



GAHC010198752017



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 4151/2017

Md. Ohiduz Zaman,
S/o Md. Shamsur Rahman,
Resident of L.N.B. Road, Haibargaon,
PO-Haibargaon, Dist.-Nagaon, Assam.

.....Petitioner.

-Versus-

1. The State of Assam,
Represented by the Commissioner & Secretary to the
Government of Assam, Higher Education Department,
Dispur, Guwahati-6.
2. The Commissioner & Secretary to the
Government of Assam, Finance Department,
Dispur, Guwahati-6.
3. The Director of Higher Education, Assam,
Kahilipara, Guwahati-19.
4. The Deputy Director of Higher Education, Assam,
Kahilipara, Guwahati-19.
5. The Principal,
Anandaram Dhekial Phookan College, Nagaon,
Pin-782002.

.....Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner : Mr. S.K. Das.Advocate.



For the Respondents : Mr. D. Upamanyu, SC, Higher Edu.
.....Advocate.

Date of Hearing and Judgment : ***23rd October, 2025***

JUDGMENT AND ORDER (ORAL)

Heard Mr. S.K. Das, learned counsel for the petitioner and also heard Mr. D. Upamanyu, learned standing counsel, Higher Education Department, appearing for the respondents.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the order dated 08.02.2017, passed by the Commissioner and Secretary, Education (Higher) Department (Annexure-XIII) and also prayed for issuing direction to the respondent authorities to fix UGC scale of pay with effect from the date of his regularization i.e. 12.11.1993 instead of August, 2009 at Anandaram Dhekial Phookan College, Nagaon, with all benefits of UGC pay scales with arrear pay retrospectively.

Background Facts:-

3. The background facts, leading to filing of the present writ petition are briefly stated as under:-



"The petitioner, namely, Md. Ohiduz Zaman was appointed as Lecturer in Anandaram Dhekial Phukan College, Nagaon (A.D.P. College for short), in the department of Hindi in the year 1985. Due to non-regularization of his service by the respondent authorities he preferred one writ petition, being Civil Rule No.304/1988 and pursuant to the order being passed in the aforementioned civil rule, dated 06.01.1993, the service of the petitioner was regularized w.e.f. 12.11.1993, pursuant to the letter No.B(2).H.704/92/14, dated 06.11.1993 and subsequent letter issued by the Joint Director of Higher Education, Kahilipara, Assam, vide Memo No.G(A)AC.47/86/Pt/355-A, dated 12.11.1993 with the condition to complete M.Phil or Ph.D degree, even though the petitioner is a Master degree holder in Hindi with 52.90% and at the relevant point of time, cut off mark for grant of UGC scale was 52% only. The petitioner then completed his M.Phil degree and thereafter, he was granted UGC scale from August, 2009 instead of his date of regularization i.e. 12.11.1993, though the UGC scale of pay was granted to some of the similarly situated persons from the date of their joining. Thereafter, the petitioner has filed one representation, dated 25.10.2011, raising his grievance and demanding relief, through proper channel, and the same was forwarded to the respondent No.1,



but, the same failed to evoke any response for years together. Then, being aggrieved, the petitioner had filed another writ petition, being WP(C) No.1716/2014 and the same was disposed of vide order dated 09.05.2014 with the direction to the Commissioner and Secretary, Higher Education Department to dispose of the representation dated 25.10.2011, within six weeks. Thereafter also, the Commissioner and Secretary set over the matter and thereby, compelling the petitioner to approach this Court again by filing Contempt (Civil) Case No.624/2014, against the Commissioner & Secretary, Higher Education Department for non-compliance of the direction issued by this Court. Thereafter, the Commissioner and Secretary had passed the order dated 08.02.2017, rejecting the claim of the petitioner and based on the said order, the contempt case was closed and this order dated 08.02.2017 (Annexure-XIII), is being challenged before this Court in the present writ petition being the same discriminatory and arbitrary for granting the UGC scale of pay on pick and choose basis and depriving the petitioner from the benefit of UGC scale of pay with effect from his date of regularization i.e. 12.11.1993, when similarly situated persons were granted UGC pay scale from the date of their joining."



4. The respondent No.1 had filed one affidavit bringing on record the information received from the Director of Higher Education, Assam, vide letter No.DHE/PA/Misc/1/2023/206, dated 16.02.2024.

5. The respondent No.3 had also filed affidavit-in-opposition, wherein a stand has been taken that the service of the petitioner was regularized w.e.f. 12.11.1993 on the following condition, that –

- (a) Md. Ohiduz Zaman is allowed to draw the UGC scale of pay of Rs.2200-4000/- p.m. plus other allowances as admissible under rules and procedure;
- (b) Md. Ohiduz Zaman will have to obtain M.Phil or Ph.D degree within 8(eight) years from the date of approval of his appointment; and
- (c) Md. Ohiduz Zaman will not be eligible to draw senior scale of pay/Grade of pay until fulfills the conditions laid down in the letter.

5.1. And accordingly, the petitioner had joined his respective post and received his salary as admissible under the rules. It is also stated that as per condition laid down in the appointment letter, the petitioner was given the benefit of UGC pay scale w.e.f. August, 2009 as the petitioner had obtained his M. Phil degree in the year August, 2009 from Vinayaka Mission University, Salem, Tamil Nadu and being dissatisfied, the petitioner preferred one representation



dated 16.09.2011, to the Director of Higher Education, Assam and on receipt of the same, the Director of Higher Education, Assam had forwarded to the same to the Commissioner & Secretary to the Government of Assam, Higher Education Department. It is also stated that as per appointment letter, he should have obtained M.Phil or Ph.D degree within 8(eight) years. But in the instant case, the petitioner had took more than 8(eight) years to fulfill the condition laid down in the appointment letter.

5.2. It is also stated that the Director of Higher Education, Assam, on 09.04.2024, had issued notice to Smt. Aparna Tamuli for recovery of excess drawal granted to her. In connection with recovery of excess drawal by her, a letter was issued to the Principal and a reply was received from the Principal stating that Smt. Aparna Tamuli has drawn all the retirement benefits w.e.f. 01.02.2020 and at present, the College does not have the mechanism to recover the excess drawal amount of Smt. Tamuli, as she has already drawn the pension, gratuity, GPF, leave encashment, etc. and in respect of Smt. Pratibha Choudhury, Assistant Professor of Mandia Anchalik College was appointed against sanctioned post in deficit grants-in-aid college, whereas the petitioner was appointed by the College authority against non-sanctioned post and as per order of this Court, his service was regularized against additional post of Hindi w.e.f. 12.11.1993 and as such, the petitioner is not similarly situated with that of Smt. Pratibha Choudhury and that the Directorate had issued notices to (a) Smt. Aparna Tamuli, A.D.P. College; (b) Dr. Devimallika Rajkhowa, DHSK Commerce College; (c) Ms. Mainu



Devi, Diphu Government College; and (d) Dr. Nirajana Mahanta, DHSK Commerce College and that Dr. Devimallika Rajkhowa had preferred a writ petition, being WP(C) No.2158/2024, challenging the communication dated 01.04.2024, issued by the Director of Higher Education to the Principal of DHSK Commerce College and the communication dated 04.04.2024, issued by the Principal of DHSK Commerce College to the Treasury Officer of Dibrugarh for initiating recovery process for excess drawal of salary and the same was disposed of by this Court vide order dated 22.04.2025, by setting aside the aforementioned communications. It is also stated that the service of the petitioner was regularized on 12.11.1993, as per order of this Court and at that relevant point of time, UGC norm was 55% of marks, whereas the percentage of the petitioner in the Master Degree was 52.90% and his appointment was conditional appointment and the petitioner without any objection or protest, whatsoever accepted the appointment letter and accordingly, performed his duty.

6. Thereafter, the Director of Higher Education, respondent No.3 had filed another additional affidavit, stating that the Ministry of Human Resources Development, Department of Education, Government of India, vide Notification No.F-1-21/87, U.I. dated 17.06.1987, had made it mandatory that minimum qualification required for appointment to the post of Lecturer, amongst others, will be those prescribed by the UGC, which also prescribed that the candidate should have qualified in a comprehensive test to be specifically conducted for the purpose and this was followed by 9.0



UGC Regulations, 1991 regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, vide Notification No.F.1-11/87(CPP), dated 19.09.1991, reiterating the requirement that the qualifications required for appointment to the post of Lecturer will be those prescribed by the UGC and as such, the State could prescribe a higher bench-mark for appointment to the post of Lecturer, but could not waive the requirement of following UGC norms.

6.1. It is also stated that the UGC Notification No.F.1-11/87(CPP), dated 19.09.1991 had been issued in exercise of power conferred by Clause (e) of sub-section (1) of Section 26 read with Section 14 of the University Grants Commission Act, 1956 and the said notification had superseded previous notifications dated 13.06.1983, 19.02.1985 and 26.11.1985 and the schedule read as under:-

“SCHEDULE-1

(3) A Lecturer

(a) Arts, Sciences, Social Sciences, Commerce, Education, Physical Education, Foreign Language and Law.

Good academic record with at least 55% marks or an equivalent grade at Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign university.



Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers conducted by UGC, CSIS or similar test accredited by the UGC.”

6.2. It is also stated that in the notification dated 19.09.1991, Clause 2 contains a non-obstante provision to the effect that no person shall be appointed to a teaching post in University or in any institutions including constituent or affiliated Colleges recognized under Clause (f) of Section 2 of the UGC Act, 1956. Further, under Clause 11 of the Notification No.F-1-21/87 U.I. dated 17.06.1987, issued by the Government of India, Ministry of Human Resources Development, Department of Education also prescribes to the effect that only those candidates who, besides fulfilling the minimum academic qualifications prescribed for the post of lecturer, have qualified in a comprehensive test, to be specially conducted for the purpose, will be eligible for appointment of lecturers and therefore, in the light of the aforesaid two notifications, the petitioner would not be entitled to wish away the qualification requiring clearing of during the eligibility test for lecturer and as such, NET/SLET is such eligibility test prescribed to be cleared for appointment to the post of Lecturer and similar condition requiring NET/SLET is reiterated, amongst others, in the subsequent UGC Regulation on Revision of Pay Scales, Minimum Qualification for Appointment of Teachers in Universities, Colleges and Other Measures for the Maintenance of Standards, 1998.



6.3. Another stand taken by the respondent No.3 is that the M.Phil qualification was obtained by the petitioner in distance mode from Vinayaka Mission University of Tamil Nadu and cannot be recognized as offering of M.Phil/Ph.D degree through distance mode, is completely prohibited by the Central Government and that without satisfaction of the UGC norms, full salary for the under qualified Lecturer, would not be justified and that prescription of law is that a lecturer, in order to be appointed and become entitled to UGC scale of pay, would be required to clear NET/SLET/Ph.D and therefore, if any person has been appointed as lecturer without such qualification, such an appointment cannot be said to be in accordance with law.

7. The petitioner has filed his affidavit-in-reply, denying the statement and averment made in the affidavit-in-opposition by the respondent authorities. It is stated that the stand taken by the respondents are absurd and is an attempt to impose the present prevailing UGC Regulation conditions and notification of the Govt. of Assam, which were non-existent at the time of joining in service by the petitioner on 24.04.1985.

Submissions:-

8. Mr. Das, learned counsel for the petitioner submits that the impugned order is being challenged primarily on two grounds:-

- (i) That, while passing the impugned order, the respondent No. 2 had taken into consideration the



conditions that have been imposed in the appointment letter are not based on any rule or regulation prevalent at the relevant point of time; and

- (ii) The said conditions were not imposed in case of other similarly situated persons, namely, Aparna Tamuli of Anandaram Dhekial Phookan College, Nagaon and Smt. Pratibha Choudhury of Mandia Anchalik College, Barpeta and those lecturers were granted the benefit of UGC scale of pay from the date of their regularization.

8.1 Mr. Das also submits that since similarly situated persons, namely Aparna Tamuli and Pratibha Choudhury, were granted the benefits from the date of their regularization and the petitioner is treated differently and as such, the right of the petitioner guaranteed under Article 14 of the Constitution of India is violated and as such, the impugned order is liable to be interfered with and the respondent authorities may be directed to provide the benefit of UGC scale of pay with effect from the date of his regularization, i.e. 12.11.1993. In support of his submission, Mr. Das has referred the following decisions:-

- (i) **Ramesh Goswami v. State of Assam & Ors.**, reported in 2002 (3) GLT 377;
- (ii) **Ashutosh Gupta v. State of Rajasthan & Ors.**, reported in (2002) 4 SCC 34.



9. Per contra, Mr. Upamanyu, learned standing counsel for the respondents in Higher Education Department has vehemently opposed the petition. Mr. Upamanyu submits that though some of the candidates have been given the benefit of UGC scale of pay from the date of their appointment wrongly, the petitioner cannot claim the benefit of UGC scale of pay on the ground of negative equality. Moreover, notice was issued by the respondent authorities to Aparna Tamuli for returning the excess drawal amount. Mr. Upamanyu further submits that in view of the prevailing UGC Regulation and the notification issued by the Higher Education Department, the benefit as claimed by the petitioner cannot be granted and under such circumstances, Mr. Upamanyu has contended to dismiss the petition. In support of his submission, he has referred following three cases of this Court:-

- (i) **Dr. Jyotirupa Sarma v. State of Assam & Ors.** [WP(C) No.5779/2016, dated 12.05.2023];
- (ii) **Ms. Deepsikha Das v. State of Assam & Ors.** [WP(C) No.5636/2010, dated 27.07.2017];
and
- (iii) **Smt. Anju Sharma v. State of Assam & Ors.** [WP(C) No.2708/2016, dated 27.03.2023].

10. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also carefully gone through the



impugned order dated 08.02.2017 and also the decisions referred by the learned counsel for both the parties.

Issues before this Court:-

11. In view of the rival contentions made in the pleading as well as the submission advanced by learned counsel for both the parties, the issues to be decided in this petition are formulated as under:-

- (i) Whether on 12.11.1993, i.e. on the date of regularization of service of the petitioner as Lecturer in A.D.P. College, Nagaon, M. Phil. degree was compulsory as per UGC norms and as per Notification/Office Memorandum issued by the Government of Assam?
- (ii) Whether impositions of condition in the regularization order/appointment letter are justified?

Discussions and Findings:-

12. The basic facts in this petition are not in dispute. The petitioner was appointed as Lecturer in the Anandaram Dhekial Phookan College, Nagaon in the Department of Hindi on 24.04.1985 and he was regularized w.e.f. 12.11.1993, on the strength of a judgment and order dated 06.01.1993, passed by this Court in Civil Rule No.304/1988 and pursuant to the Government letter No.B(2).H.704/92/14, dated 06.11.1993 and subsequent letter



issued by the Joint Director of Higher Education, Assam, vide Memo No.G(A)AC.47/86/Pt/355-A, dated 12.11.1993.

12.1. It also appears that while the petitioner was appointed, some conditions as discussed in the paragraph No. 5 of this judgment, were imposed. Thereafter, the petitioner has completed his M.Phil degree in the month of August, 2009 from Vinayaka Mission University, Salem, Tamil Nadu, and thereafter, he was granted UGC scale of pay w.e.f. from August, 2009, vide order dated 16.09.2011 (Annexure-III). Thereafter, the petitioner has filed one representation, but the same failed to evoke any response, for which he had preferred one writ petition, being WP(C) No.1716/2014, which was disposed of vide order dated 09.05.2014, directing the Commissioner and Secretary to dispose of the representation dated 25.10.2011, within six weeks.

13. Thereafter, for non-compliance of the said order, the petitioner has initiated Contempt (Civil) Case No.324/2014 and during the pendency of the aforementioned proceeding, the Commissioner and Secretary to the Higher Education Department has passed the impugned order dated 08.02.2017, by rejecting the claim of the petitioner.

13.1. For ready reference, the impugned order is extracted herein below:-

**“GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR: GUWAHATI-6**



ORDER

Dated Dispur 8th February, 2017

Read the order of the Hon'ble Gauhati High Court dated 09.05.2014 passed in WP(C)1716/2014 filed by Md. Ohiduz Zaman-vs-State of Assam and others.

Also read Govt. Speaking Order dated 2nd March, 2015 passed in connection with Hon'ble Gauhati High Courts' order dated 09/05/2014 in WP(C) 1716/2014 filed by Ohiduz Zaman.

Whereas, on the basis of Gauhati High Court's judgement on CR No. 304/88, his post was approved and his service regularised w.e.f 12-11-1993 in fixed UGC Scale of pay of Rs. 2200-4000/- plus other allowance under rules and provisions with condition that he will have to obtain M.Phil or Ph. D. Degree within 8 years from the date of approval of his appointment. He was not eligible to draw senior/ selection Grade Scale of pay until he fulfills the condition.

Whereas, Md. Ohiduz Zaman obtained the M.Phil Degree and was allowed to draw regular UGC Scale of pay w.e.f. August, 2009.

Whereas, Md. Ohiduz Zaman claims that some similar cases have been considered by the Govt. of Assam and allowed regular scale of pay from the date of joining and claims that



he is entitled to get benefit of regular UGC scale of pay with effect from 12-11-1993, i.e. from the date of joining against sanctioned post.

Whereas, Director of Higher Education, Assam has been asked to furnish and find out if such benefits were extended and to whom and when, the Director of Higher Education has given his opinion vide his letter No. G(B)CC.12/2014/64 dated 7/11/2016 that the illegal benefit granted to some cannot be cited as a precedent by the petitioner to sustain his claim. Further, Director of Higher Education, Assam has issued show cause notice to Arpana Tamuly, lecturer of A.D.P. College Nagaon who has been allowed regularization benefit from the date of joining although she acquired M.Phil in 2010.

On the facts and circumstances stated above (1) Md. Ohiduz Zaman is not entitled to get the regular pay of UGC scale from his original date of joining against sanction post i.e. 12-11-1993 but eligible only from August 2009, the date he acquired the qualification. (2) Director of Higher Education, Assam is to be asked to bring up such cases to the notice of the Govt. for corrective measures.

Sd./-

(A. Tewari, IAS)

Commissioner & Secretary to the Govt. of Assam
Higher Education Department”



14. Thus, from the contention being made by the petitioner and also from the impugned order and the affidavit and additional affidavit filed by the respondent authorities, it appears that they had granted the benefit of UGC scale of pay from the date of appointment to one Aparna Tamuli of A.D.P. College and also to Pratibha Choudhury of Mandia Anchalik College. Though the respondent authorities had taken a plea that the said benefits were given to them wrongly and also taken steps for recovery by issuing notice, yet, denying the benefit to the petitioner herein on the ground of conditions being imposed in the appointment letter of the petitioner. This action of the respondent authorities to the considered opinion of this Court appears to be arbitrary, in view of the admission made by the learned standing counsel for the respondent No.3 that the condition imposed in the appointment letter of the petitioner was not based on any rule or regulation, which Dr. Agarwal, learned standing counsel for the UGC, who is present before this Court in connection with the connected matter, also submits that there is no such regulation of UGC for imposing condition in the appointment letter.

15. Mr. Das, learned counsel for the petitioner has also drawn attention of this Court to a notification issued by the State of Assam, being O.M. No.B(2)H.408/99/41, dated 13.01.2000 and submits that the requirement of NET, SLET, M. Phil. and Ph. D. degree is made applicable w.e.f. 13.01.2000 and the appointment of the petitioner was in the year 1985 and his service was regularized as per order of this Court w.e.f. 12.11.1993 and as such, the said



notification issued by the respondent authorities is not applicable in the case of the petitioner.

16. As discussed in the foregoing paragraphs, some of the Lecturers, like Aparna Tamuli and Pratibha Choudhury are given the benefits of UGC scale of pay from the date of their appointment, though it is contended that negative equality cannot be claimed by the petitioner. But, nowhere in their affidavit the respondent No.3 had admitted that they have wrongly given the benefit to Smt. Aparna Tamuli and Pratibha Choudhury. It is well settled in catena of decisions of Hon'ble Supreme Court that the benefit given to similarly situated persons shall be extended to all such persons who are similarly situated. Reference in this context can be made to the following decisions:-

- (i) **State of Karnataka v. C. Lalitha, reported in (2006) 2 SCC 747 :**
- (ii) **State of U.P. v. Arvind Kumar Srivastava, reported in (2015) 1 SCC 347.**

16.1. It is to be noted here that in the case of **C. Lalitha (supra)**, Hon'ble Supreme Court has held as under:-

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that



this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.

16.2. And in the case Arvind Kumar Srivastava (supra), Hon'ble Supreme Court has held as under:-

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced



into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.



17. In that view of the matter, treating the petitioner differently on the ground of the condition being imposed in his appointment letter by the respondent authorities and denying the benefits to him from the date of his regularization, appears to be arbitrary and illegal.

18. It also appears that as per UGC Regulations, 1998 issued on 24.07.1998, NET/SLET is a mandatory requirement for appointment of Lecturer in Colleges. But, the Government of Assam notified NET/SLET as mandatory requirement/eligibility criteria for appointment of Lecturer in Colleges throughout the State of Assam vide its OM No. B (2)H408/99/41 dated 13.01.2000.

19. This Court has also taken note of one Office Memorandum, No. AHE.101/2013/Pt/139, dated 7th February, 2014, issued by Commissioner and Secretary to the Govt. of Assam, Higher Education Department exempting M. Phil/NET/SLET/Ph.D., who have been appointed as Assistant Professors/Librarians between 24-12-1998 to 13-01-2000, in the Degree College of Assam. And the Office Memorandum reveals that the UGC's guideline were notified by the Higher Education Department vide OM No.8(2)H.408/99/41 dated 13-01-2000, for implementing the UGC guideline for all Colleges and Institutions of the State. And in view of the same and with reference to the provision of 4(3), of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and amended Act, 2012 & 2013, Govt. in Higher Education Department



has decided to exempt the Assistant Professors/Librarians, who were appointed by the College Authority/Governing Body of the Colleges between 24-12-1998 to 13-01-2000, from having M.Phil/NET/SLET/Ph.D. qualification, if they were otherwise qualified as per UGC qualifications required then.

20. The Office Memorandum is quoted herein below for ready reference:-

**GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT DISPUR:
GUWAHATI-6**

**No.AHE 101/2013/Pt/139, Dated Dispur, the 7th
February, 2014.**

OFFICE MEMORANDUM

Sub: Exemption of M.Phil/NET/SLET/Ph.D who have appointed as Assistant Professors/Librarians between 24-12-1998 to 13-01-2000 in the Degree College of Assam.

It has come to the notice of the Government of Assam in Higher Education Department that there are number of Assistant Professors/Librarians of the Venture Degree Colleges and in Provincialised Colleges of Assam who were appointed without M. Phil/NET/SLET/Ph.D. qualifications by the College Authority/Governing Body of the Colleges after 24-12-1998. They have been



rendering their services during their respective Colleges since then.

In this regard it may be pointed out that the University Grants Commission has notified, the guideline for revision of pay scale of teachers/librarians' and requirement qualification for recruitment of a lecturer/librarian vide F.3-1/94(PS) dated 24-12-1998.

As per UGC guideline, the minimum requirement. of qualification is good academic record with 55% of marks in Master Degree having qualifying NET/SLET with effect from 24-12-1998.

But, the UGC's guideline were notified by the Higher Education Department vide OM No.8(2)H.408/99/41 dated 13-01-2000 for implementing the UGC guideline for all Colleges and Institutions of the State.

In view of the above and with reference to the provision of 4(3), of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and amended Act, 2012 & 2013 Govt. in Higher Education Department has decided to consider, the Assistant Professors/Librarians who were appointed by the College Authority/Governing Body of the Colleges between 24-12-1998 to 13-01-2000 as qualified exempting them from M.Phil/NET/SLET/Ph.D. qualification, If they



were otherwise qualified as per UGC qualifications required then.

The Director of Higher Education, Assam shall ensure the proposals are proposed only in case Principal, Teaching Faculties and Non-Teaching Staff Members of the Colleges who possess the requisite qualification as per the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and amended. Act, 2012 & 2013. No persons Le. Principal, Teaching & Non Teaching staff of any such Colleges who do not possess the requisite qualification coming under the purview of the above mentioned Act shali be considered and which has to be totally examined by the Director of Higher Education, Assam.

Sd./-(H.K. Sharma, IAS)
Commissioner & Secretary to the Govt. of Assam,
Higher Education Department.

21. Thus, from the aforesaid Office Memorandum, dated 7th February, 2014, the minimum UGC qualification for being appointed as teachers in deficit grants in aid colleges, as on 12.11.1993, i.e. the date of regularization of service of the petitioner as Lecturer in ADP College, Nagaon, M.Phil/NET/SLET/Ph.D. qualification, was not a mandatory requirement if the incumbent concerned was otherwise qualified as per UGC qualifications required then.



21.1. Though, as per UGC guideline, the minimum requirement of qualification is good academic record with 55% of marks in Master Degree having qualifying NET/SLET with effect from 24-12-1998, the Government in Higher Education Department, Assam with reference to the provision of 4(3), of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and amended Act, 2012 & 2013, Govt. has decided to exempt the Assistant Professors/Librarians who were appointed by the College Authority/Governing Body of the Colleges between 24-12-1998 to 13-01-2000, from having M. Phil/NET/SLET/Ph.D. qualification, if they were otherwise qualified as per UGC qualifications required then.

22. Thus, the Issue No. I, as formulated by this Court herein above, stands answered accordingly.

23. Since possession of M. Phil/NET/SLET/Ph.D. qualification was not a mandatory requirement on 12.11.1993, i.e. the date of regularization of service of the petitioner, then depriving the petitioner of the benefit of the UGC scale of pay from the date of his regularization, i.e. 12.11.1993, imposing the conditions that the petitioner- (a) will have to obtain M. Phil or Ph. D. degree within 8(eight) years from the date of approval of his appointment; and (b) will not be eligible to draw senior scale of pay/Grade of pay until fulfills the conditions laid down in the letter, to the considered



opinion of this Court, is illegal and arbitrary and on such count, the same warrants interference of this court.

24. In view of above factual and legal matrix, the Issue No. II, as formulated herein above has to be answered in negative and accordingly, the same stands answered.

25. I have carefully gone through the decisions referred by the learned counsel for the petitioner and also by Mr. Upamanyu, learned standing counsel for the respondent authorities. There is no quarrel at the Bar about the proposition of law laid down in the aforementioned decisions. But, in order to decide the issue involved in the present petition, reference to all those decisions are found to be not necessary, except what has been discussed herein above.

Conclusion:-

26. In the result, this Court finds sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this Court, the respondent authorities are directed to extend the benefit of UGC scale of pay to the petitioner from the date of his regularization, i.e. 12.11.1993.

27. Mr. Das, learned counsel for the petitioner submits that the petitioner has already retired on superannuation.

28. In that view of the matter, let the aforementioned exercise be carried out within a period of 2(two) months from the date of



receipt of certified copy of this order. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within 2 (two) weeks from today.

Sd/- Robin Phukan
JUDGE

Comparing Assistant