
(1997) 03 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 13 of 1992

Manipur Secretariat Stenographers Association, Imphal	APPELLANT
Vs	
State of Manipur	RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 2 GLJ 332 : (1997) 3 GLT 502

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : Shyam Kishore Singh, H.N.K.Singh, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution of India, the petitioners have prayed for a direction to the respondents to maintain the rank of Stenographers, Grade I as Class II gazetted post and to grant pay to Stenographers Grade I) proportionate to the pay of Class II gazetted officers with retrospective effect from 1987.

2. The petitioner No. 1 is an Association of Stenographers employed in the Manipur Secretariat, and the petitioner No.2 is its Secretary. By order dated 24.9.83 issued by the Govt of Manipur, General Administration Department, the post of Stenographer Grade I of Manipur Secretariat was declared to be Class II gazetted post/Class II gazetted officers enjoyed certain benefits. They were invited in all the State functions of the Govt of Manipur, they were entitled to be drawing and disbursing officers of the discretionary grant fluids of the Ministers in the State of Manipur and they were getting higher Leave Travelling Concessions (LTC) more than those employees who were holding 11011 gazetted posts. In the year 1983 when stenographers Grade I were declared as holding Class II gazetted post they were enjoying pay scale of Rs.720 1.470. By the Manipur Service (Revision of Pay) Rules, 1990. framed under Article 309 of the Constitution, (hereinafter referred to as ROP, 1990), the pay scales of different employees working under the Govt of Manipur were revised and under the said

ROP, 1990. the pay of Stenographers Grade I was revised from Rs.720 1,470 to Rs. 1400 2300 and by Office Memorandum dated 21.11.90 issued by the Govt of Manipur. Finance Department, it was indicated that all posts attached with pay scale from 825 1,200 to 1,400 2,600 would be classified as Group C (Class III) posts. Aggrieved by the scale of pay given to Stenographers Grade I by the said ROP, 1990 and by reduction of status from Class II gazetted post to Class II post, the petitioners have filed the present civil rule for appropriate relief.

3. At the hearing of the civil rule, Mr. H. Nabakumar Singh, learned counsel appearing for the petitioners, submitted that since the Stenographers Grade I working under the Manipur Secretariat were enjoying the benefits of the status of Class II gazetted post since the year 1983, the State Govt cannot take away the said benefits which have accrued to Stenographers, Grade I. He further argued that before the ROP, 1990, there were several other employees working under the Govt of Manipur who were classed as gazetted employees and were given the status of Class II posts, but these employees continued to enjoy the said status of gazetted and Class II posts even after the ROP, 1990. In this context, he referred to the employees named in paragraph 11 of the writ petition, namely, Technical Officer, Food and Civil Supplies, Godown Superintendent, Food and Civil Supplies Dietician, Family Welfare Department, Ranger, Forest Department, Inspector of Police, Inspector, Motor Vehicle Department, Inspector (Vigilance) and the Assistant Employment Officer. Although Mr. Singh did not make any specific challenge at the time of hearing of the writ petition to the pay scale given to Stenographers Grade I under the ROP, 1990, in paragraph 15 of the writ petition, it has been stated that while the Stenographers Grade I have been given the pay scale of only Rs. 1,400 2,300 various other employees who are enjoying the pay scale of Rs.720 1,400 and the status of Class II gazetted officers prior to ROP, 1990, have been allowed a new pay scale of Rs. 1,600 2,660. According to Mr. H. Nabakumar Singh, the Stenographers Grade I working in the Manipur Secretariat have suffered discrimination and their rights under Articles 14 and 16 of the Constitution have been violated by ROP, 1990 and the Office Memorandum dated 21.11.90 issued by the Govt of Manipur. Finance Department.

4. Mr. Shyam Kishore Singh, learned Govt Advocate, Manipur, in reply, submitted that the petitioners have no grievance against the ROP, 1990, as such and the only grievance of the petitioners relates to reduction of their rank from Class II gazetted officers to Class III non gazetted posts. The Stenographers Grade I working in the Manipur Secretariat have been classified as Group C (Class III) by the impugned Office Memorandum as a consequence of ROP, 1990. He submitted that it was on the basis of recommendation of the Fourth Pay Commission, the Pay Committee, and the Cabinet Sub Committee which reviewed the ROP, 1990, that the scale of pay of Stenographers Grade I has been fixed at Rs. 1,400 2,300 and their post has been categorized as Group C (Class III). He further argued that the impugned Office Memorandum would show that all posts with pay scales from Rs.825 1,200 to Rs. 1,400 2,600 have been categorized and classified as

Group C (Class III post). Mr. Shyam Kishore Singh referred to the averments in para 4 of the affidavit in opposition filed on behalf of the respondents to show that 23 other posts which were earlier in the pay scale of Rs.720 1,470 under the ROP, 1982 are under the pay scale of Rs. 1,400 2,300 under the ROP, 1990 and the said posts now fall in the category of Group C (Class III posts) as per Office Memorandum dated 21.11.90, though they earlier fell under Class II gazetted posts like the post of Stenographers Grade I. Thus the Stenographers Grade I are not the only employees who have been brought down from Class II gazetted post to Group C (Class III post) and they cannot complain of any discrimination and violation of rights under Articles 14 and 16 of the Constitution. Mr. Shyam Kishore Singh, learned Govt Advocate has further stated that the pay scales under the ROP, 1990, were fixed and the impugned Office Memorandum dated 21.11.90 was issued on the basis of the recommendation of the expert bodies, namely, Fourth Pay Commission and the Pay Committee and it has been said by the Apex Court in the cases of Union of India vs. G.R. Prabhavalkar, AIR 1973 SC 2102; Prabhat Kiran vs. Union of India, AIR 1977 SC 1553; Secretary Finance Department & others vs. West Bengal Registration Service Association & others, AIR 1992 SC 1203; Swap an Kumar Choudhury & others vs. Tapas Chakravorty, AIR 1996 SC 662; Municipal Commissioner, Calcutta Municipal Corporation & others vs. Pijush Kanti Das & another, AIR 1996 SC 1108, that equation of posts, fixation of their pay scales and classification of posts are all intricate and complex matters into which only the experts, such as, the Pay Commission and the Pay Committees can delve into in details and that the Govt as the executive has the power to fix such pay scales and classify the posts on the basis of the recommendations of such expert bodies and the Court will not lightly interfere with the decisions of the Govt in such matters.

5. There is lot of force in the contention of Mr. Shyam Kishore Singh, learned Govt Advocate, Manipur, that matters, such as fixation of pay scales and classification of posts, with which we are concerned in this civil rule, are complex matters and that these are best left to the Govt to decide in accordance with the recommendations of expert bodies, such as, Pay Commission and the Pay Committee. But this does not mean that the Court has absolutely no jurisdiction to entertain the grievance of the employees in this regard when they show that they have not been fairly treated in the case of Secretary Finance Department & others vs. West Bengal Registration Service Association & others (supra), Supreme Court observed :

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both

a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements."

The aforesaid decision of the Apex Court on which Mr. Shyamkishore has relied on would clearly show that where the aggrieved employees are unjustly treated by arbitrary State action or inaction, the Court is not powerless to grant remedy though the Court has to bear in mind that the task of pay revision and equation of posts and classification are time consuming and intricate matters which can best be handled by the expert bodies.

6. Bearing in mind the aforesaid principle as laid down by the Apex Court, I examine the records which were produced before me in this case and in particular, the recommendations of the Fourth Pay Commission and the Pay Committee. On the question of classification of posts, the Fourth Pay Commission recommendation discontinuance of classification into Class I, II, III and IV with the following reasons:

""4.31. Questions of stature and dignity have been largely responsible for a large number of representations. It was strongly, and even at times emotionally, urged that persons who were earlier Grade I or Class I officers had been arbitrarily brought down to Grade II in ROP 87. Similarly, persons who were earlier in Class II or Class III resented their reduction to a lower class. All this heart burning has arisen from notification No.3.9.86 PIC (Pt) (G) dated March 11, 1988. According to this notification all posts with a pay scale whose maximum is not less than Rs.3,500/ are in Grade A or Class I, those with maximum less than Rs.3,500/ but not less than 2,600/ are in Grade B or Class II, those with maximum less than Rs.2,600/ but over 1,150/ are in Grade C or Class III, and those whose maximum is Rs. 1,150/ or less are in Grade D or Class IV. This classification is merely a continuation of similar classifications under ROP 82 and earlier Pay Rules. The maxima chosen are, however, different from those prescribed by the Central Govt. Earlier, classifications of staff into different groups had some relevance mainly in determining Travelling and Daily Allowance entitlements. In the pattern of emoluments which has been introduced following on the recommendations of the Fourth Central Pay Commission, hardly any entitlement is now based on the group or class to which an employee belongs. This has been replaced almost entirely by entitlement based on slabs of pay. At the moment, classification has a minor statistical value, and also finds a place in determining the premium payable by a Govt employee in his group insurance scheme. The Commission feels that the minor advantage of retaining the classification system are far outweighed by the unnecessary effect it has on employee morale. The Commission feels that it is possible to have classification by pay slabs for statistical purposes. Similarly, the premium payable for group insurance can also

be determined by pay slabs rather than by artificial classification. The Commission, therefore, recommends discontinuance of classification into Class I, II, III and IV. The distinction between gazetted and non gazetted posts will, however, have to continue. Certain administrative and financial powers, particularly those of drawing and disbursing funds, are entrusted only to gazetted officers. This distinction, therefore, needs to be maintained. The decision as to who should be gazetted will, however, not be based on pay or class categorisation, but on administrative convenience."

The aforesaid recommendation of the Fourth Pay Commission to discontinue the classification of posts into four classes was initially accepted by the State Govt under the resolution dated 19th August, 1989 of the Finance Department. Thereafter, a Pay Committee was constituted by the State Govt by its office Memorandum dated 19.3.90 to examine and recommend the pay scales for the various categories of posts under the Govt of Manipur and the said Pay Committee comprising of the Commissioner (Finance) as the Chairman, Secretary (DP), Secretary (Education) and a retired Joint Secretary (Finance) Sri RK Mangal Singh submitted a report dated 21.6.90 making various recommendations. The recommendation of the Pay Committee with regard to Stenographers was to the following effect:

"The Committee felt that the pay scale of a Stenographer Grade III should be equivalent to that of a LDC (Rs.950 1,550) and that of a Stenographer Grade II should be equivalent to that of a UDC (Rs. 1,200 2,040). As far as the Stenographer Grade I is concerned, it was felt that he may be given a pay scale of Rs. 1,400 2,300, as that would be the Central scale corresponding to ROP 75 scale of Rs.470 750. It was also felt that a pay scale of Rs. 1,400 2,300 for Stenographers Grade I gives them a suitable financial benefit on promotion from Grade II to Grade I..."

The aforesaid recommendation of the Pay Committee would show that the pay scale of Stenographers Grade I was recommended at Rs. 1,400 2,300 as that was the Central scale corresponding to ROP 75 scale of Rs.470 750 and it was felt that the said pay scale would give the Stenographers Grade I a suitable financial benefit on promotion from Grade II. But on reading of the entire recommendation of the Pay Committee, I do not find that they have recommended anything with regard to classification of posts. It was only the Cabinet Sub Committee, formed for partial review of the ROP. 1990. under order dated 5.9.90 comprising of the Deputy Chief Minister, Finance Minister, Minister, IFC and MI and Minister, Vety and AH and Science and Technology, which recommended that the system of classification of posts be reintroduced. The said recommendation of the Cabinet Sub Committee is extracted hereinbelow :

"Classification of services : Following ROP, 89 the system of classification of services was discontinued. This has, however, caused problems in the matter of keeping provisions about reservation in the matter of promotions and in defining the jurisdiction of the MPSC in the matter of appointments. A system of

classification still continues in the Central Govt.

The Committee also noticed that various Associations of officials have demanded restoration of their "status" as they feel that in the absence of a system of classification their status has been down graded. The Committee also took note of the fact that Hon"ble Chief Minister had announced that Class I status will start from Rs.2,000 3,500.

Recommendation: Accordingly, the Committee recommends that the system of classification of posts be reintroduced as under :

Class IV Maximum of the scale of Rs. 1,150 or less

Class III Maximum of the scale over Rs. 1,150 but less than Rs.2,660.

Class II Maximum of the scale not less than Rs.2,660 but less than Rs.3,500.

Class I Maximum of the scale of Rs.3,500 and above.

Apart from the above general recommendations the Committee would like to make specific recommendations about certain Departments and category of employees..."

It appears that it is on the basis of the aforesaid recommendation of the Cabinet Sub Committee that the impugned Office Memorandum dated 21.11.90 has been issued by the Finance Department classifying various posts under the Govt of Manipur on the basis of their pay scales. Thus it is not on the basis of the recommendation of the expert bodies such as Fourth Pay Commission or the Pay Committee that the classification of posts under the Office Memorandum dated 21.11.90 has been issued. The said Cabinet Sub Committee on the basis of whose recommendation the aforesaid Office Memorandum has been issued did not comprise of any expert. The aforesaid recommendation of the Cabinet Sub Committee also does not indicate any expertize or deep thinking on the question of classification. On the otherhand, the Fourth Pay Commission had clearly indicated in its recommendation quoted above that the question of status and dignity have been largely responsible for a large number of representations and it was strongly, and even at times emotionally, urged that persons who were in higher grade had been abruptly brought down to lower grade by the subsequent ROP and it was for this reason that the Fourth Pay Commission had recommended discontinuance of classification into Class I, II. III and IV. If, however, the Cabinet Sub Committee and the State Govt were of the view that the system of classification should be continued or reintroduced, the Govt should have referred this complicated question of classification of employees working under the Govt of Manipur to an expert body and after considering the recommendations of such expert body taken a decision in this regard. I am, therefore, of the considered opinion that the decision of the Govt of Manipur with regard to the classification of different posts under the impugned Office Memorandum dated 21.11.90 has been taken in an arbitrary manner.

7. Having reached this conclusion, I would have normally quashed the impugned Office Memorandum dated 21.11.90, but in the decision in the case of Secretary, Finance Department vs. West Bengal Registration Service Association & others (supra), the Apex Court has observed thus :

"... We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well."

The aforesaid observations of the Apex Court in the context of pay structure fixed by the Govt are equally applicable to classification of posts which if disturbed by the Court would upset the balance and cause avoidable ripples in different cadres of service under the Govt of Manipur. In the ends of justice, however, I direct the State Govt of Manipur to refer the question of classification of the post of Stenographers Grade I to a body of persons having expertise in matters relating to pay structure, classification of posts, service conditions etc and after considering the recommendations of such expert body take a fresh decision as early as possible preferably within a period of six months from today. But I decline to grant any relief with regard to higher pay of Stenographers Grade I claimed in this writ petition.

8. With the aforesaid observations and direction, the present writ petition is finally disposed of. However, considering the entire facts and circumstances of the case I leave the parties to bear their own costs.