

## **Ratul Bordoloi and Ors. Vs Assam Agricultural University and Ors.**

**Court:** Gauhati High Court

**Date of Decision:** June 26, 2007

**Citation:** (2008) 2 GLR 701

**Hon'ble Judges:** Ranjan Gogoi, J

**Bench:** Single Bench

**Advocate:** B.Bhuyan, B.Goswami, P.Kataki, Advocates appearing for Parties

### **Judgement**

1. This writ petition has been filed seeking the higher pay scale of Rs. 1,685 to 3,700 with effect from the date of regularization of the petitioners as

Junior Engineers in the Assam Agricultural University and the corresponding revised scale of pay effective from such date as due.

2. The facts, in brief, may be noticed at the outset.

The petitioner No. 1 was appointed as a Subordinate Engineer on 12.8.1986 on a consolidated pay. The other two petitioners were appointed in

the post of Junior Engineer again on consolidated pay, on 23.2.1987 and 8.6.1987 respectively. Thereafter, on 20th February, 1992, time scale of

pay of Rs. 1,475 to 3,575 was granted to the petitioner No.1. Likewise, on 20th November, 1995 the petitioner Nos. 2 and 3 were brought to the

aforesaid time scale of pay. By an order dated 1st of March, 1995 Junior Engineers appointed prior to 1.1.1989 were given a higher scale of pay,

i.e., Rs. 1,685 to 3,700. Following the recommendations of the Pay Committee, 1999, the aforesaid scale of pay of Rs. 1,685 to 3,700 was

revised to Rs. 4,120 to 9,725. While the Junior Engineers in the higher pay scale of Rs. 1,685 to 3,700 received the higher revised scale, the

petitioners who were in the pay scale of Rs. 1,475 to 3,575 received the corresponding higher revised scale of Rs. 3,760 to 9,400. Aggrieved and

contending that the grant of a higher scale of pay to a category of Junior Engineers who performed identical works and duties like the petitioners

has the effect of hostile discrimination and further that such hostile discrimination has been continued by the upward revision of the two pay scales,

this writ petition has been filed seeking the reliefs earlier noticed.

3. The respondents have filed an affidavit in the case and, in the course of the several hearings that took place, have also placed before the court

the records in original to justify the existence of two separate pay scales for Junior Engineers including two separate revised pay scales. The stand

taken by the Respondents in the affidavit filed and in the course of the oral arguments advanced appears to be that the higher pay scale of Rs.

1,685 to 3,700 was granted by the order dated 1.3.1995 to Junior Engineers who had completed a required number of years of service and who

were appointed prior to 1.1.1989, As the petitioners received the time scale of pay in the years 1992 and 1995, respectively, they were

considered not to be eligible for the higher scale of pay of Rs. 1,685 to 3,700. The respondents have taken the further stand that in the report of

the Committee constituted to examine the anomalies arising out of the Pay Committee Report of the year 1990 the very same question was gone

into by the Anomalies Committee and the opinion expressed was to the effect that higher scale of pay of Rs. 1,685 to 3,700 was justified in cases

of Junior Engineers who had put in 8 years of regular service. The grant of the higher scale to other Junior Engineers by order dated 1.3.1995 and

denial thereof to the petitioners has been sought to be justified on the aforesaid basis. Furthermore, according to the respondents, as the petitioners

were in the pay scale of Rs. 1,475 to 3,575, by virtue of the recommendations of the Pay Committee of the year 1999, the said pay scale was

enhanced to Rs. 3,760 to 9,400. The petitioners, accordingly, received the aforesaid revised scale of pay. In so far as the other Junior Engineers

who were in the pay scale of Rs. 1,685 to 3,700 is concerned, according to the Respondents, as the said pay scale was enhanced to Rs. 4,120 to

9,725 such Junior Engineers received the higher revised scale of pay. The respondents, on the aforesaid basis, have therefore contended that there

is no discrimination in the matter of grant of two pay scales to the two different categories of Junior Engineers and the grievances raised by the

petitioners are without any merit and/or substance.

4. Questions relating to fixation of pay and determination of what should be the appropriate scale of pay of any category of Government servants

are matters that has always been construed by the courts to be best suited for decision by the experts in the field. That is why the courts have

repeatedly emphasized that judicial intervention in such matters would only be justified when grant of a particular pay scale has the effect of causing

a hostile discrimination against a particular category of employees thereby infringing their rights under article 14 of the Constitution. It is from the

aforesaid limited standpoint and perspective that the court, therefore, has to deal with the grievances raised in the present writ petition.

5. Grant of two different pay scales to employees having the same nomenclature of posts and performing largely similar functions is not unknown to

service jurisprudence. Such a situation need not necessarily result in hostile discrimination or infringement of article 14 of the Constitution. Much

would depend on the stream from which the appointments have been made or the period of service rendered. Grant of higher pay scale on account

of long years of service rendered and to avoid stagnation may result in what may seemingly appear to be unequal treatment and discrimination.

However, if there is a rational basis for such differential treatment, the same will be justified. In the present case, if according to the University,

Junior Engineers appointed prior to 1.1.1989 should be treated differently and put on a higher pay scale, the court would like to hold that there is a

rational difference between the category of Junior Engineers appointed prior to 1.1.1989 and the second category appointed subsequent to

1.1.1989. Such a phenomenon in the present day times finds reflection in provisions of a Assured Career Progression which essentially consists of

grant of increments, after completion of certain years of service, in order to ameliorate situations where promotions are not possible on account of

lack of vacancies. If the University had taken a conscious decision, which subsequently has been fortified by the report of the Anomalies

Committee, that a higher pay scale should be given to Junior Engineers appointed prior to 1.1.1989, i.e., having a requisite length of service, it will

be difficult to visualize as to how, at the instance of the petitioners who were regularly appointed after 1.1.1989, such action of the University can

be termed to be without any legal foundation.

6. This will bring the court to a consideration of the next question involved in the writ petition, i.e., whether the existence of two separate revised

pay scales for Junior Engineers as had resulted in the present case on the basis of the recommendations of the Pay Committee of 1999 would be

consistent with the provisions of article 14 of the Constitution. At first blush it would appear to be rational and logical to accept a situation that

there can be two separate revised scales of pay for Junior Engineers, if there had been two separate unrevised scales of pay as in the present case.

However, a closer look at the report of the Pay Committee of 1999 would go to show that the said report contemplates only one class of Junior

Engineers whose pay was required to be revised to the level of Rs. 4,120 to 9,725. There is a class of Junior Engineers contemplated by the

Report of the Pay Committee in the lower revised scale of pay, i.e., Rs. 3,760 to 9,400. However, that class of Junior Engineers are those who

were initially appointed as Subordinate Engineers and were subsequently redesignated as Junior Engineers. Such redesignation, in fact, was

contemplated in the report of the Pay Committee of the year 1990. It is not the case of the respondents that the petitioners, all or any of them,

were regularized as Subordinate Engineers at any point of time and were subsequently redesignated as Junior Engineers so as to justify the grant of

the lower revised scale of pay to the petitioners on the basis of the report of the Pay Committee of 1999. As the Pay Committee report of 1999

also envisaged the pay scale of Rs. 4,120 to 9,725 for Junior Engineers of the category to which the petitioners belong, it can be safely assumed

that the petitioners should have been given the said higher revised scale of pay of Rs. 4,120 to 9,725. That was, according to the University, not

possible because the petitioners were in the prerevised lower scale of Rs. 1,475 to 3,575. In such a situation, the aforesaid aspect of the matter

should have been sent to the Anomalies Committee to look into the anomalies that had occurred on account of the recommendations of the Pay

Committee of 1999. It is not known, at least from the materials on record, whether such an Anomaly Committee had been appointed. However,

the aforesaid aspect of the matter need not detain the court as, even in the absence of an Anomaly Committee, faced with the apparent anomaly

that had occurred in the present case it would be bounden duty of the court to correct the same. The only way in which the said anomaly can be

corrected is by a direction to the University to grant to the petitioners the higher revised scale of pay of Rs. 4,120 to 9,725 with effect from the

date on which the recommendations of the Pay Committee of the year 1999 was given effect to by the University. The respondents will now act

accordingly and grant all consequential benefits that may be due to the petitioners in terms of the present directions. This will be done with utmost

expedition and without any delay.

7. Writ petition, consequently, is partly allowed to the extent indicated above.