
(2021) 01 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (c) No. 733 Of 2018

Aheibam Romel Singh

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2021) 01 MAN CK 0005

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : Kh. Tarunkumar, H. Devendra, Lenin Hijam, Dr.R.K. Deepak

Final Decision : Allowed

Judgement

1. The petitioner has filed the writ petition challenging the Government order dated 3.1.2016 so far fixation of the revision of pay for the post of

Principal, District Institute of Education and Training (the scale of pay of Rs. 15600-39100+GP6600/- with effect from 23.1.2016 and quash the same.

The petitioner also prayed for a direction on the respondents to revise the pay of Rs.15600- 39100+GP6600 with effect from the publication of the

Recruitment Rules for the post of Principal, DIET, Department of SCERT, Manipur i.e. on 29.11 2008 or from the date of promotion of the petitioner

to the post of Principal, DIET on 18.1.2014 within a stipulated period.

2. The case of the petitioner is that at present he is serving as Principal, DIET in the Department of SCERT, Manipur and the scale of pay attached to

the post of Principal, DIET was equal with the scale of pay for the post of Principal of the Government Higher Secondary School in various revision

of pay like revision of pay 1966, 1975, 1982, 1990. However, without giving any justifiable reason, in the revision of pay 1999, the scale of pay to the

post of Principal, DIET was revised at the scale of pay of Rs.8000-13500 and whereas the scale of pay to the post of Principal, Higher Secondary

School was revised at a higher scale of pay of Rs.10000-15200 though the qualification prescribed for the post of Principal, DIET is higher than the

qualification prescribed for the post of Principal of the Government Higher Secondary School. Functions and duties of the post of Principal, DIET is

also more onerous than the Principal of Government Higher Secondary School.

3. Further case of the petitioner is that in the State of Nagaland where the pattern and norms of NCTE is followed like in the State of Manipur, the

pay scale for the post of Principal, DIET has been revised at the scale of pay of Rs.15600-39100+GP7600 which is equivalent with the scale of pay

attached to the post of Joint Director of School Education.

4. It is averred that in the year 1988, the Ministry of Human Resources Development (Department of Education), Government of India, recommended

to create the post of Principal, DIET in the corresponding pay scale at par with the Deputy Directors of the State Education Department. In the State

of Manipur, as a policy, all the post of Deputy Directors in the School Education Department have already been re-designated as Joint Director.

5. The petitioner along with other incumbents have already submitted representations to the respondent authorities to rectify the pay anomaly for the

post of Principal, DIET and requested to revise the scale of pay for the post of Principal, DIET at par with the pay scale of Joint Director

(SCERT)/Principal of the Government Higher Secondary Schools. The Director, SCERT also forwarded the claim of the petitioner by highlighting a

clear picture of the anomaly qua the pay scale for the post of Principal, DIET in comparison with the pay scale of the Principal, Government Higher

Secondary Schools.

6. It is further averred that the scale of pay for the post of Principal, DIET in the Department of SCERT, Government of Manipur was revised

belatedly at the scale of pay of Rs.15600- 39100+GP6600 with effect from 23.1.2016 which is at par with the scale of pay for the post of Principal of

the Government Higher Secondary Schools/Joint Director of SCERT. Because of the revision of scale of pay for the post of Principal, DIET with

effect from 23.1.2016, the petitioner has been placed at a very disadvantageous position in comparing with his counterpart whenever any DPC is held

for promotion to the post of Director, SCERT.

7. In the recruitment rules for the post of Director, it is mentioned that the insertion of Principal, DIET in the feeder list shall be taken effective from

the date of prescription of identical pay scale with Joint Director (NFE)/Joint Director FD(PIC) which is approved by the State Cabinet. Whenever

any DPC is held for promotion to the post of Director, SCERT, though the petitioner was promoted to the post of Principal, DIET on 18.1.2014, his

eligibility will be counted only with effect from 23.1.2016 i.e. the day on which the scale of pay for the post of Principal, DIET has been revised at par

with the scale of pay for the post of Joint Director(NFE)/Joint Director, SCERT/Principal, Government Higher Secondary Schools. Therefore,

necessary corrections of the date of effective of the revision of pay scale for the post of Principal, DIET is necessary. Hence, the petitioner has

constrained to file the present writ petition.

8. The first respondent filed affidavit-in-opposition stating that it is not mandatory for the Government to borrow the systems followed in another State

and the State of Manipur has its own policy decisions. Upgradation of posts and rectification of pay scales are to be done under the norms prescribed

by the Finance Department (PIC), Government of Manipur. It is stated that the pay scale of the Principal, DIET has been revised to Rs.15600-

39100+GP6600, however, rectification of anomalies in the pay scale is not under the purview of the administrative department and it is under the

purview of the Finance Department (PIC), Government of Manipur.

9. It is further stated that as per the conditional note inserted in the recruitment rules for the post of Director, SCERT, the petitioner has become

eligible for appointment to the said post with effect from 23.1.2016, the date on which the pay scale for the post of Principal, DIET was revised to

Rs.15600-39100+GP6600. Fixation of pay scale of a post is done according to the duties and responsibilities assigned to the post and the post of

Principal, Government Higher Secondary School was prescribed higher pay scale as it was made feeder to the post of Additional Director of

Education(S) Department whereas the post of Principal, DIET was only a feeder to the post of Joint Director before the new recruitment rules for the

post of Director, SCERT was framed. In fact, the post of Principal was a feeder to the post of Joint Director before the amendment of the

recruitment rules for the post of Director, SCERT in which the post of Principal, DIET was included as one of the feeders.

10. It is stated that the petitioner's claim for providing the pay scale of Principal, DIET with effect from 29.11.2018, the date of the publication of the recruitment rules for the post of Principal, DIET or from 18.1.2014 i.e., the date of his promotion to the post of Principal, DIET is not reasonable and thus, prayed for dismissal of the petition.

11. The second respondent filed affidavit-in-opposition stating that the Manipur Services (Revised Pay) (1st Amendment) Rules, 1999 was notified on

10.3.1999 as per the approval of the State Cabinet to the recommendation of the Committee of Officers on Pay Anomaly constituted to the revision of

pay scales of various posts corresponding to the pre-revised pay scale including the post of Principal, DIET and Principal, Government Higher

Secondary Schools. It is stated that the pay for the post of Principal, DIET has been revised to the scale of pay of Rs.15600-39100+GP 6600 with

effect from 23.1.2016 and it is for the State Government to prescribe appropriate pay scale for all Government posts and the States does not adopt

pay structures of other States.

12. It is stated in the affidavit-in-opposition that the post of Principal, DIET has been newly inserted as feeder to the post of Director, SCERT along

with other existing feeder grades and this insertion is on the basis of the fact that the Principal, DIET which was earlier lying in the scale of pay of

Rs.9300-34800+GP5400 has come to be upgraded to Rs.9300-34800+6600 at par with other feeder grades of Joint Director (NFE) and Joint Director

(SCERT). This shows that upon upgradation of pay of the Principal, DIET, there has been a consequent upgradation in status as well. Therefore, there

is no irregularity in issuing the notification dated 3.1.2017 which was issued with the concurrence of the Finance Department and the same was done

as per the policy decision of the State.

13. The fifth respondent filed affidavit-in-opposition stating that the Government modifies and notifies the pay scales of posts from time to time for

every department as per the State policy. It is for the State Government to examine the existing laws and State policies while determining the pay

scales of different posts and it is for the State Government to assign duties and responsibilities to a particular post and fix an appropriate pay scale for

the said post. Having taken into consideration all these factors, the State Government had decided an appropriate pay scale and it is not for the petitioner to fix the pay scale of the post of Principal, DIET. It is not necessary for the State of Manipur to adopt the scale of pay of a particular post fixed in the State of Nagaland.

14. It is stated that the State Government had fixed appropriate pay scales for Principal, DIET and Principal, Government Higher Secondary School under revision of pay 1999 and revision of pay 2010 taking into consideration all relevant factors and the existing rules and regulations and in fact, these pay scales have reached a finality and been acted upon. A representation dated 17.10.2016 was submitted by the petitioner pointing out the defective parts/clauses in the revised recruitment rules of Director. Nowhere in the country, the Principal of a teaching institution made direct feeder to Director of a Department keeping in view of the lack of administration experience on the part of the Principal. Before the amendment of the recruitment rules for the post of Director (SCERT), the post of Joint Director (NFE/SCERT) was the only post feeder to the Director, SCERT and the Principal, DIET was feeder to the Joint Director (NFE).

15. In his affidavit-in-opposition, the fifth respondent stated that when he was appointed in March 2014 as Joint Director (SCERT), the post of Principal, DIET was not even born as feeder to Director, SCERT and the fifth respondent was the lone eligible candidate for the post of Director, SCERT and the fifth respondent therefore questions how a Principal, DIET who was born as feeder to Director, SCERT only in 2016, can claim seniority/supersede an already existing regular Joint Director, SCERT. Aggrieved with the footnote in the recruitment rules, 2016, the fifth respondent filed W.P.(C) No.936 of 2016 before this Court and by an order dated 22.1.2019, this Court was pleased to dispose of the writ petition and a copy of the order was communicated to the Government of Manipur. Accordingly, the Government of Manipur issued orders on 18.9.2019 finalizing the seniority list of officers as feeder to the post of Director, SCERT and the plea of the petitioner that he is senior to the Joint Director, SCERT is unfounded and illogical.

16. It is stated that pay rectification has to be prospective, otherwise it would disturb the setup of the whole Department. Moreover, Principals were

promoted from Theory Instructor/Lecturer. These Theory Instructors, a class II post, were upgraded as Lecturer by revision of pay and till date no administrative order has been issued for upgradation of Theory Instructors/Lecturers. It is the prerogative of the States to fix the pay structures as per the existing rules and regulations of the State and the pay Scales prevalent in the State of Nagaland need not be the same as those prevalent or to be applied in the State of Manipur. Since the impugned notification dated 3.1.2017 in respect of the revision of pay for the post of Principal, DIET was issued as per the recommendation of the PIC of the Finance Department, which is the final authority, there is no need to interfere with the same and prayed for dismissal of the writ petition.

17. Assailing the impugned order, the learned counsel for the petitioner submitted that earlier the petitioner along with other personnel have submitted a representation to rectify the pay anomaly for the post of Principal, DIET and requested to review the scale of pay for the post of Principal, DIET at par with the pay scale of Joint Director, SCERT/Principal, Government Higher Secondary School. He would submit that on 30.5.2014, the Director, SCERT, Manipur also requested to revise the pay scale of the Principal, DIET at par with the pay scale of Principal of Higher Secondary School/Joint Director of Education(S)/SCERT Department and keeping quite for long number of years, only on 3.1.2017, the scale of pay of Principal, DIET was revised at the scale of pay of Rs.15600-39100+GP6600 with effect from 23.1.2016 which is similar with the scale of pay for the post of Principal of the Government Higher Secondary School and because of this belated revision of pay, the petitioner has been placed at the very disadvantageous position in comparing with other counterparts while considering his case for promotion to the post of Director, SCERT.

18. The learned counsel further submitted that whenever any DPC is held for promotion to the post of Director, SCERT, the eligibility of the petitioner will be counted only with effect from 23.1.2016 though he was promoted to the post of Principal, DIET on 18.1.2014.

19. The learned counsel next submitted that on 28.12.2006 itself, the State Finance Department requested the Department of Personnel to amend the recruitment rules for the post of Principal, DIET for rectification of pay anomaly for the said post and that the said letter was written with the approval

of the State Cabinet. Further, the Director, SCERT also requested the Commissioner, SCERT, Government of Manipur to revise the pay scale of the Principal, DIET in the pay scale of Rs.15600- 39100+GP6600 for smooth functioning of the DIET centre before promotion of the petitioner to the post of Principal, DIET and despite all these recommendations, no timely action was taken to revise the scale of pay for the post of Principal, DIET at par with the scale of pay for the post of Principal, Government Higher Secondary School/Joint Director, SCERT. Hence, it is a clear case of administrative lapses committed by the official respondents, for which the petitioner shall not be a victim.

20. It is the submission of the learned counsel for the petitioner that on 9.7.2019, the Finance Department issued a notification for revision of pay of

various posts under the revision of pay 2010 and by the said revision of pay, pay scales of various posts like Lower Division Clerk of all the

Engineering Departments and other Departments were revised with notional effect from the date of publication of the relevant recruitment rules for all

the said posts. In the instant case also, the scale of pay for the post of Principal, DIET is entitled to be revised notionally from the date of publication

of the recruitment rules for the said post with effect from 29.11.2008 by invoking Article 14 of the Constitution of India. Therefore, the said

notification be extended in the present case. Thus, the learned counsel for the petitioner prays for a direction to the respondents to revise the scale of

pay for the post of Principal, DIET in the pay scale of Rs.15600-39100+GP6600 notionally with effect from the date of publication of the recruitment

rules for the said post i.e., with effect from 29.11.2008.

21. The Learned Counsel for the petitioner has produced the following citations for supporting his case :

a) Amrik Singh Vs Union of India, 1980 (3) SCC 393

â??9. Let us assume for a moment that the State Government had not reported to the Central Government and that the consultation with the Union

Public Service Commission had not been made by the Central Government. Let us further assume that, in a strict view, that was needed. Even so, the

Union Territories of Himachal Pradesh and Delhi should have formally told the Home Ministry about the officiation beyond three months by Ahluwalia

in a cadre post. This was not done. The real line of distinction between a State

and the Union of India might well be blurred a little when it is a Union Territory. Moreover, there is the circumstance that the entire Service was in the melting pot for a few years because the All-India Services were being switched from Himachal Pradesh and Delhi into all the Union Territories. Even more; since uncertainty prevailed while the question of a part of Punjab being tacked on to Himachal Pradesh came to engage the Administration. Amidst these fluctuating factors, the solecism committed by the Union Territory of Himachal Pradesh in not having reported to the Central Government about continuing Ahluwalia, beyond 3 months, in a cadre post, was a venial sin for which the candidate was free from blame. Secondly, the argument, based on Sahney, a senior to Ahluwalia, being in an ex-cadre post and therefore, Ahluwalia's service during that period not being regular, also cannot be exaggerated out of proportion. Technically, the CBI, posts are ex-cadre posts, but it is a Central Government Department and nothing is suggested that there was something suspicious in Sahney being kept in the CBI, to facilitate Ahluwalia's continuance in a Cadre post. Everything in this case is straightforward and, therefore, if there was any administrative lapse, Ahluwalia could not be victimised. Indeed, an unwitting hardship inflicted on a member of the Service under such circumstances can be relieved against by exercise of the residuary power of Central Government under Rule 3 extracted above. They passed the order (Annexure 'X') which we reproduce:

Annexure 'X'.

No. 24/16/71-Pers. II (IPS) Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya.

MEMORANDUM.

S/Shri P.C. Sahney, K.S. Dhaliwal and V.K. Ahluwalia were appointed from the Indian Police Service by promotion from the State Police Service on

January 30, 1971 and allocated to the Himachal Pradesh Cadre of Service.

2. Prior to their appointment to the Indian Police Service, these officers were holding the following posts.

* * *

In accordance with Regulation 8 of IPS (Appointment by Promotion) Regulations, 1955 the Select List officers are to be appointed to the cadre post in

the order in which their names appear in the Select List. As such in cases where a senior select list officer was not holding a cadre post, the

officiation in a cadre post of a junior officer in the Select List was not approved by the Central Government because the appointment of Junior Select

List officer to a cadre post was violative of the provisions of Regulation 8 of the Promotion Regulations.

* * *

Accordingly, it was decided that the rules may be relaxed to count the period of officiation against ex-cadre posts so as to give benefit of the service

rendered by the junior officers in the cadre post for the purpose of seniority. Applying the ratio of the case of U.T. Cadre, the Government of India

has come to the conclusion that the appointment of Shri P.C. Sahney in the CBI on deputation basis from December 7, 1964 to October 6, 1969 was

made by the Central Government in public interest since Shri Sahney belonged to the U.T. Cadre which was managed by the Central Government. It

can, therefore, be said that the question of misuse of provisions of rules and regulations by the State Government in this case does not arise. The

certificates that but for his appointment to ex-cadre post in the CBI, Shri Sahney would have continued against a cadre post, was to be issued by the

Ministry of Home Affairs and the fault, if any, lies with the Central Government and not with any State Government. It has, therefore, been tentatively

decided to count the ex-cadre officiations of Shri P.C. Sahney from December 7, 1964 to October 6, 1969 for the purpose of seniority in relaxation of

the provisions of the IPS (Regulation of Seniority) Rules, 1954.

* * *

In view of the counting of ex-cadre officiation of Shri

P.C. Sahney for the period December 7, 1964 to October

6, 1969, the cadre officiation of S/Shri K.S. Dhaliwal and V.K. Ahluwalia prior to October 13, 1969 will not be violative of the provisions of Regulation

8 of IPS (Appointment by Promotions) Regulations, 1955. It is, therefore, prepared to count the entire cadre officiation of S/Shri K.S. Dhaliwal and

V.K. Ahluwalia for the purpose of their seniority. Accordingly, the crucial date in respect of S/Shri K.S. Dhaliwal and V.K. Ahluwalia shall be March

28, 1965 and, November 11, 1965, respectively.

* * *

sd/-

A. JAYARAMAN

Under-Secretary to the Government of India??

After full and second consideration, the Central Government passed Annexure ??
Y?? dated December 1, 1978, whereby Ahluwalia was given the

benefit of 1961 as the year of the allotment. The period of officiation of Ahluwalia
between August 1, 1968 and October 19, 1969 was approved by

the Central Government after consultation with the UPSC. This retrospectively
cured the infirmity that existed in Ahluwalia??s officiation, beyond

3 months or 6 months, in a cadre post without consultation with the UPSC. The
contravention of Regulation 8 was, thus, relieved against.

b) Ram Ganesh Tripathi & Others Vs. State of U.P. and Others, (1997) 1 SCC 621.

??9. The Government thereby has tried to give seniority to the respondents and
those other ad hoc employees by treating them as permanently

appointed promotees since

2 years after the date of their joining the posts as Sahayak Nagar Adhikaris.
Thus the respondents and other ad hoc employees who had been

appointed temporarily and whose services were not regular and were regularised
only on 17-5-1985, will have to be treated as permanently appointed

in 1974, as they were for the first time appointed on those posts in 1972. The
said order was not challenged in the writ petition as it had not come to

the notice of the appellants. It has been filed in this Court along with the counter-
affidavit of Respondents 3, 7, 8 and 9 and is relied upon by all the

respondents. This order also deserves to be quashed as it is not consistent with
the statutory Rules. It appears to have been passed by the Government

to oblige the respondents and similarly situated ad hoc appointees.??

c) State of U.P. & Others Vs. U.P. Sales Tax Officers Grade-II Association, (2003)
6 SCC 250.

??9. Learned counsel appearing for the respondent Association, therefore,
argues that once the Government resolves to depart from the report of

the Pay Commission of giving different pay revision based on grouping of the
District Level Officers engaged in developmental activities and others

not so engaged, there was no justification not to give to the Trade Tax Officers

revised pay scale of Rs 625-1240 which is the pay scale

recommended in place of pre-revised scale of Rs 400-750. It is submitted that the Trade Tax Officers discharge both administrative and quasi-judicial

functions within the district and sometimes their jurisdiction goes beyond the district based on the area for which they are appointed. When the District

Level Officers, who were in the pre-revised scale of Rs 400-750, have been granted by the State Government, the pay scale of Rs 625-1240, the High

Court is justified in holding that it was discriminatory to grant the Trade Tax Officers carrying the same pre-revised scale of Rs 400-750, the pay scale

of Rs 625-1170. On the aforesaid additional reason, the judgment of the High Court in favour of Trade Tax Officers has been supported.

10. After going through the relevant part of the report of the Second Pay Commission, the resolution of the Government taken thereupon and hearing

the submissions made by the learned counsel appearing for the parties, we have come to the conclusion that the High Court committed no error in

granting relief by directing that the Trade Tax Officers be fixed in the revised scale of Rs 690-1420 on a par with District Level Officers carrying the

same pre-revised scale of pay.

11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review

obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the

employees. In the present case, however, judicial review is not sought against the report or recommendations of the Pay Commission. What the

respondent Association has questioned is the implementation of the resolution of the Government based on the report and recommendations of the Pay

Commission. As we have seen above, the Pay Commission classified the District Level Officers into two groups. Those engaged in welfare and

developmental activities, in view of their onerous duties, were recommended pay revision a step above other District Level Officers engaged in

traditional work of the Government. These recommendations of the Pay Commission by classifying District Level Officers into two groups i.e. A and

B has been given a go-by rightly too, in our view, by the Government when it resolved under its decision taken on 29-12-1981 to grant revised pay

scales to District Level Officers only on the basis of the pre-revised pay scales

which they were carrying. We have also noted the relevant part of the resolution of the Government which recommends for the officers in the pre-revised scale of Rs 400-750, the pay scale of Rs 690- 1420.

12. In the light of the aforesaid decision of the Government, Trade Tax Officers who were carrying pre- revised scale of Rs 400-750 could not have been discriminated vis-À-vis the District Level Officers who also carried the same pre-revised scale of pay. Pursuant to the aforesaid decision of the Government, Trade Tax Officers have been granted a pay scale of Rs 625-1170 which is a step below the pay scale of Rs 690-1420 granted to the District Level Officers who carried the same pre-revised scale of pay with Trade Tax Officers.

13. The High Court has also gone into the question as to whether the Trade Tax Officers can be dealt differently from the District Level Officers.

The Pay Commission did consider the cases of Trade Tax Officers in the Tax Department distinctly from District Level Officers in other departments of the State Government but for both the officers in pre-revised scale of Rs 400-750, the Commission recommended revised scale of Rs 625-1170.

Thereafter, the government resolution granted pay scale of Rs 625-1240 to the officers in pre-revised scale of Rs 400-750. Pursuant to the resolution

of the Government, all officers either in the Tax Department or in other departments, carrying pre-revised scale of Rs 400-750 were required to be

granted revised scale of Rs 625-1240 and no discrimination inter se between them could be made on the basis of the report of the Pay Commission.

The High Court has examined the nature of duties and functions of Trade Tax Officers. The High Court has rightly come to the conclusion that the

Trade Tax Officers exercise administrative and quasi-judicial functions both within the district and sometimes outside and can, in that sense, be treated

as District Level Officers on a par with District Level Officers in other departments. The importance of their role and their significant contribution,

functionally in the administrative hierarchy cannot in any manner be belittled even vis-À-vis the others, was appreciated by the Commission or

ultimately considered for better treatment even by the Government, in the process of implementation of the report of the Commission. It appears that

the resolution of the Government dated 29-12-1981 and particularly its relevant part quoted above, makes no distinction between the officers carrying

pre-revised scale of Rs 400-750 in the Tax Department as well as in other departments. In effect, the implementation of the resolution of the

Government seems to be discriminatory and has rightly been interfered with by the High Court by directing the State Government to grant revised pay

scale of Rs 690-1420 to Trade Tax Officers on a par with District Level Officers who carried the same pre-revised scale of pay.â??

22. Per contra, the learned counsel for the respondent State submitted that revising of scale of pay for the post of Principal, DIET at Par with the

scale of pay for the post of Principal, Government Higher Secondary School/Joint Director, SCERT was approved by the State Cabinet on 23.1.2016

and therefore, the effective date for revision of pay for the post of Principal, DIET has been counted from 23.1.2016. Hence, there is no irregularity

and/or illegality in the impugned order, which was issued in concurrence with the State Finance Department.

23. The learned counsel further submitted that the post of Principal, DIET has been newly included as feeder post for promotion to the post of

Director, SCERT along with other existing feeder grades namely Joint Director (NFE) and Joint Director (SCERT) in the State Council of Educational

Research and Training, Manipur. This inclusion of Principal, DIET as feeder post is due to the upgradation of the scale of pay from Rs.9300-

34800+GP5400 to Rs.9300 34800 GP6600 which is at par with other feeder grades i.e., Joint Director (NFE) and Joint Director (SCERT). Therefore,

if the claim of the petitioner for revision of scale of pay of Principal, DIET is allowed with retrospective effect, it will result to unsettlement of settled

positions. For supporting his case, the Learned Counsel for State has produced a judgment reported in State of West Bengal and another Vs. West

Bengal Minimum Wages Inspectors Association and Others, (2010) 5 SCC

â??23. It is now well settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were

carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than

what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts.

24. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised

pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending

upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the

same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is

considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the

benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge

duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.â??

24. The learned counsel for the fifth respondent submitted that before the upgradation of the pay scale of Principal, DIET as equivalent to that of Joint

Director, the post of Principal, DIET was a feeder to the Joint Director (NFE) and when the fifth respondent was promoted to Joint Director (SCERT)

in 2014 and the petitioner as Principal, DIET in the same year, the Principal, DIET was still a feeder to Joint Director (NFE/SCERT). He would

submit that if retrospective upgradation is granted even notionally, then a situation may arise where a Principal, DIET, who was feeder to Joint

Director (NFE), could become senior to Joint Director (NFE/SCERT), thereby contradicting the established recruitment rules and overturning the

already established hierarchy.

25. The learned counsel further submitted that the fifth respondent became a Lecturer about 18 years ahead of the petitioner and the seniority of the

fifth respondent over the petitioner even before they were subsequently regularized as Joint Director (SCERT) and Principal, DIET respectively.

26. The learned counsel next submitted that a policy decision of the Government cannot be challenged without reasonable cause and it is for the State

Government to examine the existing laws and State policies while determining the pay scales of different posts. According to the learned counsel,

different in pay scales of Principal, DIET and Principal, Higher Secondary School is proper and legal. Since the Government of Manipur finalized the

seniority and placed the fifth respondent at Serial No.1 amongst those in the feeder of the Director, SCERT, there is no need to revisit the said issue

again. Since the impugned order dated 3.1.2017 regarding pay revision of Principal, DIET was issued as per the recommendation of the PIC of the

Finance Department, the same cannot be faulted and the PIC is the authority in matter of pay fixation of employees and that the revision of pay 2019

dated 11.7.2019 specifically provided that the date of upgradation of the scale of pay of Principal, DIET will be effective from 23.1.2016. Finally, the

learned counsel submitted that the petitioner cannot claim seniority on a date prior to his birth in the post and thus, prayed for dismissal of the writ

petition. For supporting his case, the Learned Counsel for fifth respondent has produced the following citations.

Union of India and others Vs. M.V. Mohanan Nair, (2020) 5 SCC 421

30. The learned Amicus Curiae and the learned counsel appearing for the respondents urged the Court to adopt a purposive interpretation

that the words "immediate next higher grade pay" to be interpreted as "Grade pay of the next promotional post" in the hierarchy. MACP

Scheme envisages merely placement in the immediate next higher grade pay. By perusal of the MACP Scheme extracted earlier, it is seen that the

words used in the Scheme are "placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands". The

term "grade pay in the next promotional post" is conspicuously absent in the entire body of the MACP Scheme. The argument of the respondents

that the benefit of MACP Scheme is referable to the promotional post, is dehors the MACP Scheme and cannot be accepted. Though ACP and

MACP Schemes are intended to provide relief against stagnation, both the schemes have different features. Pay scales under the Sixth Pay

Commission and the MACP Scheme are stated to be more beneficial since it extends to the employees with time intervals with higher pay bands and

various facilities which were not available under the ACP Scheme including the three financial upgradations in shorter time span. In any event, MACP

Scheme has not been challenged by the respondents. As rightly contended by the learned ASG, the respondents cannot be permitted to cherry-pick

beneficial features from the erstwhile ACP Scheme and also take advantage of the beneficial features in the MACP Scheme.

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34. Observing that the decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review, in *State of U.P. v. U.P. Sales Tax*

Officers Grade II Assn. State of U.P. v. U.P. Sales Tax Officers Grade II Assn., (2003) 6 SCC 250, the Supreme Court held as under: (SCC p. 253,

para 11)

“11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review

obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the

employees.”

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36.....

37. Observing that fixation of pay and determination of responsibilities is a complex matter which is for the executive to take a decision, the Courts

should approach such matters with restraint, in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. State of Haryana v. Haryana Civil*

Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822

38. the Supreme Court held as under: (SCC pp. 79-80, para 10)

“10.. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a

constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter

which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in

the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional

liability of a revised scale of pay. “That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such

administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied

that the decision of the Government is patently irrational, unjust and prejudicial

to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.â??

(emphasis supplied)

39. The prescription of pay scales and incentives are matters where decision is taken by the Government based upon the recommendation of the

expert bodies like the Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in

Haryana Civil Secretariat Personal Staff Assn. State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC

(L&S) 822

40. , the Court should approach such matters with restraint and interfere only when the Court is satisfied that the decision of the Government is

arbitrary. Even in a case where the Court takes the view that order/scheme passed by the Government is not an equitable one, ordinarily only a

direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases

where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP

Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP

Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.

27. This Court considered the submissions raised by the learned counsel for the parties and also perused the materials available on record.

28. The grievance of the petitioner is that the post of Principal, DIET which was re-designated from Principal, BTC enjoyed the same scale of pay

with the post of Principal, Government Higher Secondary School in the revision of pay 1975, 1982 and 1990 etc. and the post of Principal, DIET

should have been allowed to enjoy the same scale of pay in the revision of pay

1999 also with that of the post of Principal, Government However, the same was not done and hence, Higher Secondary School. he prays for a direction to revise the scale of pay for the post of Principal, DIET with effect

from the publication of the recruitment rules i.e. from 29.11.2008 or from the date when the petitioner was promoted to the post of Principal, DIET.

29. It appears that the respondent authorities after realizing the mistake in giving the revised scale of pay for the post of Principal, DIET, rectified the

said anomaly by revising the scale of pay for the post of Principal, DIET belatedly on 3.1.2017 by giving the revised scale of pay for the post of

Principal, DIET at Rs.15600- 39100+GP6600 with effect from 23.1.2016.

30. According to the petitioner, he suffered a lot for the belated revision of pay and no reasoning assigned for not rectifying the scale of pay in time.

31. The learned counsel for the petitioner submitted that the pay scale of Principal, DIET must be placed at par with the pay scale of Joint Director of

Education (S), Government of Manipur as per the recommendation of the Ministry of Human Resource Development (Department of Education),

Government of India. However, the State Government has not implemented the said recommendation for a quite long time and only on 3.1.2017

through the impugned order, the scale of pay for the post of Principal, DIET has been revised from Rs.9300-34800+GP5400 to Rs.15600-

39100+GP6600 with effect from 23.1.2016 and that the State authorities acted in a very lethargic manner to implement the aforesaid recommendation

of the Central Government in revising the scale of pay for the post of Principal, DIET, SCERT, Manipur and therefore, it is a clear case of

administrative lapses for which the petitioner shall not be a victim.

32. Refuting the submissions of the learned counsel for the petitioner, the learned counsel for the State argued that before enforcement of revision of

pay 1999, the post of Principal, DIET and the post of Principal, Government Higher Secondary School were carrying the same pay scale does not

mean that after implementation of revision in pay scales, they should necessarily have the same revised pay scale and parity cannot be claimed merely

on the basis that these two posts were carrying the same scale of pay. In support, the learned counsel for the State relied upon the decision of the

Apex Court in the case of State of West Bengal and another v. West Bengal Minimum Wages Inspectors Association and others, (2010) 5 SCC 225.

33. According to the fifth respondent, by the time the petitioner was appointed as Principal, DIET, the post of Principal, DIET was not feeder to

Director, but respondent No.5 was already feeder and the State policy cannot be challenged unless it is patently irrational, unjust and prejudicial to a

section of employees and that the Government while taking the decision has ignored factors which are material and relevant for a decision in the

matter. The learned counsel further argued that pay revision cannot be effected before the cabinet approval on 23.1.2016 and also before the

amendment of the recruitment rules of Principal, DIET.

34. The first respondent admitted the fact that the Basic Training College, Imphal was upgraded as DIET by renaming the post of Principal, BTC as

Principal, DIET from revision of pay 1999. The fifth respondent also admitted the fact that in the revisions of pay 1966, 1975 and 1982, the post of

Principal, Government Higher Secondary School and the Principal of the Basic Training College were enjoying the same scale of pay.

35. It also appears from the records that no action was taken up by the administrative department as well as the Finance Department to rectify/revise

the scale of pay for the post of Principal, DIET in time and the fact remains that the scale of pay for the post of Principal, DIET was revised at the

scale of pay of Rs.15600-391600+GP6600 only on 3.1.2017 giving effect from 23.1.2016.

36. On a perusal of the letter of the Director, SCERT, Government of Manipur, it is seen that the said authority has made a proposal to the

Commissioner, SCERT to place the scale of pay for the post of Principal, DIET at par with the scale of pay for the post of Principal, Government

Higher Secondary School by giving a clear picture regarding functions and duties and qualifications for the post of Principal, DIET in comparison to

the Principal, Government Higher Secondary School. The said proposal was made by the Director, SCERT based on the application dated 7.4.2014

submitted by the DIET Employee Association, SCERT seeking to rectify the pay scale in respect of the post of Principal, DIET. Despite receipt of

the said proposal and keeping quite for long number of days, on 3.1.2017, the Joint Secretary, SCERT issued the impugned order by giving revised

scale of pay for the post of Principal, DIET at Rs.15600-39100+GP6600 with effect from 23.1.2016.

37. It appears that the State Cabinet approved the posts in its meeting held on 5.5.2015 and subsequently on 23.1.2016 for the new DIET Imphal East.

However, the revision came to be issued belatedly on 3.1.2017 and there is no reason given in the impugned order for the delay in issuing the same.

Thus, it is clear that there is belated action on the part of the official respondents in revising the scale of pay for the post in question.

38. According to the petitioner because of this belated revision of pay, the petitioner has been placed at the very disadvantageous post on in comparing

with other counterparts while considering his case for promotion to the post of Director, SCERT.

39. In reply, the learned counsel for the State submitted that prior to the upgradation of Principal, DIET as feeder post to the post of Director, SCERT,

the Principal, DIET was a feeder post to the post of Joint Director (NFE) and thus lower in status to Joint Director (NFE). Therefore, if the claim of

the petitioner for revision of scale of pay of Principal, DIET is allowed with retrospective effect, it will result to unsettlement of settled positions. The

said argument of the learned counsel for the State cannot be countenanced and on the other hand, there is some force in the submissions made by the

learned counsel for the petitioner. As stated supra, the authority concerned has delayed the matter and issued the order revising the scale of pay for

the post of Principal, DIET at Rs.15600- 39100+GP6600 with effect from 23.1.2016 and as rightly argued by the learned counsel for the petitioner, the

aforesaid acts of the authority really placed the petitioner into disadvantageous position in comparing with the other counterparts while considering his

case for promotion to the post of Director, SCERT.

40. In view of the above discussions, admittedly the petitioner, who is presently serving as Principal, DIET shall be entitled to get the pay scale

equivalent to that of the Principal of the Government Higher Secondary School. It is settled law that equation of post/pay scale is within the domain of

the executive and not under the judiciary, that is not to say, the Court has no jurisdiction and aggrieved employee have no remedy if he is unjustly

treated by arbitrary state action or by inaction, but the Court, however, realizing that the difficulty in carrying the job for equation of posts, the matter is

referred to the expert body having the assistance of staff of requisite expertise. Such being the settled position of law, this Court is of the considered

view that the writ petitioner is entitled the relief as prayed for in the writ petition.

41. In the result,

a) the writ petition is allowed.

b) the impugned order dated 03.01.2017 in respect of position for revision of pay for the post of Principal, DIET at the Scale of Pay of Rs. 15600-

3900+GP 6600 with effect from 23.1.2016 is set aside.

c) the Respondents 1 to 4 are hereby directed to revise the pay scale for the post of Principal, DIET at the scale of Pay of Rs. 15600-39100+GP

6600/- under ROP, 2010 and its corresponding Pay Scale under ROP, 1999 notionally w.e.f. the publication of the Recruitment Rules for the post of

Principal, DIET Department of SCERT, Manipur i.e. 29.11.2008 with cash payment w.e.f. 23.01.2016.

d) the said exercise shall be done within a period of 4 weeks from the date of receipt of this order.

41. Registry is directed to issue copy of this order to both the parties through their WhatsApp/e-mail.