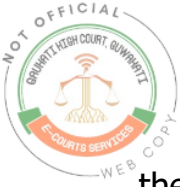
8. The learned Senior Counsel further submitted that from Schedule (I), it is apparent that the post in the cadre of Deputy Chief Executive Officer enjoys the pay scale in PB-4 whereas the post in the cadre of Block Development Officer enjoys the pay scale in PB-3. The learned Senior counsel further referring to Rule 8 and Schedule (II) of the Rules of 2013 further drew the attention of this Court to Serial No.10 and Serial No.11 wherein the post of the Deputy Chief Executive Officer, Zilla Parishad and Block Development Officer, Zilla Parishad respectively have been mentioned.

9. The learned Senior Counsel during the course of hearing further drew attention of this Court to a notification dated 11.08.2004 issued by the Commissioner and Secretary to the Government of Assam, P&RD whereby the Governor of Assam merged the post of Senior Block Development Officer created vide Government letter No.RDB.144/04/14 dated 27.06.1986 and No.RDB.144/04/16 dated 26.09.1986 with the post of Block Development Officer with immediate effect. The learned Senior counsel while drawing the attention to the notification further submitted that the notification would also show that those Senior Block Development Officer even after the merger and designated as the Block Development Officer have been granted the pay protection. As the said document was placed during the course of hearing, the same is kept on record and marked with the letter "X".

10. The learned Senior Counsel submitted that all the problems arose in view of the recommendations so made by the 7th Assam Pay and Productivity Pay

Commission (for short "the 7th Pay Commission") whereby at paragraph No.1.23 and more particularly at Clause No.5, it was recommended that the promotion from Group-B should be made to the level of BDO in the Grade Pay of Rs.5,400/-. In Clause No.8, it was recommended that the post of the Deputy CEO, BDO (Senior Grade) and the BDO shall all be put in the same pay scale with Grade Pay of Rs.5,400/-. It was recommended that the designation of the BDO (Senior Grade) pay abolished and the officers posted in the Zilla Parishad be called Deputy CEO and those posted in the Blocks be called BDO, both having the same Grade Pay of Rs.5,400/-. It was further recommended that as a consequence of such recommendations, the Extension Officer (Group-B) can be posted on promotion either as Deputy CEO or as BDO.

11. The learned Senior Counsel submitted that though these recommendations were made by the 7th Pay Commission but the same could not have been acted upon unless and until the Rules of 2013 were amended. The learned Senior counsel further drew the attention to the notification dated 17.03.2017 issued by the Additional Chief Secretary to the Government of Assam, Finance Department in the name of the Governor. In Clause 39(XXII)(d), it was mentioned that the provisions of the Service Rules shall apply in the recommendations of the Commissions at Clause 4, 5, 7 & 8 of para 1.23. It is therefore the submission of the learned Senior counsel that unless and until the Rules of 2013 is amended, the recommendation made in Clause-8 of para 1.23 cannot be given effect to. The learned Senior counsel submitted that without there being an amendment made in the Rules of 2013, the Finance Department of the Government of Assam gave effect to Clause-5 of para 1.23 thereby revising the pay structure insofar as the BDO is concerned and accordingly, vide



the said notification, the Grade Pay of the BDOs were revised to Rs.12,700/-. It is under such circumstances a disparity occurred whereby a promotional post in the cadre of Deputy CEO in terms with the Rules of 2013 have been given the same Grade Pay as that of the feeder post of the BDO. It is under such circumstances, the learned Senior counsel submitted that the petitioners had filed representations and the respondent authorities had not acted on the same for which the present writ petition has been filed seeking interference by issuance of Writ of Mandamus directing the concerned respondent authorities that the Grade Pay for the post of Deputy CEO under the Panchayat and Rural Development Department should be Rs.13,900/- w.e.f. the date on which the BDOs were given enhanced Grade Pay with all consequential benefits.

12. The learned Senior counsel further drew the attention of this Court to the affidavit-in-opposition filed by the respondent Nos. 1 and 2 wherein the Panchayat and Rural Development Department had also supported the stand of the petitioners and had requested the Finance Department to retain the post of Deputy CEO and enhance the Grade Pay of the Deputy CEO to 13,300/-. Referring to the affidavit-in-opposition so filed by the respondent No.3, the learned Senior counsel submitted that the Finance Department after having enhanced the Grade Pay of the Block Development Officers that too without the Rules of 2013 being amended, cannot take the plea that no interference should be made on the ground that an expert body had made recommendations. The learned Senior counsel further submitted that the plea so taken that in absence of specific recommendation of the 7th Pay Commission, the Government in the Finance (PRU) Department is not in a position to upgrade the pay scale of the Deputy CEO cannot be an absolute proposition of law when by the actions of the Finance Department, it has resulted in a disparity in pay whereby the



promotional post as well as the feeder post have been given the same grade pay that too when the P&RD Department had categorically expressed their opinion that the post of Deputy CEO carries higher responsibilities and work.

13. The learned Senior counsel therefore drew the attention of this Court to various judgments of the Supreme Court which are detailed hereinunder:

- (i) ***Mewa Ram Kanojia Vs. All India Institute of Medical Sciences and Others reported in (1989) 2 SCC 235;***
- (ii) ***Shyam Babu Verma and Others Vs. Union of India and Others reported in (1994) 2 SCC 521;***
- (iii) ***Union of India and Another Vs. T.V.L.N. Mallikarjuna Rao reported in (2015) 3 SCC 653*** and
- (iv) ***Uttar Pradesh Power Corporation Limited Vs. Ayodhya Prasad Mishra and Another reported in (2008) 10 SCC 139.***

14. Mr. N. K. Debnath, the learned Standing counsel appearing on behalf of the P&RD Department submitted that the post of the Deputy CEO was created by re-designation of the erstwhile 32 numbers of post of Secretary Mahakuma Parishad and 12 numbers of post of Secretary Standing Committee vide an order dated 17.09.1984 and the letter dated 27.12.1978. The posts were re-designated as Deputy CEO in the Zilla Parishad vide order dated 19.08.2004. Referring to Rule 5(d) of the Rules of 2013 as well as Rule 11(1)(d), the learned Standing counsel submitted that the post of the Deputy CEO is a promotional post from the post of BDO, whereby the BDO's having experience of minimum 10 years of continuous service in the said cadre can only apply to the post of



Deputy CEO. The learned Standing Counsel submitted that pursuant to the notification issued on 23.02.2021 by the Finance Department whereby the Grade Pay of the BDOs were made equivalent to the Grade Pay of the Deputy CEO, a proposal was sent to the Finance Department for enhancement of the Grade Pay of the Deputy CEO from Rs.12,700/- - Rs.13,300/-. However, the Finance Department in its endorsement dated 12.04.2021 directed the P&RD Department to resubmit the proposal subject to the department furnishing an undertaking wherein the department shall agree to the Finance Department's proposal of merging the present post of Deputy CEO with the cadre of BDO in the same Grade Pay of Rs.5,400/- (revised Rs.12,700/-) after the retirement of the present incumbents holding the post. The learned Standing counsel further submitted that the abolition of the post of the Deputy CEO by merging the same with the Post of BDO would create substantial difficulties on functioning of the system and would also hamper the promotional aspects of the serving BDOs. The learned Standing counsel further submitted that the P&RD Department had again expressed its views that the Grade Pay of the Deputy CEO should be enhanced from Rs.12,700/- to Rs.13,300/- and the said aspect of the matter is presently pending in the Finance Department.

15. On the other hand, Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Finance Department submitted that the 7th Pay Commission had recommended at para 1.23(8) that the posts of the Deputy CEO, BDO (Senior Grade) and BDO shall all be put in the same Grade Pay of Rs.5,400/-. The designation of the BDO (Senior Grade) be abolished and the officers posted in the Zilla Parishad should be called the Deputy CEO and those posted in the Block should be called the BDO both having the same Grade Pay of Rs.5,400/- corresponding to the revised Grade Pay of Rs.12,700/-. On the



basis of the said recommendation, the learned Standing counsel for the Finance Department submitted that a proposal was received from the P&RD Department for upgradation of the pay scale of the Block Development Officer (BDO) from the existing pay scale with Grade Pay of Rs.12,700/- and the post of the Deputy CEO from the existing pay scale with Grade Pay of Rs.13,300/-. The said proposal was examined by the Finance (PRU) Department and as per the recommendation of the 7th Pay Commission, the post of the BDO was upgraded from the existing pay scale of PB-3 to PB-4 vide notification dated 23.02.2021. As regards the proposal for upgradation of the pay scale of the post of the Deputy CEO from the existing PB-4 + Grade Pay of Rs.12,700/- to PB-4 + Grade Pay of Rs.13,300/- there being no recommendation of the 7th Pay Commission in the matter, the Finance Department requested the P&RD Department to examine and take action as per the recommendation of the 7th Pay Commission and amend the Rules of 2013, if required vide notification dated 23.02.2021. However, the P&RD Department resubmitted the proposal for upgradation of the pay scale of the Deputy CEO stating that the post of the Deputy CEO is a promotional post from the post of the BDO and is higher in rank to the post of the BDO. The said proposal was examined again by the Finance (PRU) Department and vide endorsement dated 28.07.2022, the P&RD Department was informed that the 7th Pay Commission after thorough study had recommended that the post of the Deputy CEO, BDO (Senior Grade) and BDO should be in the same Grade Pay of Rs.5,400/- corresponding to revised Grade Pay of Rs.12,700/-. On receipt of the proposal from the P&RD Department for the upgradation of the Grade Pay of the BDO and there being recommendation of the 7th Pay Commission for upgradation of the Grade Pay of the BDO to



Rs.5,400/- corresponding to the revised Grade Pay of Rs.12,700/-, the pay scale of the BDO was enhanced vide the notification dated 23.02.2021. It was further mentioned that though there was a request for amending the Rules of 2013, if so required, no action on the amendments of Rules have taken by the P&RD Department and the said Department on other hand have justified the upgradation on the ground that the post of Deputy CEO was created as a promotional post from the BDO due to which the recommendation of the 7th Pay Commission could not be followed and if the recommendation of the 7th Pay Commission was acted upon, it would result into an anomalous situation.

16. It was further mentioned that the P&RD Department again resubmitted the proposal justifying the upgradation in view of the manifold responsibilities of the Deputy CEO. The P&RD Department in its reversed proposal had stated that there were 44 sanctioned posts of the Deputy CEO and at present 9 posts were filled up and the remaining 35 posts were vacant. In view of the said, the P&RD Department was again requested to clarify if there are other posts under the P&RD Department with Grade Pay of Rs.13,300/- and the possibility of those incumbents again claiming for higher pay, if the Grade Pay of the Deputy CEO is upgraded. The P&RD Department was also requested to furnish the financial implications. It is therefore the submission of Mr. R. Borpujari, the learned Standing counsel that the notification dated 23.02.2021 was issued thereby enhancing the Grade Pay of the BDOs on the basis of the recommendation being made by the 7th Pay Commission and the reluctance of the Finance Department to give a higher Grade Pay to the promotional post of the Deputy CEO is on the ground of the recommendation so made by the 7th Pay Commission for merging the post of Deputy CEO, Senior BDO as well as the



BDO and also on the ground that if the Grade Pay of the Deputy CEO is increased to Rs.13,300/- there would be similar claims in respect to other cadres of the P&RD.

17. The learned Standing counsel appearing on behalf of the Finance Department has relied upon two judgments. The first of such judgment is the judgment in the case of ***State of Bihar and Others Vs. Bihar Secondary Teachers Struggle Committee, Munger and others*** reported in ***(2019) 18 SCC 301*** and more particularly referred to paragraph No.96 and its sub-paragraphs. The second judgment so relied upon is in the case of ***Sunbansiri Koiborta Meen Palan Self Help Group Vs. Commissioner and Secretary to the Government of Assam, Forest Department, Dispur and Others*** reported in ***2011 (6) GLR 41*** and referred to paragraph No.21 of the said judgment.

18. I have heard the learned counsels for the parties and have perused the materials on record. From the facts narrated hereinabove and upon a perusal of the Rules of 2013, there is no dispute that the post of the Deputy CEO is a promotional post from the post of the BDO as can be seen from Rule 5(4) read with Rule 11(1)(d) of the Rules of 2013. The said Rules therefore shows that the post of the Deputy CEO is a promotional post from the cadre of the Block Development Officer and it is only after an officer in the cadre of Block Development Officer have an experience of minimum 10 years of continuous service, he has the eligibility for the purpose of being considered for promotion to the post of Deputy CEO. Rule 12 of the Rules of 2013 prescribes a detail procedure as to how the promotion is to be affected. From Rule 12(4), it would be seen that the promotion is to be affected on the principles of merit with due regard to seniority. It would also been seen from Rule 23 read with the



Schedule-(I) that the post of the Deputy CEO at the time of framing of the Rules was put in Pay Band 4 with Grade Pay of Rs.5,400/- whereas the post of the Block Development Officer was put in Pay Band 3 with Grade Pay of Rs.4,700/-. It is also seen from para 1.23 of Clause-5 of the recommendation so made by the 7th Pay Commission that the Grade Pay of the Block Development Officer should be increased to 5,400/-. However, it is also seen that in Clause-8 of para 1.23, it has been also mentioned that there is a recommendation of reorganization of a cadre whereby the post of the Deputy CEO, BDO (Senior Grade) and the BDO should be amalgamated/merged into the cadre of BDO and those who are posted in the Zilla Parishad should be called the Deputy CEO and those posted in the Blocks should be called the BDO. It is also seen that from the notification issued by the Additional Chief Secretary of the Finance Department dated 17.03.2017 more particularly in Clause 39(xxii)(d) that the provisions of the Service Rules shall apply in the recommendations of the Commission at sub-para 4, 5, 7 and 8 of para 1.23. However, it is relevant to take note of that the said notification dated 17.03.2017 is a notification intimating all concerned that the Government had accepted the recommendation of the 7th Pay Commission with modification as suggested by Committee and any other modifications as have been deemed necessary and accordingly, the said modification was made. It is however relevant to take note of that the Rules of 2013 are Statutory Rules framed under the proviso to Article 309 of the Constitution and by way of the notification dated 17.03.2017 which is issued under Article 162 of the Constitution, the said Rules of 2013 could not have been amended.

19. At this stage, this Court finds it relevant to take note of the scope of



interference under Article 226 in respect to the pay parity. The learned Senior counsel appearing on behalf of the petitioners referred to various judgments as already mentioned above supra. I have perused the various judgments and from a perusal of the judgment in the case of **T.V.L.N. Mallikarjuna Rao (supra)**, it would show that the earlier judgments of the Supreme Court which have been referred to by the learned Senior counsel have been duly considered. In paragraph No.25 of the said judgment, the Supreme Court refers to the Staff Selection Commission (Electronic Data Processing Group-C Post of Data Entry Discipline) Recruitment Rules, 1996. From the said Rules, it was clear that the qualification of the Date Entry Operator Grade-A is Higher Secondary whereas the qualification of Data Entry Operator Grade-B is Graduation and it is a promotional post from Data Entry Operator Grade-A, persons who have 6 years of experience. It was observed that the classification of posts and determination of pay structure comes within the exclusive domain of the Executive and the Tribunal cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. In paragraph No.27 of the judgment, it was observed that the Government on consideration of the report submitted by the Committee issued Office Memorandum dated 11.09.1989 prescribing therein different pay scales and different grades of Data Entry Operators besides the mode and manner of recruitment to and qualification for each entry grade post as well as eligibility and experience for promotional grades. It was also observed that the Court or the Tribunal would be exceeding its power of judicial review if it sits in appeal over the decision of the Executive in the manner of prescribing the pay structure unless it is shown to be in violation of Articles 14 and 16 of Constitution of India. It was further observed that the difference in pay scales based on education qualifications,



nature of job, responsibility, accountability, qualifications, experience and manner of recruitment does not violate Article 14 of the Constitution. In paragraph No.28 which is pertinent for the purpose of instant dispute, the Supreme Court categorically observed that both the Tribunal and the High Court failed to notice that the Data Entry Operator Grade-B in the pay scale of Rs.1350/- - Rs.2200/- is a promotional Grade and only those who have 6 years of experience are eligible for such promotion. It was specifically observed that the promotional Grade and entry grade cannot have the same pay scale and in the absence of a declaration that rationalization of the pay scale of the Electronic Data Processing Posts made by the Office Memorandum dated 11.09.1989 is illegal, no such benefit could have been granted. Paragraph No.25, 26, 27 and the relevant portion of paragraph No.28 are reproduced hereinbelow:

“25. Subsequently, the Rules under the proviso to Article 309 of the Constitution of India have been framed. From the aforesaid memorandum and Rules it is clear that qualification for Data Entry Operator Grade A is higher secondary whereas the qualification for Data Entry Operator Grade B is graduation and it is a promotional post from Data Entry Operator Grade A persons who have six years of experience.

26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.

27. The Government on consideration of the report submitted by the Committee issued Office Memorandum dated 11-9-1989 prescribing therein different pay scales and different grades of Data Entry Operators besides the mode and manner of recruitment to and qualifications for each entry grade post

as well as eligibility and experience for promotional grades. The Court or the Tribunal, in our opinion, would be exceeding its power of judicial review if it sits in appeal over the decision of the executive in the matter of prescribing the pay structure unless it is shown to be in violation of Articles 14 and 16 of the Constitution of India. Difference in pay scales based on educational qualifications, nature of job, responsibility, accountability, qualification, experience and manner of recruitment does not violate Article 14 of the Constitution of India.

28. *“..... Both the Tribunal and the High Court also failed to notice that the Data Entry Operator Grade B in the pay scale of Rs 1350-2200 is a promotional grade and only those who have six years of experience are eligible for such promotion. The promotional grade and entry grade cannot have the same pay scale and in the absence of declaration that rationalisation of pay scale of Electronic Data Processing posts made by Office Memorandum dated 11-9-1989 is illegal, no such benefit could have been granted.”*

20. The learned Standing Counsel appearing on behalf of the Finance Department referred to the case of ***Bihar Secondary Teachers Struggle Committee, Munger and others (supra)*** wherein reference was made to paragraph No.96 and its sub-paragraphs i.e. paragraph Nos. 96.6, 96.7 and 96.8. A perusal of the said paragraphs so referred to is an absolute proposition of law that granting pay scale is a purely Executive function and hence the Court should not interfere with the same inasmuch as it may have a cascading effect creating all kinds of problems for the Government and the authorities. The proposition that the equation of posts and salary is a complex matter which should be left to an expert body is not in dispute. Further, the proposition that granting of pay parity by the Court may result in a cascading effect and the reaction which can have adverse consequences is also an absolute proposition



of law. In fact, in a recent judgment of the Supreme Court in the case of ***Union of India Vs. Indian Navy Civilian Design Officers Association and Another reported in (2023) SCC Online SC 173***, the Supreme Court had also observed that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a Court of law i.e. the equal pay must be for equal work of equal value. It was observed that the equation of posts and determination of pay scales is a primary function of the Executive and not of the Judiciary. Under such circumstances, it was further observed that the Court therefore should enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commission, who undertake rigorous exercise for the job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and the responsibilities attached to the posts, the extent of the powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with the similar jobs etc. It was further observed that the nature of work involved in two posts may sometime appear to be more or less similar, however, if the classification of the posts and the determination of the pay scale have reasonable nexus with the objective or the purpose sought to be achieved, namely the efficiency in administration, the Pay Commission would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. It was observed that the higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. In paragraph No.17 of the said judgment, the Supreme Court observed that the powers of judicial review in matters involving financial implications are also very limited. The

wisdom and advisability of the Courts in the matters concerning the finance are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party. Paragraph No.14 and 17 of the said judgment being relevant is quoted herienunder:

“14. In view of the afore-stated legal position, it clearly emerges that though the doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain

of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.

17. *The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party."*

21. In the backdrop of the above proposition of law as laid down by the Supreme Court in the various judgments, it is clear that the scope of judicial review is limited sans a case of gross arbitrariness or unfairness is established by the aggrieved party. The materials on record of the instant case would clearly show that the post of the Deputy CEO is a promotional post from the cadre of the BDO. The Finance Department in terms with para 1.23(5) had granted the benefit of enhancement in the Grade Pay of Rs.5400/- to the BDO corresponding to Rs.12,700/-. However, it seems that the Finance Department in haste have done so that too without the Rules of 2013 being amended and when no steps have been taken for the purpose of merger of the post of BDO, Senior BDO as well as the Deputy CEO. The notification dated 17.03.2017 under no manner can override the Statutory Rules of 2013. Therefore, till the said Rules of 2013 exist, the post of the Deputy CEO continues to be a promotional post from the cadre of BDO and as such giving the same grade pay to the feeder post and the promotional post would amount to a case of gross arbitrariness and unfairness and thereby violate the mandate of Article 14 of the Constitution. Accordingly, this Court therefore is of the opinion that the petitioners herein who are in the cadre of Deputy CEO would be entitled to a

higher Grade Pay than the Grade Pay so given to the BDO.

22. Now the question arises as to what should be the Grade Pay to which the petitioners would be entitled to. In the writ petition, the petitioners have claimed the Grade Pay of Rs.13,900/- and on the other hand, the P&RD Department have mentioned in their affidavit that the post of the Deputy CEO should carry a Grade Pay of Rs.13,300/-. The judgment of the Supreme Court in the case of ***Indian Navy Civilian Design Officers Association (supra)*** categorically mandates that it is not within the realm of the Court to decide what should be the Grade Pay and applying the said principles, this Court cannot decide what Grade Pay to which the petitioners who are in the post of Deputy CEO would be entitled to except as already observed above that the post of the Deputy CEO would be entitled to a higher Grade Pay than that of the post of the BDO.

23. Accordingly, this Court therefore directs the Chief Secretary to the Government of Assam in consultation with the Finance Department, the P&RD Department as well as the Personnel Department of the Government of Assam to take a decision as to what should be the suitable Grade Pay in the post of the Deputy CEO. It is however made clear that while taking the said decision, the said authorities shall take note that the Grade Pay in the cadre of the Deputy CEO has to be higher than the Grade Pay so given to officers in the cadre of BDO.

24. Another sub-issue duly arises as to from which date the petitioners herein would be entitled to the higher Grade Pay. Taking into account that on 23.02.2021, the officers in the cadre of BDO have been granted the revised Grade Pay of Rs.12,700/- and they have been enjoying since then, the enhanced Grade Pay of the petitioners or such other officers in the cadre of the



Deputy CEO would be from the date the revised Grade Pay was granted to the BDO i.e. 23.02.2021

25. Mr. A. C. Borbora, the learned Senior counsel further submitted that during the pendency of the instant writ petition, some of the petitioners have already retired and they are getting the pension on the basis of the present Grade Pay of Rs.12,700/-. This Court further observes that upon the said decision being taken as regards the enhancement of the Grade Pay by the authorities as directed hereinabove, the petitioners herein who are presently working would be entitled to the arrears on account of the enhancement in the Grade Pay from 23.02.2021. The petitioners who have retired prior to 23.02.2021, the question of enhancement of the Grade Pay would not arise. However in respect to those petitioners who have retired after 23.02.2021 would not only entitled to the arrear in their salary on account of the higher Grade Pay but would also be entitled to re-computation of the pension on the basis of the higher Grade Pay. The said exercise be completed within a period of 4 (four) months from the date a certified copy of this instant order is served upon the Chief Secretary to the Government of Assam.

26. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant