

GAHC010267092022



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

Case No. : WP(C)/8437/2022

SYED SHAH KAMAL SHAH
S/O LATE SYED SHAHAN SHAH, R/O VILL- BANBARI, P.O.-BHELLA, DIST-
BARPETA, PIN-781309

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION DEPARTMENT (SECONDARY),
DISPUR, GUWAHATI, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GUWAHATI-19

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

4:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
DIST-BARPETA
ASSAM

5:THE SCREENING COMMITTEE
CONSTITUTED UNDER ASSURED CAREER PROGRESSION SCHEME

2011 REPRESENTED BY ITS CHAIRPERSON CUM INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
DIST-BARPETA
ASSA

Advocate for the Petitioner : MR. D CHOUDHURY, MR J DAS,MR T CHAKRABORTY

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 01.04.2026

Heard Mr. T. Chakraborty, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned Standing Counsel, Secondary Education Department as well as Mr. A. Chaliha, learned Standing Counsel, Finance.

2. By filing this petition, the petitioner has prayed for a direction to grant financial upgradation as per Modified Assured Career Progression Scheme (MACPS) as notified vide notification dated 6th July, 2017.

3. The case, in brief, is that pursuant to the advertisement dated 03.09.1991, inviting application for various posts of teacher in Secondary Education Department, the petitioner was appointed as Assistant Teacher (Science) at Nehru Girls High School in Barpeta district. At the time of appointment, the petitioner was wrongly provided the intermediate scale of pay i.e. Rs.1185/ – Rs. 2395/ instead of graduate scale of pay.

4. However, the same was corrected/modified to graduate scale of pay of Rs.1375/ – Rs.3375/ per-month vide order dated 30.12.1993, consequent to which, the Inspector of School, Barpeta District Circle, Barpeta has issued an order for upgradation of the intermediate scale of pay to graduate scale of pay.

5. It is the contention of the petitioner that despite upgradation of scale of pay from intermediate scale of pay to graduate scale of pay way back in 1993, the respondent authorities have illegally refused

to grant financial upgradation under MACPS.

6. It is submitted at the Bar that similar issue involving appointment of persons as Assistant Teacher pursuant to the same advertisement dated 03.09.1991 and the appointment orders, this Court vide order dated 19.06.2019 in **WP(C) 2397/2025 (Sailendra Nath Das & Ors. Vs- State of Assam & Ors.)** has already dealt with and granted relief to the petitioners in those cases, therefore, similar relief may be provided to the petitioner in the present case.

7. This Court vide an order dated 19.06.2018 has dealt with similar issue as involved in the writ petition being WP(C)/ 2397/2025, which is reproduced herein below:-

“6. The advertisement dated 3.9.1991 states that the pay scale of Graduate Science Teacher and Assistant Teacher of Secondary Schools shall be Rs.1375-3375/- per month. However, the appointment orders of the petitioners issued between 28.3.1992 and 29.9.1993 show that they had been given the pay scale of Rs.1185-2395/- per month, which is not in consonance with the pay scale given in the advertisement. 7. The Notification dated 30.12.1993 has upgraded the pay scale of the petitioners to Rs.1375-3375/- per month from the date of issue of the order. The question here is whether the upgradation of the petitioners’ pay scale from intermediate pay scale to graduate pay scale vide Notification dated 30.12.1993 can be said to be an upgradation of the petitioners’ post. Further, whether the upgradation of the pay scale of petitioners, by way of the Notification dated 30.12.1993, can be the basis for denying the petitioners 2 financial upgradations as claimed by the petitioners in pursuance to the ACP Scheme. In this respect, the Notification dated 30.12.1993 is reproduced below;

8. The clause 1(II) 3(XI), 4 (XII) and XVI are reproduced below;

“1. II. The benefit under the Scheme would be given twice in their entire service period-first one after completion of 10 years and second one after completion of 24 years of service if they do not get one regular promotion within first 10 years of regular service and two regular promotions within 24 years of regular service.

3. XI. The Scheme would be operational w.e.f. 01-01-2011. In other words, financial Upgradations as per the provisions of the ACP Scheme would be granted w.e.f. 01-01-2011.

4.XII. The 1st financial upgradation under the ACP Scheme shall be allowed after 10 years of regular service and 2 nd financial upgradation shall be allowed after 24 years of regular service.

XVI. If any post has been upgraded once and the employee has received the financial benefit due to upgradation within 10 years of service or on the date of introduction of the Scheme i.e. 01-01-2011, benefit of 1st financial upgradation under ACPS shall not be given to him. Similarly, if such post has been upgraded twice before completion of 24 years or on the date of introduction of the Scheme i.e. 01-01-2011, or the post is upgraded once after the employee has taken the benefit of 1 st financial upgradation under ACPS but within 24 years of service, then benefit of 2 nd financial upgradation under ACPS shall not be given to him.”

9. The advertisement dated 3.9.1991 has clearly spelt out the fact that the persons who were appointed to the posts, in which the petitioners have been appointed, would be given the salary of Rs.1375-3375/- per month. The respondents were thus bound by the norms and conditions laid down in the advertisement. There is nothing produced by the respondents to show that the said norms and conditions stipulated in the Advertisement dated 3.9.1991 had been changed at any time after issuance

of the advertisement by the concerned authorities. Thus, just because the appointment orders of the petitioners as Assistant Teachers for Secondary Schools, did not carry the pay scale that they were entitled to as per the advertisement, does not mean that they can be denied the same. Pertinently, in pursuance to the Notification dated 30.12.1993, the petitioners' pay scale was upgraded from Rs.1185-2395/- to Rs.1375-3375/-, which was in consonance with the Advertisement dated 3.9.1991. In the considered view of this Court, the advertisement having already laid down the pay scale to be paid to the petitioners, the alleged upgradation of the petitioners' pay scale vide Notification dated 30.12.1993, which is in consonance with the advertised pay scale, is not a upgradation at all. It is only a correction of a mistake, as the petitioners were entitled to be given the pay scale of Rs.1375-3375/- per month at the time of their initial appointment. The actions of an employer bear public character and contain an element of public interest. Article 14 of the Constitution guarantees to all persons equality before law and equal protection of the law. The State has to act fairly and reasonably in the discharge of its function. Also, as the advertisement had laid down the terms and conditions to which the selected candidates would be governed by, the selection was accordingly done on the basis of the terms and conditions of the Advertisement dated 3.9.1991. Consequently, the selected persons were to be governed on the basis of the criteria laid down in the advertisement. The mistake made in the appointment letters of the petitioners, whether intentional or not, in giving a lower pay scale than what had been prescribed, does not confer any right upon the employer to give a pay scale, lower than the petitioners entitlement. In any event, a mistake can be corrected.

10. In this case, there is nothing to show that the petitioners were entitled to promotion one year after their appointment as Assistant Teachers. Accordingly, there was no occasion for their pay to be upgraded. The language in the Notification dated 30.12.1993 states that the pay scale of the Assistant Teachers would be upgraded. Thus, the language used in the notification cannot be construed to mean that the petitioners were promoted/upgraded. Also, it is an admitted fact that there is no rule or provision for promotion or upgradation of the petitioners' to a higher post. It was due to this very purpose that the ACP Scheme is applicable to the petitioners. 11. In view of the reasons stated above, this Court is of the view that the petitioners have been given their rightful pay scale vide the Notification dated 30.12.1993, which is in consonance with the criteria, terms and conditions laid down in the Advertisement dated 3.9.1991. Accordingly, this Court finds that as the petitioners have not been given any regular promotion/upgradation during their service career of more than 24 years, they are entitled to 2 financial upgradations as per the ACP Scheme, provided for in the Notification dated 25.5.2011. Consequently, this Court finds that the upgradation of the petitioners' intermediate scale of pay to the graduate scale of pay cannot be termed as a benefit under the ACP Scheme. The respondents are accordingly, directed to grant the petitioners 2 financial upgradations under the ACP Scheme and issue necessary orders for implementing the same within a period of 2 (two) months from the date of receipt of a certified copy of this order.

The writ petition is accordingly disposed off."

8. Having considered the above judgment and order dated 19.06.2018 in WP(C) 2397/2015 and as agreed to by the learned counsel for the parties, I am of the considered view that the above case would squarely cover the case of the petitioner. Thus, the petitioner is entitled to be provided with the similar relief granted to those similarly situated persons in the above case.

9. Accordingly, the petitioner be granted with two financial upgradation of MACPS as notified

vide notification dated 6th July 2017 and issue necessary orders for implementing the same within a period of 60 days from the date of this order.

10. Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant