

GAHC010115772022



2026:GAU-AS:1541

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

Case No. : WP(C)/3988/2022

DALIMI KALITA
WIFE OF LATE DHARANI THAKURIA, HOUSE NO. 24, NOONMATI BIJOI
NAGAR, P.O. NOONMATI, P.S. NOONMATI, DISTRICT- KAMRUP(M),
GUWAHATI- 781020, ASSAM.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 2 ORS
REPRESENTED BY THE CHAIRMAN, BIJULEE BHAWAN, P.O. GUWAHATI
G.P.O., P.S. PALTAN BAZAR, DISTRICT- KAMRUP(M), GUWAHATI- 781001.

2:THE CHIEF GENERAL MANAGER (HRA)
THE ASSAM POWER DISTRIBUTION COMPANY LTD.

BIJULEE BHAWAN
GUWAHATI- 781001.

3:THE MANAGING DIRECTOR
THE ASSAM POWER DISTRIBUTION COMPANY LTD.

BIJULEE BHAWAN
GUWAHATI- 781001

B E F O R E

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Mr. A.K. Baruah, Advocate

Advocates for the respondents : Mr. N. Deka, SC, APDCL.

Date of hearing and judgment : 06.02.2026.

JUDGMENT & ORDER (Oral)

Heard Mr. A.K. Baruah, learned counsel for the petitioner. Also heard Mr. N. Deka, learned Standing Counsel, APDCL for the respondents.

2. The petitioner is aggrieved by the grant of lesser pay scale to her in the post of 'Auxiliary Nurse and Midwife' (ANM), for which the present petition has been instituted. The petitioner has also challenged the communication dated 01.02.2022 issued by the Chief General Manager (HRA), APDCL whereby the claim of the petitioner as regard discrepancy in initial pay-fixation has been rejected being raised after a considerable lapse of time, i.e., almost 30 years from the date of appointment of the petitioner, thereby, rejecting the claim for re-fixation of pay.

3. The petitioner was appointed as 'Auxiliary Nurse and Midwife' (ANM) in the erstwhile Assam State Electricity Board in the scale of pay of Rs. 1025-35-1375-EB-40-1655/- plus other allowances on 29.04.1992. She was last posted on 05.11.2018 to the establishment under the Chief Medical Officer, APDCL, Bijulee Bhawan wherein the petitioner is presently serving.

4. It is the contention of the petitioner that she came to learn that there is a discrepancy in a pay scale for which she approached the respondent authorities for redressal of her grievance as similarly situated Auxiliary Nurse and Midwife' (ANM) have been provided with the higher pay scale of Rs. 1085-40-1245-1425-EB-50-1925/- per month plus all other allowances.

5. The petitioner contends that one Smt. Rukhomati Mosahary, who was appointed on 21.06.1990 earlier than the petitioner has been provided the

higher pay scale than the petitioner, whose appointment is on 29.04.1992. The petitioner filed representations on 21.02.2020 and 27.07.2021 to the respondent authorities for grant of similar pay scale as that of the other Auxiliary Nurse and Midwife' (ANM) who have been paid higher pay scale than the petitioner.

6. By communication dated 01.02.2022, the Chief General Manager (HRA), APDCL has informed the petitioner that the discrepancy in the pay fixation as raised by the petitioner cannot be entertained as the same was raised after a lapse of considerable period of time thereby rejecting the claim of the petitioner.

7. Mr. Baruah, learned counsel for the petitioner, while referring to the documents annexed to the writ petition, submits that there is no dispute regarding the post of Auxiliary Nurse and Midwife' (ANM) as the Auxiliary Nurse and Midwife' (ANM) are one and the same having the same pay scale. However, the petitioner has been denied the same pay scale with that of other Auxiliary Nurse and Midwife' (ANM), who has been provided with higher pay scale than the petitioner. He submits that although the respondent by way of RTI reply has stated that the pay scale of Mid-wife is below the pay scale of Auxiliary Nurse, as per the ROP, there is nothing on record to show that the Mid-wife and the Auxiliary Nurse are two different posts having a different pay scale. The respondents have admitted clearly that the petitioner is appointed as Auxiliary Nurse and Midwife' (ANM). The respondents authorities have also clearly provided the basic pay of the petitioner as Rs. 51,480/- and the basic pay of other similarly situated Auxiliary Nurse and Midwife' (ANM) as Rs. 68,910/- which clearly reflects the discrepancy of pay being drawn by the petitioner and other similarly Auxiliary Nurse and Midwife' (ANM). It is further admitted by the respondent authorities that current pay scale of the petitioner is lower than the other Auxiliary Nurse and Midwife' (ANM) due to her initial pay fixation as per

her appointment order dated 29.04.1992.

8. Mr. Baruah, the learned counsel for the petitioner while referring to the Assam Services (Revision of Pay) Rules, 2017 submits that it clearly provides the post of Midwife / ANM as one and the same having the same Pay Band and Grade Pay which clearly indicates that there cannot be any distinction between Midwife and ANM as the ANM is an Auxiliary Nurse and Midwife. Therefore, he submits that respondent authorities may be directed to provide the same pay scale and other admissible allowances to the petitioner with that of the similarly situated Auxiliary Nurse and Midwife' (ANM).

9. Mr. N. Deka, learned Standing Counsel for the APDCL / respondents, submits that the impugned communication dated 01.02.2022 issued by the Chief General Manager (HRA), APDCL appears to be on the basis of delay and laches as the petitioner admittedly raised the grievance after lapse of 30 years from the date of her appointment, i.e., on 29.04.1992. Admittedly, it appears that the matter has not been considered on merit. Therefore, he submits that since the petitioner has slept over her right for last 30 years, she is debarred from claiming any grievance after lapse of many years. However, he submits that the matter can be remanded back to the respondent authorities to reconsider the claim of the petitioner on merit.

10. I have considered the submissions of the learned counsel for the parties and have perused the materials available on record.

11. The petitioner was appointed as Auxiliary Nurse and Midwife' (ANM) in the erstwhile Assam State Electricity Board (now APDCL). The scale of pay as per the appointment order dated 29.04.1992 of the petitioner is Rs. 1025-35-1375-EB-40-1655/- plus other allowances. The other similarly Auxiliary Nurse and

Midwife' who has been appointed on 01.06.1992 has been provided the higher scale of pay of Rs. 1085-40-1245-1425-EB-50-1925/- per month plus all other allowances.

12. Perusal of the Assam Services (Revision of Pay) Rules, 2017, reflects that the Midwife/ANM has the same Pay Band and Grade Pay as PB-2 5200-20200 2400 PB-2 14000- 49000 6200. Upon careful consideration, it is seen that the Midwife/ANM are one and same post having same pay scale. Therefore, it cannot be said that Midwife/ANM are two different posts having the different Pay Scale / Grade Pay.

13. As submitted by the learned counsel for the respondents, Mr. Deka, that the respondent authorities appears to have considered and examined the matter, not on merits, however, appears to have rejected the grievance of the petitioner only on the ground of delay and laches as the petitioner has raised her grievance as regards the discrepancy in fixation of pay scale after the lapse of almost 30 years from the date of her appointment.

14. Having considered that the respondent authorities have not considered the grievance of the petitioner on merits, I am of the considered view that the same is required to be considered on merit ignoring the said delay in view of the fact that there appears to be clear discrepancy in fixation of the pay scale, perhaps, may be inadvertently at the time of initial appointment of the petitioner as the same is supported by the records including the RoP, 2017.

15. Regard being had to the delay, in raising the grievance, Mr. Baruah, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***M.R. Gupta vs. Union of India*** reported in ***1995 5 SCC 628***. The relevant paragraph of the said judgment is extracted

herein below:

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.”

16. Mr. Baruah, learned counsel for the petitioner has also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Sanjay Kumar Upadhyay vs. State of Jharkhand and Ors.** [decided on 16.12.2025], the relevant portion of which is extracted herein below:

“32. The plea of delay and laches cannot be sustained in a case involving continuing violation of rights that too in the light of the nature of directions issued in rem. The Appellant's consistent pursuit of his claim through representations and the timely filing of the writ petition after their rejection shows that he was not sleeping over his rights. Moreover, financial Implications and administrative convenience cannot override constitutional guarantees against arbitrary discrimination. The State, being

the model employer, cannot plead its own inefficiency or negligence to deny legitimate rights to its employees. The recommendations of various committees acknowledging the anomaly only reinforces the constitutional obligation to remove the discrimination."

17. On perusal of the aforesaid judgments of the Hon'ble Supreme Court, I am of the view that there would not be any quarrel to the aforesaid observation and proposition, although it has been rendered on its contextual facts of those cases, as in respect of any continuing / recurring cause of action, no application can be barred on the ground of limitation.

18. In the present case, records and the provisions of the law clearly fortified the grievance of the petitioner as regards the discrepancy in fixation of pay scale as admittedly, she being provided with lesser pay than the other similarly situated Auxiliary Nurse and Midwife' (ANM) under the same authorities, i.e., APDCL. The petitioner in my view would be entitled to be provided with the similar pay and allowances as granted to the other similarly Auxiliary Nurse and Midwife' (ANM) under the respondent authorities.

19. In view of what has been discussed herein above, I am of the considered view that there exists a discrepancy as regard the pay fixation in respect of the petitioner. Thus, it would be appropriate to direct the respondent authorities to re-consider and re-fix the pay and allowances of the petitioner as that of the other similarly situated Auxiliary Nurse and Midwife' (ANM) of the APDCL. It is ordered accordingly.

20. It is provided that the claim for arrears of the petitioner be restricted to 3 years from the date of demand, i.e., 21.02.2020. As observed by the Hon'ble Supreme Court in the case of ***Union of India (UOI) and Ors. vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648***. It is provided that consequential action

directed herein shall be taken as expeditiously but not later than 60 days.

21. Writ petition stands allowed and disposed accordingly.

JUDGE

Comparing Assistant