GAHC010027912015

2026:GAU-AS:15580

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

Case No. : WP(C)/7688/2015

SABITA TAMULI
W/O- PRANJAL KUMAR MENA, R/O- 9TH BYE LANE, DR. ZAKIR HUSSAIN ROAD, PUB-SORUMOTORIA, DISPUR, KAMRUP M, ASSAM- 781036.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY- 6.

2:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
DEPTT. OF INDUSTRIES AND COMMERCE
ASSAM SECRETARIAT
DISPUR
GHY- 6.

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
SECRETARIAT BUILDING
FINANCE DEPTT.
DISPUR
GHY- 6.

4:THE COMMISSIONER
INDUSTRIES AND COMMERCE DEPTT.
UDYOG BHAWAN
BAMUNIMAIDAM
GHY- 21.

5:THE MANAGING DIRECTOR
ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD.
R.G. BARUAH ROAD
GHY- 24.

6:ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY THE CHAIRMAN
R.G.BARUAH ROAD
GUWAHATI-2

Advocate for the Petitioner : MR.M P SARMA, MR.U K NAIR,MR.A CHETRY,MR.H K DAS,MR.W YHOSHII,MR. J. SINGH,MR H AGARWAL,MR. R KALITA

Advocate for the Respondent : MR.S N SARMAR-4 and 5, MR D DEKA (R-5,6),MR. A. KALITA, SC, INDUSTRIES AND COMMERCE,MR. B. GOGOI, SC, FINANCE AND TAXATION,MR. P P DAS (r-5,6),MR. SURAJIT DAS (r-5,6),MS. M D BORA, MR. J.K. GOSWAMI, SC, AIDC,MR.A J MAHANTA(R-4 & 5),SC, INDUSTRIES,MR.A JAHID(R-4 & 5),MR.S SAMARIA,MR.S CHOUDHURY(R-4 & 5),MR.K KALITA(R-4 & 5)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : 01.10.2026

Date of pronouncement of judgment : 14.10.2026

Whether the pronouncement is of the operative of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. B. D. Konwar, learned Senior Counsel assisted by Ms. P. Gupta, learned counsel for the petitioner. Also heard Mr. A. Chakrabarty, learned State Counsel for respondent Nos. 1 & 2; Mr. R. Borpujari, learned Standing Counsel, Finance Department, for respondent No. 3; and Mr. D. Deka, learned Standing Counsel, AIDC, for respondent Nos. 4, 5 & 6.

2. By filing this writ petition, the petitioner has put to challenge the impugned Office Memorandum No. AIDC/ESTT/1 (T)/3300-09, dated 13.09.2013, whereby the Service Linked Advancement Scheme (in short, "SLAS") for the employees of the Assam Industrial Development Corporation Ltd. (in short, "AIDC") has been partially modified, and the impugned Office Memorandum No. AIDC/ESTT/1(T)/3310-19, dated 13.09.2013, whereby the petitioner has been granted financial upgradation under the said Scheme by placing her in the Grade Pay of Rs. 7,600/- in the Pay Band of Rs. 12,000-40,000/- from the Pay Band of Rs. 12,000-40,000/- with Grade Pay of Rs. 7,400/- then being drawn by her. The petitioner has prayed for a direction to the respondent authorities to grant her the Pay Band of Rs. 26,000-45,000/- with Grade Pay of Rs. 8,700/-, corresponding to the next higher post of General Manager, with effect from 31.12.2012, besides seeking a direction for creation of a personal post of General Manager (Company Secretariat) to address the stagnation in her service.

3. The petitioner was initially appointed as Assistant Company Secretary in the AIDC in the year 1995 in the pre-revised pay scale of Rs. 2,555-4,600/-. She was thereafter upgraded to the next higher scale of Rs. 9,075-14,225/-. The 18th DPC-PAC, in its meeting held on 31.07.2001, considered her case for promotion to the post of Company Secretary in the pre-revised pay scale of Rs. 10,050-15,575/-. In the meantime, pursuant to the restructuring of the executive cadre of the Company Secretariat Department, the post of Company Secretariat and Assistant Company Secretary was re-designated as Company Secretary Grade-I and Company Secretary Grade-II, respectively. The petitioner was accordingly re-designated as Company Secretary Grade-II vide office order dated 21.09.2001. Subsequently, pursuant to her representation dated

08.10.2001, she was promoted to the post of Company Secretary Grade-I in the pre-revised pay scale of Rs. 10,050-15,575/- vide office order dated 31.12.2002.

4. The AIDC had introduced the Service Linked Advancement Scheme (SLAS) for its employees with the objective of removing stagnation in service vide circular dated 21.09.2001, whereby, under Clause-A of the said Scheme, an employee who had completed 10 years of continuous satisfactory service in the same grade/post and was otherwise eligible for promotion to the next higher post, but remained stagnant due to non-availability of vacancy or sanctioned post, was eligible to be placed in the next higher scale in the approved pay structure as a personal scale of pay. The higher scale prescribed under the said SLAS Scheme was Rs. 11,025-17,000/-, applicable to employees up to the level of Deputy General Manager drawing the pre-revised scale of Rs. 10,050-15,575/-.

5. The petitioner completed 10 years of service in the post of Company Secretary Grade-I on 31.12.2012. According to the petitioner, as the pre-revised pay scale of Rs. 10,050-15,575/- was equivalent to the scale of Deputy General Manager and there was no sanctioned post of General Manager in the Company Secretariat Department, she became entitled, upon completion of the requisite period of service, to financial upgradation to the next higher scale of Rs. 11,025-17,000/-, corresponding to the post of General Manager. Accordingly, the petitioner submitted a representation dated 13.12.2012 seeking financial upgradation under the SLAS.

6. Vide its 32nd meeting of the DPC-PAC, held on 16.02.2013, petitioner's case for financial upgradation to the next higher pay band was considered. However, her claim was rejected on the ground that she had already received 2

(two) regular promotions during her service in the Corporation and having reached the pay band of Rs. 12,000-40,000/- with Grade Pay of Rs. 7,400/-, she was not entitled to any further benefit under the Assured Career Progression Scheme (ACP Scheme). Thereafter, the petitioner submitted another representation dated 15.03.2013, contending that the ACP Scheme had not been adopted by the AIDC and the Board of Directors, in its 255th meeting held on 03.08.2012, had resolved to continue with the SLAS.

7. Thereafter, vide Office Memorandum dated 13.09.2013, the SLAS was partially modified following the adoption of the revised pay structure pursuant to the Assam Services (ROP) Rules, 2010. By the said modification, the Corporation decided to adopt the Pay Band of Rs. 12,000-40,000/- with Grade Pay of Rs. 7,600/- for extending the benefit of SLAS to employees who were in the revised Pay Band of Rs. 12,000-40,000/- with Grade Pay of Rs.7,400/-. On the same date, by the impugned Office Memorandum, the petitioner was granted financial upgradation under the SLAS by placing her in the Grade Pay of Rs.7,600/-.

8. Aggrieved by the aforesaid decision, the petitioner submitted a representation dated 20.09.2013 contending that her entitlement to financial upgradation had accrued upon completion of 10 (ten) years of service on 31.12.2012 and the subsequent modification of the SLAS dated 13.09.2013 could not be retrospectively applied to her case. She claimed that she was entitled to the revised pay band corresponding to the next higher post of General Manager. As the representation did not yield any favourable decision, the petitioner again submitted representations dated 05.05.2014, 20.12.2014, 25.02.2015 and 25.08.2015, seeking either grant of the appropriate higher pay band or creation of a personal post of General Manager (Company Secretariat).

9. The petitioner has also placed reliance upon the case of one Sri U.C. Buragohain, who was holding the post of Deputy General Manager (P&A) in the pre-revised pay scale of Rs. 10,050-15,575/-. According to the petitioner, his case was considered for financial upgradation to the next higher scale of Rs. 11,025-17,000/- under the SLAS despite there being no sanctioned post of General Manager. Subsequently, upon approval of the Government of Assam for creation of a post of General Manager (P&A), he was promoted to the said post. The petitioner claims that being similarly situated, she is also entitled to similar treatment, including creation of a personal post of General Manager (Company Secretariat). Hence, this writ petition.

10. Mr. B. D. Konwar, learned Senior Counsel for the petitioner, submits that the petitioner's entitlement to financial upgradation under the SLAS had crystallized on 31.12.2012, upon her completion of 10 years of continuous and satisfactory service in the post of Company Secretary Grade-I. The Corporation itself does not dispute that there was no further sanctioned post in the Company Secretariat Department to which the petitioner could have been promoted and that she had otherwise fulfilled the eligibility criteria prescribed under the SLAS. Therefore, the petitioner’s case squarely fell within the ambit of Clause-A of the SLAS and became entitled to be placed in the next higher scale of Rs. 11,025-17,000/- as her personal scale of pay.

11. Learned Senior Counsel further submits that the subsequent partial modification of the SLAS vide Office Memorandum dated 13.09.2013 could not have been applied to the petitioner, whose eligibility had already accrued prior thereto. The said modification was prospective in its operation and merely provided that employees thereafter considered for upgradation under the SLAS

would receive financial upgradation to the next higher Grade Pay. However, the petitioner was already eligible for financial upgradation under the original Scheme with effect from 31.12.2012. The action of the Corporation in applying the modified Scheme to her case resulted in her being granted only a Grade Pay of Rs. 7,600/-, instead of the pay scale corresponding to the next higher post of General Manager, and thereby unlawfully deprived her of the benefit which had accrued to her prior to the modification.

12. Mr. Konwar, learned Senior Counsel, submits that the reliance placed by the Corporation upon the Assured Career Progression Scheme (ACPS) dated 25.05.2011 is wholly misplaced, inasmuch as the said ACPS framed by the State Government was applicable to State Government employees only and was never adopted by the AIDC. On the contrary, the Board of Directors, in its 255th meeting held on 03.08.2012, after considering the ACPS, had specifically found the SLAS to be more reasonable and acceptable to the Corporation and resolved to continue with the SLAS. Thus, on the date on which the petitioner's entitlement accrued, the governing scheme in the Corporation was the SLAS and not the ACPS. The subsequent signing of the MoU with the State Government or adoption of the ROP Rules, 2010, could not amount to adoption of the ACPS by the Corporation.

13. He submits that the very basis on which the petitioner was granted the Grade Pay of Rs. 7,600/- is unsustainable, as such Grade Pay was not part of the applicable service structure of the Corporation. The Corporation's own gradation list continued to show the petitioner's pay band with Grade Pay of Rs. 7,400/-, and the scale carrying Grade Pay of Rs. 7,600/- was never incorporated into the Service Rules of the Corporation. Therefore, the impugned action could not have

been justified merely by reference to the ROP Rules, particularly when the Corporation had not obtained the prior approval of the Finance Department as contemplated by Clause 3 of the MoU for any change in service conditions having financial implications.

14. Learned Senior Counsel further submits that the conduct of the Corporation is discriminatory, inasmuch as the benefit of the SLAS continued to be extended to other employees even after the ROP Rules, 2010 had come into force and the MoU had been executed. He submits that in another case of one Sri H. Barman, Peon, who was granted upgradation on 12.02.2013, the benefit was extended at a time when, according to the Corporation's own stand, the SLAS was still in force. However, when the petitioner's case was considered only a few days thereafter, the Committee rejected her claim by applying the ACPS, although the said Scheme had never been adopted by the Corporation. Therefore, the action of the respondent authorities in such differential treatment is arbitrary and discriminatory. Thus, the petitioner is also entitled to be treated on the same footing, particularly when the Corporation itself admits that there is no higher post in the Company Secretariat Department to which she could be promoted. Therefore, he submits that the impugned Office Memorandum dated 13.09.2013 are arbitrary and unsustainable, insofar as they seek to deny the petitioner the benefit which had accrued to her under the SLAS prior to its modification and as such, the petitioner is entitled to the pay band of Rs. 26,000-45,000/- with Grade Pay of Rs. 8,700/-, corresponding to the next higher post, with effect from 31.12.2012, and appropriate directions may also be issued for creation of a personal post of General Manager (Company Secretariat), in parity with the treatment extended to similarly situated employees.

15. In support of his submissions, Mr. Konwar, learned Senior Counsel for the petitioner, has relied on the following judgments:

(i) **Tejshree Ghag Vs. Prakash Parashuram Patil**, reported in **(2007) 6 SCC 220**

(ii) **Railway Board Vs. C.R. Rangadhamaiah**, reported in **(1997) 6 SCC 623**

(iii) **State of M.P. Vs. Yogendra Shrivastava**, reported in **(2010) 12 SCC 538**

(iv) **Food Corporation of India Vs. Parashotam Das Bansal**, reported in **(2008) 5 SCC 100**

(v) **Council of Scientific and Industrial Research Vs. K.G.S. Bhatt**, reported in **1989 (4) SCC 635**

16. On the other hand, Mr. D. Deka, learned Standing Counsel, AIDC, for respondent Nos. 4, 5 & 6, submits that the writ petition is liable to be dismissed, as the petitioner's prayer for promotion to the post of General Manager and for grant of the time scale prescribed for the said post had already been considered and rejected by the Board of Directors in its 244th meeting held on 12.01.2011. The petitioner was duly intimated of the said decision vide letter dated 08.03.2011, but she did not challenge the same. He submits that the petitioner had already attained the highest position in the cadre of Company Secretariat, namely, Company Secretary Grade-I, and there is no further promotional post of General Manager in the Company Secretariat cadre under the Service Rules of the Corporation. The post of General Manager is a Public Enterprises Selection

Board (PESB) post and there is no sanctioned post of General Manager in the Company Secretariat cadre. Learned Standing Counsel submits that the SLAS has to be read along with the procedure prescribed therein. Under Clauses E and F of the Scheme, an eligible employee is required to be considered by the appropriate DPC-cum-Personnel Affairs Committee and the recommendation for financial upgradation is subject to approval of the competent authority. Therefore, the petitioner cannot claim an automatic entitlement to the pay scale attached to the post of General Manager merely on the ground that she had completed 10 years of service in the post of Company Secretary Grade-I.

17. Learned Standing Counsel further submits that pursuant to the MoU dated 12.09.2012, the Corporation was required to adopt the Assam Services ROP Rules, 2010 and the Government approved pay structure, and any revision of pay scales or service conditions having financial implications was subject to the approval of the Finance Department. He submits that although the Board had earlier, in its 255th meeting held on 03.08.2012, resolved to continue the SLAS instead of adopting the ACPS, the subsequent MoU and the adoption of the Government pay structure necessitated modification of the Scheme. Accordingly, the Board, in its 261st meeting held on 26.08.2013, decided to modify the SLAS and to provide Grade Pay of Rs. 7,600/- to employees who were then drawing Grade Pay of Rs. 7,400/-, and the modified Scheme was brought into force by the Office Memorandum dated 13.09.2013. Therefore, he submits that the petitioner's claim for Pay Band of Rs. 26,000-45,000/- with Grade Pay of Rs. 8,700/-, corresponding to the post of General Manager, cannot be accepted, as there is no sanctioned post of General Manager in the Company Secretariat cadre.

18. As regards the cases of Shri H. Barman, Peon, and Shri U.C. Buragohain, General Manager (P&A), learned Standing Counsel submits that the same stand on a different footing. The said Shri H. Barman was granted financial upgradation on 12.02.2013, prior to the amendment of the SLAS, whereas the petitioner's case was considered after the modified Scheme came into force. In the case of Shri U.C. Buragohain, the Corporation had separately created and obtained Government approval for the post of General Manager (P&A), followed by an officiating arrangement on account of his prolonged stagnation, which has no similarity with the present case.

19. Learned Standing Counsel further submits that the petitioner's representations seeking financial upgradation and creation of a post of General Manager (Company Secretariat) have been considered by the Corporation, and the matter was referred to the Industries, Commerce and Public Enterprises Department for obtaining the views of the Finance Department. However, vide communication dated 04.03.2024, the said Department informed the Corporation that the Finance Department had clarified that the ACPS/MACPS did not extend to the employees of AIDC and that the Administrative Department was required to take its own decision in the matter. The Industries, Commerce and Public Enterprises Department accordingly expressed its agreement with the stand taken by the Corporation in the present writ petition. Learned Standing Counsel further opposes the creation of a separate post of General Manager (Company Secretariat) or conversion of the existing post of General Manager (P&A), contending that such creation or conversion would require the requisite approval and adversely affect the promotional prospects of eligible employees in the P&A cadre. He reiterates that the petitioner has already earned two promotions and financial upgradation during her service and has reached the

highest position in her cadre and as such, the petitioner has no enforceable right to claim the scale of General Manager or seek creation of a personal post and therefore, the writ petition is liable to be dismissed.

20. In support of his submissions, Mr. D. Deka, learned Standing Counsel, AIDC, has relied on the following decisions of the Hon'ble Supreme Court:

(i) **Secretary, Government (NCT of Delhi) & Ors. Vs. Grade-I Dass Officers' Association & Ors.**, reported in **(2014) 13 SCC 296**

(ii) **Govt. of T.N. & Anr. Vs. S. Arumugham & Ors.**, reported in **(1998) 2 SCC 198**

(iii) **Union of India & Ors. Vs. M. V. Mohanan Nair**, reported in **(2020) 5 SCC 421**

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

22. The controversy in the present writ petition primarily revolves around the interpretation and applicability of the Service Linked Advancement Scheme (SLAS) introduced by the respondent-Corporation on 21.09.2001 and the effect of its subsequent modification by the Office Order dated 13.09.2013. The petitioner contends that upon completion of 10 (ten) years of continuous and satisfactory service as Company Secretary Grade-I on 31.12.2012, she became eligible for financial upgradation to the next higher personal scale of pay under the original scheme. The respondents, on the other hand, contend that following the execution of the Memorandum of Understanding (MoU) dated 12.09.2012 with the Government of Assam and the adoption of the revised pay structure under the Assam Services (ROP) Rules, 2010, the scheme was validly modified and the petitioner was accordingly granted financial upgradation to the

next higher Grade Pay of Rs. 7,600/-. Primarily, the question, therefore, is whether the petitioner's claim was liable to be considered under the original SLAS, as it stood on the date she completed the prescribed qualifying period, or whether the respondents were justified in restricting the benefit to the next higher Grade Pay under the modified scheme.

23. Before examining the rival contentions, it would be apposite to refer to the original SLAS dated 21.09.2001, which provides as follows:

> "*A. An employee who completes 10 years continuous satisfactory service in the same grade/post and is otherwise suitable for promotion to the next higher post as required under promotion rules but remains stagnant due to non-availbility of vacancy either for filling up the post by other incumbent or no further sanctioned post, will be eligible for being placed in the next higher scale in the approved pay structure as his personal scale of pay. The higher scale that may be granted as personal scale of pay shall be restricted to the existing highest scale of Rs. 11,025-17,000/-. In other words employee up to the level of Dy. General Manager in the Scale of Pay 10,050-15,575/- will be entitled to this benefit. In case of up-gradation of scale from the level of Dy. General Manager to the Scale of Rs. 11,025-17,000/- and if any vacancy arises at the grade i.e. General Manager level, regularization of such employee to that level will be considered only as per the existing policy of the Corporation/directive from Govt. of Assam.*
>
> *B. An employee who is placed in this personal Scale of pay will continue to do any work as may be assigned by the Management from time to time. On such placement in the next higher scale the employee will be eligible to draw pay and allowances other than perks and designation, admissible to the employee of that grade only.*
>
> *C This placement in the personal scale will be done after giving the benefit of fixation of pay to the employee as per existing rules of pay fixation on promotion.*
>
> *D. The Stagnation benefit will not lead to creation of any post in any form. In case of such employee leaving the Corporation or attaining superannuation his vacancy will occur in his original post/scale of pay from which he had availed of the stagnation benefit.*

E. The eligible employees under the scheme will be examined by the respective DPC-PAC in respect of executive category and DPC (staff) in respect of staff category and recommend up-gradation of pay scales as per the promotion rules of the Corporation along with other cases of regular promotion, if any subject to satisfaction of the management.

F. The scheme is in addition to the regular scheme of promotion, which will take place as and when vacancies occur in accordance with the normal procedure prescribed under the Recruitment and Promotion Rules. Those who are granted personal scale of pay and are meeting the eligibility criteria may be considered for regular promotion to the higher post in the same scale, with the approval of the Managing Di-rector except for PESB Selection posts as applicable as per existing policies of the Corporation/directive from Govt. of Assam if any vacancy arises.

G. An employee will be eligible for a maximum of two advancement under this scheme during his entire career span in the Corporation.

H. This scheme will not be applicable to those employees who are availing the benefit of special increments after completion of 15 years continuous service and 2 special increments after completion of 20 years continuous service in their existing post.

1. This scheme will not be applicable to those employees who are not eligible for promotion to the next higher post due to lack of requisite qualification.

The above scheme will come into force with immediate effect."

24. A plain reading of the aforesaid provision under Clause A shows that the SLAS was introduced to address stagnation in service where an employee, despite being otherwise suitable for promotion, could not progress on account of the non-availability of a vacancy or the absence of a further sanctioned post. The scheme contemplated placement of an eligible employee in the next higher scale of pay as a personal scale, subject to the ceiling prescribed therein. It further provides that in the event a vacancy subsequently arises at the General

Manager level, regularisation of an employee granted the aforesaid personal scale would be considered only in accordance with the existing policy of the Corporation and the directives of the Government of Assam. The nature of the benefit contemplated under the scheme is further clarified by Clauses B, D and F. Clause B provides that an employee placed in the personal scale would continue to discharge the duties assigned by the management and would be entitled to the pay and allowances admissible to the corresponding grade, subject to the exclusions stipulated therein. Clause D expressly provides that the stagnation benefit would not lead to the creation of any post. Clause F, in turn, preserves the normal process of promotion in accordance with the applicable Recruitment and Promotion Rules. Therefore, it is evident that the scheme draws a clear distinction between financial upgradation by way of a personal scale and regular promotion to a higher post. The grant of a personal scale does not confer the designation or status of the higher post, nor does it dispense with the prescribed procedure for regular promotion.

25. In the present case, the petitioner was promoted to the post of Company Secretary Grade-I on 31.12.2002 and she completed 10 (ten) years of continuous service in the grade on 31.12.2012 and as no further promotional post was available in the Company Secretariat cadre, she became eligible for consideration under Clause A of the original SLAS. The respondents have not disputed that the petitioner was holding the post of Company Secretary Grade-I or that no further post of General Manager was available in her line of service. The objection of respondents is that in the absence of a sanctioned post of General Manager in the Company Secretariat cadre, the petitioner cannot claim promotion to that post or the pay scale attached thereto. However, the said objection does not adequately address the nature of the petitioner’s claim under

the original scheme. The absence of a further promotional post is one of the circumstances expressly contemplated by Clause A. In my view, if the benefit under the scheme were to be denied merely because no higher post existed in the employee's cadre, the very purpose for which the scheme was introduced would stand defeated. The relevant question is, therefore, not whether the petitioner could claim regular promotion to the post of General Manager, but whether she fulfilled the conditions for financial upgradation under the SLAS.

26. It is taken note and clarified that completion of 10 (ten) years of service does not, in isolation, dispense with the other conditions prescribed under the scheme. Clause A requires continuous and satisfactory service and suitability for promotion to the next higher post in accordance with the applicable promotion rules. Clause E further provides for examination of the case of an eligible employee by the respective DPC-PAC, in the case of the executive category and recommendation for upgradation subject to the satisfaction of the management. Thus, completion of the prescribed period of service entitles an employee to consideration under the scheme, subject to fulfilment of the other conditions prescribed therein. Thus, the question is whether the petitioner's claim was examined in accordance with those conditions under the original SLAS or was dealt with by applying the subsequently modified scheme.

27. The respondents have relied upon the decision of the Board of Directors taken in its 244th meeting held on 12.01.2011, whereby the petitioner's earlier prayer for promotion to the post of General Manager and for the time scale attached to that post was rejected. The said decision was communicated to the petitioner on 08.03.2011 and the respondents contend that having not challenged that decision, the petitioner cannot now seek substantially the same relief. The said contention, in the facts of the present case, cannot be accepted

as a complete answer to the petitioner's claim under the SLAS. The earlier decision preceded the date on which the petitioner completed ten years of service as Company Secretary Grade-I, i.e. 31.12.2012. More importantly, the rejection of a claim for regular promotion or for the time scale attached to the post of General Manager is not, by itself, determinative of a subsequent claim for financial upgradation under a stagnation-removal scheme, upon fulfilment of the qualifying period prescribed therein. The present claim must, therefore, be examined with reference to the terms of the SLAS and the circumstances obtaining when the petitioner completed the prescribed period of service. The earlier decision cannot be construed as having conclusively determined an entitlement that had not yet arisen on the basis of the subsequent completion of the qualifying period.

28. The next aspect requiring consideration is the modification of the SLAS by the Board of Directors in its 261st meeting held on 26.08.2013. The Office Order dated 13.09.2013 records that the existing SLAS was continued with partial modifications following the execution of the MoU with the Government of Assam and the adoption of the revised pay scales and allowances under the Assam Services (ROP) Rules, 2010. The said modified scheme provides that an employee considered for upgradation under the SLAS would be entitled to financial upgradation to the next higher Grade Pay only. It further provides that in view of the revised pay structure comprising pay bands and Grade Pay instead of individual scales for each category of post, the benefit of the next higher pay scale would be modified to the next higher Grade Pay in the approved pay structure. It also prescribe the corresponding Grade Pay treatment for the specified categories of employees. In the case of promotion from the cadre or post of Deputy General Manager to the post of General

Manager through the Public Enterprises Selection Board, the employee would be entitled to the pay band of Rs. 26,000–45,000/- with Grade Pay of Rs. 8,700/-. Accordingly, the Office Order states that the relevant portion of the SLAS was partially modified and that the modification would come into force with immediate effect.

29. The aforesaid modification came into force with effect on 13.09.2013. However, it does not expressly provide for retrospective application to employees who had completed the prescribed qualifying period under the original scheme before that date, nor does it expressly provide that claims arising under the original scheme before the modification would stand extinguished or would necessarily be governed by the modified provisions irrespective of the date on which the qualifying conditions were fulfilled. In the present case, as noted above, the petitioner completed 10 (ten) years of service in the post of Company Secretary Grade-I on 31.12.2012, before the modified scheme came into force. Therefore, her claim for financial upgradation was required to be examined with reference to the original scheme applicable on that date, subject to fulfilment of its prescribed conditions. The subsequent modification could regulate claims falling within its temporal operation, but, in the absence of any express provision to that effect, it could not be applied mechanically to defeat the petitioner's claim without first determining her entitlement under the original scheme.

30. On the same date on which the scheme was modified, i.e. 13.09.2013, the Corporation issued a separate Office Order granting financial upgradation to the petitioner. The relevant portion of the order reads as follows:

> "*The Board after detailed deliberation approved for financial upgradation of Mrs. S. Tamuli, Company Secretary to the next higher Grade Pay of Rs. 7,600/-, In the Pay*

Band of Rs. 12,000-40,000/- from her existing Pay Band of Rs.12,000-40,000/- + Grade Pay of Rs. 7,400/- as per the above modified Service Linked Advancement Scheme for the employees of AIDC Ltd.

Accordingly, Mrs. S. Tamuli, Company Secretary is upgraded to the next higher Grade Pay of Rs. 7,600/- under the Service Linked Advancement Scheme for the employees of AIDC Ltd. with immediate effect."

31. The aforesaid order demonstrates that the Board granted the petitioner financial upgradation under the modified scheme with effect from 13.09.2013. However, the order does not disclose that the petitioner's claim, arising upon completion of the qualifying period on 31.12.2012, was independently examined under the original SLAS. It is also relevant that the 32nd DPC-PAC had earlier rejected her claim by referring to the fact that she had already received two regular promotions and to the provisions of the ACPS. The respondents have not demonstrated that the petitioner's claim under the original SLAS was determined by applying the eligibility conditions contained in that scheme. In this regard, Clause G of the original SLAS prescribes a maximum of two advancements under the scheme during an employee's career. The restriction contained therein cannot, without further examination, be equated with a disqualification arising merely from the fact that an employee has received two regular promotions. The petitioner's entitlement must be assessed with reference to the actual benefits, if any, previously availed of by her under the SLAS and the conditions prescribed therein. The grant of the next higher Grade Pay under the modified scheme does not establish that her earlier claim was duly considered under the original scheme.

32. The respondents have also placed reliance upon the MoU dated 12.09.2012 executed between the Government of Assam and the Corporation. Clauses 2 and 3 of the MoU provide as under:

> *"2. The Assam Industrial Development Corporation Ltd. shall not create any new post without prior approval of the Finance Deptt. through the Industries & Commerce Deptt., (Administrative Deptt.) in Govt. of Assam.*
>
> *3. Any change or revision in pay scales, allowances, perks or any other service conditions of the Assam Industrial Development Corporation Ltd. employees having financial implication and which is not as per the provisions of Assam Services (ROP) Rules, 2010 shall not be made without prior approval of Finance Deptt."*

33. The aforesaid clauses of the MOU impose restrictions on the creation of new posts and on changes or revisions in pay scales and other service conditions having financial implications outside the framework of the Assam Services (ROP) Rules, 2010. These restrictions are relevant while considering the petitioner's claim for a personal scale and her separate prayer for creation of a personal post. However, the claim for a personal scale under the original SLAS cannot be equated with a claim for creation of a new post. Clause D of the original scheme expressly stipulates that the stagnation benefit shall not lead to the creation of any post. Therefore, the grant of a personal scale is conceptually distinct from the creation of a sanctioned post or regular promotion to the post of General Manager. The MoU must undoubtedly be respected in determining the permissible pay structure and the financial implications of the benefit. On the other hand, the execution of the MoU does not establish that the petitioner's claim under the existing SLAS stood extinguished. The respondents were required to examine the petitioner's claim under the scheme applicable on the relevant date and determine the corresponding financial benefit consistently with the applicable rules, the approved pay structure and the conditions imposed by the Government.

34. The respondents have further relied upon the communication dated 04.03.2024, issued by the Industries, Commerce and Public Enterprises Department, referring to the views of the Finance Department that the

ACPS/MACPS applicable to regular State Government employees did not extend to AIDC employees and the Administrative Department should take its own decision in relation to the SLAS. The said communication does not record a specific rejection by the Finance Department of the petitioner's claim under the original SLAS. Rather, it indicates that the ACPS/MACPS and the SLAS were treated as distinct schemes and that the question concerning the SLAS was left to the competent Administrative Department. Therefore, the petitioner's claim must be examined under the scheme framed and adopted by AIDC itself, subject to the governing pay structure and applicable approvals. The inapplicability of the State Government's ACPS/MACPS cannot constitute a ground for denying consideration under the Corporation's own scheme.

35. The petitioner has also relied upon the cases of Shri H. Barman and Shri U.C. Buragohain in support of her plea of unequal treatment. The respondents have sought to distinguish those cases on the ground that the benefits granted to the said employees arose in different circumstances. In the absence of a complete identity of the relevant service conditions and the circumstances in which the respective benefits were granted, it would not be appropriate to rest the decision in the present case solely on the plea of parity. Nevertheless, the petitioner's claim does not depend exclusively upon the cases of other employees. It arises from the terms of the original SLAS and the qualifying period prescribed therein. The absence of a further promotional post, which is relied upon by the respondents to oppose her claim, is a circumstance expressly contemplated by the scheme. Thus, the petitioner's claim must be decided on its own merits under the applicable provisions, rather than being rejected merely because no regular promotional post exists in the Company Secretariat cadre.

36. The petitioner has claimed the pay band of Rs. 26,000–45,000/- with Grade Pay of Rs. 8,700/-, relying upon the scale associated with the post of General Manager. In this regard, it is necessary to distinguish the personal scale benefit under Clause A of the original SLAS from the pay attached to regular promotion to the post of General Manager. The modified Office Order dated 13.09.2013 specifically refers to promotion from the cadre or post of Deputy General Manager to the post of General Manager through the Public Enterprises Selection Board. It cannot be treated as automatically establishing that the same pay band and Grade Pay must be granted as a personal scale under the original scheme. The entitlement under the original SLAS must be determined in accordance with the ceiling prescribed therein and the corresponding pay structure lawfully applicable to that personal scale benefit.

37. Consequently, the petitioner's entitlement under the original scheme cannot be equated with an automatic right to regular promotion, conferment of the designation of General Manager or creation of a post of General Manager (Company Secretariat). Those matters are governed by the applicable service rules, sanctioned cadre structure and prescribed selection procedure. The relief to which the petitioner may be entitled under the SLAS is the financial benefit contemplated by that scheme, subject to its terms and the applicable pay structure.

38. Regard being had to the judgments relied upon by learned Senior Counsel for the petitioner as well as learned Standing Counsel for the respondent-Corporation, the said decisions are settled propositions of law and there is no quarrel with the principles laid down therein. The judgments relied upon by the petitioner, including **C.R. Rangadhamaiah** (supra), **Yogendra Shrivastava** (supra), have been cited in support of her contention concerning service

benefits and the effect of changes in the applicable service conditions. On the other hand, the decisions relied upon by the respondent-Corporation, including **Grade-I Dass Officers' Association** (supra), **S. Arumugham** (supra), and **M.V. Mohanan Nair** (supra), have been cited in support of the Corporation's stand regarding the governing service framework and the implementation of financial upgradation schemes. The principles laid down in the aforesaid decisions must be applied in the context of the particular scheme governing the petitioner's service and the facts established on record. The issue before this Court is not whether the Corporation is competent to modify its scheme in accordance with law, but whether the petitioner's claim, arising upon completion of the prescribed qualifying period before the modification came into force, was determined in accordance with the scheme applicable to her. The decisions relied upon by either side do not dispense with the necessity of examining the express terms of the SLAS and applying them to the petitioner's case.

39. On a consideration of the scheme as a whole, the relevant dates and the orders passed by the Corporation, this Court finds that the petitioner completed the prescribed period of 10 (ten) years of service on 31.12.2012, before the modified SLAS came into force on 13.09.2013. The original scheme expressly contemplated financial upgradation by way of a personal scale in cases of stagnation caused by the non-availability of a vacancy or a further sanctioned post. Although the Corporation was entitled to modify the scheme in the light of the revised pay structure and the conditions imposed under the MoU, the subsequent modification, which came into force with immediate effect, could not be applied to the petitioner's claim without determining her eligibility under the original scheme. The material on record does not demonstrate that such determination was undertaken. The decision to restrict her benefit to the next

higher Grade Pay under the modified scheme, without addressing her claim under the original SLAS, therefore, cannot be sustained to that extent.

40. For the reasons aforesaid, this Court holds that the petitioner is entitled to have her claim for financial upgradation determined under the original SLAS applicable on 31.12.2012, subject to fulfillment of the eligibility conditions prescribed therein. However, this finding does not confer upon the petitioner an automatic right to regular promotion to the post of General Manager, nor does it direct creation of a personal or sanctioned post in the Company Secretariat cadre. It is confined to the financial upgradation contemplated by the original scheme and the consequential pay fixation admissible thereunder.

41. In the result, the writ petition is allowed in the following terms:

(i) The Office Order dated 13.09.2013, insofar as it restricts the petitioner's claim arising upon completion of the qualifying period on 31.12.2012 to the next higher Grade Pay under the modified SLAS without determination of her claim under the original scheme, is set aside to that extent.

(ii) The competent authority of AIDC shall determine the petitioner's entitlement to financial upgradation under the original SLAS as it stood on 31.12.2012, in accordance with the terms of the scheme, including the conditions relating to continuous and satisfactory service, suitability for promotion and consideration by the appropriate committee.

(iii) If the petitioner is found eligible under the original scheme, the respondents shall extend to her the personal scale benefit admissible thereunder, subject to the prescribed ceiling and the applicable Government approved pay structure and shall refix her pay accordingly

with effect from the date on which the benefit became admissible under the scheme. The consequential monetary benefits shall also be determined after giving due adjustment to the financial upgradation already granted to her under the Office Order dated 13.09.2013, so as to avoid any duplication of benefit.

(iv) The aforesaid exercise shall be completed within a period of 3 (three) months from the date of receipt of a certified copy of this judgment.

42. It is made clear that the directions contained herein shall not be construed as directing the creation of a post of General Manager (Company Secretariat) or conferring upon the petitioner regular promotion to the post of General Manager which is best left with the DPC-PAC. The relief is confined to financial upgradation under the original SLAS and the consequential benefits, if admissible, in accordance with the terms of the scheme.

43. Writ petition stands disposed of in terms above.

JUDGE

Comparing Assistant