



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

ITANAGAR PERMANENT BENCH

**W.P(C) No. 326(AP) of 2015**

**Petitioner**

Smti Gitesh Tiwari

W/o Shri S.K. Tiwari, presently serving

Hindi Typist, under North Eastern Regional

Institutes of Science and Technology, (NERIST)

Nirjuli, -791109 Arunachal Pradesh

M: 9402871006

**By Advocates:**

R.B Yadav

T. Tatin

- **Vs** -

**Respondents:**

1. North Eastern Regional Institute of Science and Technology, (NERIST), Nirjuli, Arunachal Pradesh through its Registrar.
2. Union of India, through the Secretary, Govt. of India, Ministry of Human Resources Development (Department of Education), New Delhi.
3. The Director, North Eastern Regional Institute of Science and Technology, Nirjuli, Arunachal Pradesh.
4. The Board of Management, through its Chairman, North Eastern Regional Institute of Science and Technology, Nirjuli, Arunachal Pradesh.

**By Advocate:**

- A. Apang, Sr. Advocate S/C (NERIST)
- P. Taffom, ASG

**B E F O R E**  
**THE HON'BLE MR. JUSTICE S. SERTO**

Date of hearing : 31.10.2017

Date of Judgment : 28-11 2017

**J U D G M E N T   A N D   O R D E R (CAV)**

This is a petition praying for issuance of appropriate writ or direction, directing the respondents to refixed the pay scale of the petitioner at the corresponding pay scale of LDC recommended by the 6<sup>th</sup> Pay Commission.

2. Heard the learned counsel for the petitioner Mr. T. Tatin and also heard Mr. A. Apang, learned standing counsel who appeared on behalf of the respondents.

3. Brief facts and circumstances which led to the filing of this writ petition are as follows:-

Vide letter No. EST. 6/1/93/Vol. II dated 24.11.1995 of the Registrar of Northern Eastern Regional Institute of Science & Technology (NERIST in short), the petitioner was appointed as Hindi Typist in NERIST on contingent

basis with wages at the rate of Rs. 930/- per month, for a period of 89 days. Thereafter, the petitioner's service was extended from time to time, till it was terminated on 26.04.1998. However, on the petition filed by the petitioner, this Court in WP(C) No. 378 (AP) 2001 directed the respondent No. 2 to allow her to continue in service. In pursuance of the said order of this Court, the Deputy Registrar (Estt) of NERIST, vide his Order No. EST-99/2/2000-01/4219-34 dated 20.01.2003 allowed the petitioner to continue in her post on contingent, basis at the consolidated monthly wage of Rs. 1,499/-. In the year 2006, following the recommendation of a committee constituted for consideration of the grievances of some of the employees of NERIST, which were pending before Courts the petitioner's pay/wages was raised to 1/30 of minimum basic pay of LDC+ DA, vide order No. EST/99/2/00-01 dated 13.04.2006 issued by the Registrar of NERIST. In course of time, the service status of the petitioner was upgraded from contingent to temporary status and her pay scale was fixed at Rs. 5680+1800 (GP) of PB-1, Rs. 5200-2000+1800 (GP) w.e.f 09.04.2013 vide order No. 754/5/2006/3900-3907 date 29.08.2013 issued by Registrar, NERIST. The petitioner has no grievance about the upgradation of her service status, but is aggrieved by the fixation of her pay at Rs.5680 + 1800(GP) only. This has led her to file the present writ petition.

4. It is submitted by learned counsel of the petitioner, that the post of Hindi Typist is equivalent to LDC. Therefore, the petitioner was paid wages at the rate of 1/30 of a minimum basic pay of LDC + DA vide order dated 13.04.2006 No. EST-99/2/00-01, issued by the Registrar of NERIST. As such, after the implementation of the recommendation of 6<sup>th</sup> Pay Commission, his pay should have been fixed at the corresponding pay scale of LDC. According to the learned counsel, the pay of LDC before the recommendation of 6<sup>th</sup> Pay Commission i.e as per the recommendation of 5<sup>th</sup> Pay Commission was 3050-75-3950-80-4590. Therefore, the petitioner was allowed to draw Rs. 3050+DA w.e.f 23.12.2002 to 31.11.2009. It was further submitted by the Ld Counsel that after the recommendation of the 6<sup>th</sup> Pay Commission, the pay scale of LDC was raised to Rs. 5880+1900 (GP) from the earlier scale of Rs. 3050+DA. As such, the pay of the petitioner should have been fixed as per the revised pay of LDC i.e Rs. 5880+1900 (GP). However, the pay scale of the petitioner was fixed by the respondents at Rs. 5680+1800 (GP) in the pay scale of PB-1 Rs. 5200-20,000+1800, which does not correspond to the pay of LDC in the recommendation of the 6<sup>th</sup> Pay Commission. Therefore, the same is arbitrary discriminatory and unreasonable. The learned counsel further submitted that though the petitioner is a temporary employee she is entitled to the same pay given to people who are regularly appointed. In

support of his submission, the learned counsel cited the case of **State of Punjab & Ors Vs Jagjit Singh & Ors** as reported in **2017 (1) GLT (SC) 47**. The relevant paras referred to by the learned counsel are para 53, 54, 55 & 56. The contents of the paragraphs are reproduced here below:-

*"53. We shall now deal with the claim of temporary employees before this Court.*

*54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 herein above. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above*

*legal position which has been repeatedly declared, is being reiterated by us, yet again.*

*55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels voluntary subjugation.*

*56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-*

"Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to

*no considerations other than those of seniority and competence;*

*(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."*

*India is a signatory to the above covenant, having ratified the same on 10.04.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee-whether engaged on regular or temporary basis."*

5. Mr. A. Apang, learned counsel appearing for the respondents submitted that LDC and typist are different and distinct post. Therefore, the petitioner who is a Hindi Typist cannot claim the pay of LDC. He also submitted that typist is below LDC, for that reason, the petitioner has been given a pay scale lower than that of the LDC. Mr. A. Apang also submitted

that the petitioner is a temporary employee, therefore, she cannot claim the pay of a regular employee.

In reply, the learned counsel for the petitioner by referring to the Order No. EST-99/2/00-01, dated 13.04.2006, issued by the Registrar of NERIST contended that the petitioner was paid 1/30 of minimum basic pay + DA of LDC's pay, this shows that the two post are same grade with same pay.

6. After having considered, the submissions of the learned counsels appearing for the parties and after having gone through the documents and the judgment placed before me I have come to the following conclusions;

The Order No. EST-99/2/00-01 dated 13.04.2006, issued by the Registrar of NERIST clearly shows that the petitioner was paid 1/30 of the basic pay of LDC + DA as per the policy decision taken by the Ministry of Human Resource Development and the respondents. To make it convenient for reference, the contents of the Order are reproduced here below:-

### **ORDER**

*"The under mentioned contingent employee of this institute who has not completed 240 days of continuous service on the Institute roll before 01.09.1993, working without any change of nature of duty is hereby allowed to be paid Daily Wage @ one thirtieth of minimum basic pay of LDC+DA as*

*per CCS rules as adopted by the Board of Management, NERIST, in this regard deemed to be effective w.e.f 04.11.2000 or a subsequent date as per rules along with other employees of her status but financial benefits allowed from 23.12.2002, the date of her resuming duty as per the Hon'ble Court Order condoning her absence period from 25.04.1998 to 22.12.2002 as 'no work, no pay' principle.*

Sl. No.	Name of Employee	Date of joining
1.	Smti. Gitesh Tiwari, Contingent Hindi Typist	23.12.2002

*This issues with the approval of the authority."*

7. In the absence of any other document showing that the pay of Hindi Typist is lesser than that of LDC or is not equivalent it has to be understood from the above order that both the post are equivalent and the pay scales are also same, therefore, the petitioner was paid 1/30 of basic pay of LDC + DA per month. What follows from thereon would be that whenever the pay of LDC is revised, the pay of Hindi typist has to be revised at the same rate to maintain parity and equality. Keeping that in view, I agree with the submission of the learned counsel of the petitioner that when the petitioner's service status was upgraded vide Order dated 29.08.2013 issued by the

Registrar, NERIST her pay scale should have been fixed at the same scale as that of LDC has recommended by the 6<sup>th</sup> Pay Commission which is Rs.5880+1900 (GP).

**8.** The contention of the learned counsel of the respondent Mr. A. Apang, that the petitioner is a temporary employee, therefore, not entitle to the same pay with that of regular employees has been taken care of by the judgment cited by the learned counsel of the petitioner, the relevant portions of which has been already reproduced above. Therefore, I need not go any further on that point of contention raised by the learned counsel of the respondents.

**9.** In view of the above conclusions drawn, the writ petition is allowed and the respondents are directed to fixed the pay of the petitioner at the same scale of LDC as recommended by the 6<sup>th</sup> Pay Commission.

**10.** This writ petition is disposed of.

**JUDGE**

Manghaki