

(2008) 06 GAU CK 0038**Gauhati High Court****Case No:** None

Gauhati Medical College
Teachers" Association and
Another

APPELLANT

Vs
State of Assam and Others

RESPONDENT**Date of Decision:** June 12, 2008**Citation:** (2008) 3 GLT 458**Hon'ble Judges:** A. Hazarika, J**Bench:** Single Bench**Judgement**

A. Hazarika, J.

Heard Mr. M. Bhuyan, learned Counsel for the petitioners. Also heard Mr. D. Saikia, learned Standing Counsel, Finance and Health Department and Ms. M. Das, learned State Counsel.

2. The petitioner is a registered Association named and styled as Gauhati Medical College Teachers" Association. The writ petition pertains to the grievances of the batch of faculty members of the Association who are serving as Assistant Professors and Associate Professors at the Gauhati Medical College, Guwahati. The main grievance of the petitioner is that vide order dated 18.09.1999 (Annexure-9) the State Respondents have denied the All India Council for Technical Education (AICTE for short) pay scale to the Associate Professors and Assistant Professors of the Medical Colleges of the State at par with that of the Assistant Professors/Lecturers (Selection Grade) as well as Professors (Technical) of Engineering Colleges.

3. The brief facts of the case is that prior to 01.01.1981, the Assistant Professors of Medical Colleges and Engineering Colleges of Assam were granted two different pay scales, viz. Rs. 900-1525/- and Rs. 1200-1725/- respectively. Thereafter, on the representation of their grievances before the State Pay Commission of 1979, the Commission duly considered the matter and prescribed revision of pay scales of Teachers of Medical Colleges and made necessary suggestions to the Govt. of

Assam for restructuring the above pay scales keeping parity with the pay scales that was allowed to the Teachers of Engineering Colleges. Accordingly, the Govt. of Assam accepted the said suggestions and revised the pay scale of the Teachers of the Medical Colleges including the Assistant Professors, as a result of which the pay scale of both Assistant Professors of Medical Colleges and Engineering Colleges were revised to Rs. 1675-2300/- maintaining parity. Even in the subsequent revision of pay made in the R.O.P. Rules of 1980 and R.O.P. Rules of 1990, the parity in the scale of pay of Assistant Professors of Medical Colleges and Engineering Colleges was maintained at Rs. 3275-5050/- . However, again the disparity in the pay scale of Assistant Professors of both Medical Colleges and Engineering Colleges arose with the introduction of the AICTE/UGC pay scale by the Govt. of Assam in the year 1995. To be more specific, the Govt. of Assam vide Notification dated 26.05.1995 (Annexure-4) extended the benefit of revised UGC/AICTE scale of pay to the Teachers of various colleges including the Engineering Colleges by which Assistant Professors of Engineering Colleges were granted revised pay scale of Rs. 3700-5700/- w.e.f 1.01.1986, although no such benefit was granted to the Assistant Professors of Medical Colleges. After coming to know about the above mentioned facts belatedly, the petitioner Association submitted its representation before the State Respondents pointing out the disparity as mentioned in the Notification dated 26.05.1995. Thereafter, the State Respondents vide Notification dated 29.12.1998 (Annexure-6), with a view to extend the benefit of AICTE pay scale to the Teachers of three Medical Colleges of Assam, (excluding the teachers of non-medical subject) granted revised pay scale of Rs. 3,000-5,000/- to the Assistant Professors, when the said Assistant Professors were already drawing a higher pay scale of Rs. 3275-5050/-in terms of the R.O.P. Rules of 1990. The said pay scale of Rs. 3000-5000/- was the pay scale of the Lecturer (Technical) (Senior Grade) of Engineering Colleges, which is a rank lower than that of the post of Assistant Professor/Lecturer (Senior Grade) in the Engineering Colleges. Subsequently vide Notification dated 18.09.99 (Annexure-9) also, the Assistant Professors of Medical Colleges were granted reduced pay scale of Rs. 10,000-15,200/- than their counter parts in the Engineering Colleges.

4. So far the Associate Professors of Medical Colleges are concerned, they were given the pay scale of Rs. 1724-2375/- (pre-revised), which was subsequently revised to Rs. 3375-5200/- prior to 1.01.1996. All throughout, the Associate Professors of Medical Colleges were granted higher pay scale than that of the Assistant Professors of Engineering Colleges, whose pay scales prior to 1.01.1996 started with Rs. 1675-2300/-, subsequently revised to Rs. 3275-5050/- . However, in the year 1998 when AICTE pay scale was extended to the Associate Professors of Medical Colleges, they were granted pay scale of Rs. 3700-5700/- which was corresponding pay scale granted to the lower rank of Assistant Professors of the Engineering Colleges. As on today, the AICTE pay scale made applicable to the Associate Professors of Medical Colleges is Rs. 12,000-18,300/-, whereas their counter parts in the Engineering

Colleges have been granted higher pay scale of Rs. 16,400-22,400/- vide two impugned Notifications dated 18.09.1999 (Annexures-8 and 9), by which the Respondents sought to extend the benefit of revised scale of pay to the teachers of both Medical Colleges and Engineering Colleges. By the Notification dated 18.09.1999 the Respondents instead of granting AICTE pay scale to the Associate Professors of Medical Colleges, granted them pay scale which is being paid to the Assistant Professors of Engineering Colleges (a lower rank).

5. It has been stated that All India Council for Technical Education which is the apex body of technical education in the country has already recognized the medical education as technical education. However, the Respondents while extending the benefit of AICTE pay scale to the teachers of the Engineering Colleges, have denied the same benefit of AICTE pay scale to the teachers of Medical Colleges and instead introduced disparity between the teachers of both the institutions as mentioned above. Further, the petitioner also has referred to the Notification dated 9.10.1998 issued by the Govt. of India by which the Assistant Professor of Medical Colleges are entitled to revised pay scale of Rs. 12,000-375-18,000/- for the period w.e.f. 1.01.1996 to 26.7.98 and to Rs. 12,000-420-18,300 w.e.f. 27.7.98. Similarly, the Associate Professors are also entitled to revised scale of pay of Rs. 14,300-450-19,250/- for the period w.e.f. 1.01.96 to 26.7.98 and Rs. 16,400-450-20,000/- w.e.f. 27.7.98.

It has been further stated that so far the educational qualification/eligibility criteria to hold the post of Assistant Professor and Associate Professor of Medical Colleges vis-a-vis Lecturer (Selection Grade) and Professor (Technical) of Engineering Colleges are concerned, the faculty members of the petitioner Association are at par, if not more, with their counterparts i.e. Lecturer (Selection Grade) and Professor (Technical) of Engineering Colleges. The minimum qualification required for the "base post" of Registrar/Demonstrator/Resident Surgeon/Physician of Medical Colleges is completion of 4 1/2 years of MBBS course with one more year of Internship i.e. to qualify for the aforesaid post of Registrar/Demonstrator etc. the minimum requirement is 5 1/2 years of medical education whereas to qualify for the "base post" in an Engineering College i.e. Lecturer (Tech.), the minimum qualification is completion of 4 years course to obtain the degree of Bachelor of Engineering. So far as Assistant Professor of Medical College is concerned, the minimum eligibility criteria is a Post Graduate Degree with minimum 6 years of service in the feeder post of Registrar/Demonstrator etc. whereas the requirement to become a Lecturer (Selection Grade) in an Engineering College is a Post Graduate Degree with 5 years service in the "base post" of Lecturer (Tech.). However, by the impugned actions, the Assistant Professors of Medical Colleges are being equated with that of Lecturer (Senior Grade) in Engineering Colleges where the eligibility criteria is only a Bachelor Degree, not Post Graduate Degree, with six years service in the "base post" of Lecturer (Tech.).

Similarly in so far as the Associate Professors of the Medical Colleges are concerned, it has been stated that considering the qualification/eligibility criteria to become an Associate Professor of a Medical College, they have been equated with the teachers of lower rank i.e., Lecturer (Selection Grade) in the Engineering Colleges instead of Professor (Tech.) of the said College. According to the petitioner, the nature/performance of duties of the Professors, Associate Professors and Assistant Professors of Medical Colleges are higher in standard and greater in volume than that of their counter parts in Engineering Colleges.

6. The respondent Nos. 1 and 2 have submitted their respective affidavits in the instant case. According to the respondents the structure of post/designation prescribed by the AICTE for Engineering Colleges is quite different than that of the post/designation prescribed for the Medical Colleges. The academic curriculum as well as service matters including designation of posts in the Medical Colleges are regulated as per the norms framed by the Medical Council of India (MCI for short), whereas, in the case of the Engineering Colleges the same are regulated by the AICTE. Further the AICTE has adopted prescribed central pay scale for educational institutions under its control, however, the MCI has not adopted the same pay scale. The respondents have further stated that there is no post of Associate Professor in the AICTE pay scale of Rs. 16,400-20,000/-in the Engineering Colleges. So far the staffing pattern of the Medical Colleges prescribed by the MCI is concerned, the same are different in the case of Engineering Colleges as prescribed by the AICTE. Similarly the qualification for recruitment as well as for promotion in the respective posts in the Medical Colleges are also different as prescribed by the MCI than that of the AICTE. In the Medical Colleges the "base post" for recruitment is Registrar/Demonstrator/Resident Surgeon/Resident Physician etc. and its required qualification is only MBBS whereas in the Engineering Colleges, the "base post" for recruitment is Lecturer and the requisite qualification is 1st Class Bachelor Degree in appropriate branch of Engineering/Technology or 1st Class Master Degree (P.G) in appropriate branch of study in the teaching post in humanities and science. In the case of promotions also the period of teaching experiences is not the same as that of the Engineering Colleges.

At para 3 of the affidavit-in-opposition filed by respondent No. 1 it has been stated that since Medical Colleges are not governed by the Rules of AICTE, the pay scale as prescribed for colleges under AICTE is not applicable to the teachers of Medical College. Relevant portion of the same are quoted here-inbelow:

It is stated that MCI and AICTE are two separate authorities who lay down norms to control/guide/recognize the Medical and Engineering and allied professional colleges and qualifications and constituted under the provision of respective Central Acts passed by the Parliament with definite objective. Since Medical Colleges are not governed by the Rules of AICTE, the pay scale as prescribed for colleges under AICTE is not applicable to the teachers of Medical College. However, considering the

academic status of the Medical College Govt. has rightly prescribed the AICTE pay scale in spirit to the Asstt. Professors and Associate Professors of the Medical Colleges as Rs. 10,000-325-15,200/- and Rs. 12,000-420-18,300/- respectively (Annexure-III). It also appears that Govt. of India has also provided the same scale of pay of Rs. 10,000-15,200/- to the Asstt. Professors (Annexure-VI), Moreover, the matter relating to pay and allowances is a subject matter of State Govt. and any Central Council can not impose a particular scale of pay for any category of employees of State Govt. and any Central Council can not impose a particular scale of pay for any category of employees of State Govt.

7. The writ petitioner by way of an Affidavit-in-Reply as well as by Rejoinder affidavit rebutted the aforesaid statements of the Respondents. The writ petitioner has also denied that the service matter in respect of teachers of Medical Colleges of the State are regulated by MCI and contended that the MCI is not an authority to adopt the prescribe Central Scale for the Medical Colleges under its control. The writ petitioner has reiterated its stand that so far the staffing pattern is concerned, the status of Assistant Professor in a Medical College is equivalent to the post of Lecturer (Tech.) (Selection Grade) in the Engineering Colleges in terms of the qualification and nature of duties attached to the posts, if not, more stringent in respect of Assistant Professor in a Medical College. The post of Assistant Professor (Tech.) (Selection Grade) in Engineering Colleges which is equivalent to the post of Assistant Professor in the Medical College, was earlier designated as Asstt. Professor (Tech.). The said post was re-designated as Lecturer (Selection Grade) which has not been denied, rather admitted by the Respondents as revealed from Annexure-4 to the writ petition. Further, the qualification/eligibility criteria attached to the respective posts in the Medical Colleges are more stringent than that of the Engineering Colleges.

8. The learned Counsel for the respective parties strenuously argued at length supporting their stands taken in the respective pleadings. The learned Counsel for the petitioner has also brought to the notice of this Court the report of the Cabinet Sub-committee of the Govt. of Assam dated 15.03.1998 on the matters of revision of pay of the State Govt. employees w.e.f. 1.01.1996. Paragraph 4.6 of the said report deals with the demand of the petitioners Association regarding parity of pay with the pay scales of the teachers of Engineering Colleges who are in the AICTE pay scale and the recommendation of the said sub-committee to the effect that the teachers in Medical Colleges be given higher pay scale in the line of AICTE/UGC scales and the Govt. should work out the details including the pay scales etc.

9. Upon hearing the learned Counsel appearing for the parties and upon perusal of the pleadings, the court noticed the following facts:

i) Prior to 1.01.81 there were disparity in the scale of pay of Asstt. Professors of Medical Colleges being Rs. 900-1525/- comparing to their counterparts in the Engineering Colleges being Rs. 1200-1725/-.

ii) The above disparity was removed by the State Respondents on the recommendation of the State Pay Commission of 1979. Subsequently also the said parity was maintained in terms of the ROP Rules of 1980 and ROP Rules of 1990.

iii) Thereafter, vide Notification dated 26.05.1995 (Annexure-4 to the writ petition), instead of maintaining the parity, the Respondents introduced disparity amongst the Asstt. Professors of Medical Colleges and their counterparts in the Engineering Colleges who were paid higher pay scales than that of Asstt. Professors of Medical Colleges.

iv) The Cabinet Sub-Committee of the Govt. of Assam on the matters of revision of pay of the State Govt. employees w.e.f. 1.01.96 in its report dated 15.03.98, a copy of which has been made available to this Court by learned Counsel appearing for the petitioner, at Clause 4.6 under the heading of "Guwahati Medical College Teachers Association", observed as follows:

The Association has demanded parity of pay with the pay scales of the Engineering College Teachers.

The Engineering College Teachers are in the AICTE pay scales.

The Cabinet Sub-committee recommends that the teachers in Medical Colleges be given higher pay scales in the line of AICTE/UGC scales. The Government should work out the details including the exact pay scales etc.

(v) Inspite of above-mentioned recommendation it is not understood as to how the same respondents vide Notification dated 29.12.98 the pay scale of Asstt. Professors of Medical Colleges were reduced to Rs. 3,000 -5,000/- when they were already drawing higher pay scale of Rs. 3275-5050/- and that too without any prior notice.

vi) At last vide impugned Notification dated 18.09.99 the State Respondents again maintained the disparity by granting revised AICTE pay scale to the Asstt. Professors of Medical Colleges at Rs. 10,000-15,200/- whereas their counterparts in the Engineering Colleges have been granted AICTE pay scale of Rs. 12,000-18,300/-. Similarly, by the same Notification the Associate Professors of Medical Colleges have been granted a pay scale of Rs. 12,000-18,300/-, whereas their counterparts in the Engineering Colleges are being paid a pay scale of Rs. 16,400-22,400/-.

(These facts in SI. Nos. I to VI have not been specifically denied by respondent authorities).

vii) Qualifications/eligibility criteria required for recruitment/promotion to the various posts in question in the Medical Colleges vis-a-vis in the Engineering Colleges are also to be considered for in the context of the present case.

10. The learned Counsel for the Respondent Nos. 1,2 and 3, in support of his submission has relied upon the following decisions:

i) (1993) Supp. (1) SCC153 Secretary, Finance Department and Ors. v. West Bengal Registration Service Association and Ors.

ii) State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association,

iii) P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others,

11. After hearing the learned Counsel for the parties as well as on perusal of the materials on record and upon consideration of the above-mentioned decisions rendered by the Hon'ble Supreme Court, this Court is of the opinion that the decision of the State Respondents in issuing the impugned Notification dated 18.09.99, being without any rational basis and devoid of valid reasons, warrants interference of this Court. However, since this Court does not have the expertise to determine the pay scales of the employees, as in the instant case of Asstt. Professors/Associate Professors of the Medical Colleges, which needs a detailed exercise to be undertaken by the executive, the State Respondents are directed to take into consideration the facts pleaded and established, more particularly, the relevant material facts mentioned in clauses-I to VII at paragraph 8 above to remove the disparity in the scale of pay of the Asstt. Professors as well as Associate Professors of Medical Colleges with their counterparts in the Engineering Colleges of Assam. The whole process shall be completed within a time frame of 6(six) months from today.

12. The Writ Petition is disposed of in terms of the above direction. The parties are left to bear their own costs.