
(2022) 09 MAN CK 0006
In the Manipur High Court
Case No : Writ Petition (C) No. 253 Of 2021

Oinam Chaoba Singh & Ors	Vs	APPELLANT
State Of Manipur & Ors		RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Manipur Municipality Act, 1994 — Section 46, 46(3)
Manipur Services (Revised Pay) Rules, 2010 — Rule 2(f)
Constitution Of India, 1950 — Article 14

Citation : (2022) 09 MAN CK 0006

Hon'ble Judges : MV Muralidaran, J

Bench : Single Bench

Advocate : Y. Nirmolchand, Th. Sukumar

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. The writ petition has been filed to quash paragraph No.1 of the impugned order dated 7.11.2017 and to direct the respondents to pay revised salary to the petitioners by calculating with effect from 1.1.2010 for cash payment as prescribed by the Manipur Services (Revised Pay) Rules, 2010.

2. Heard Mr. Y. Nirmolchand, learned senior counsel for the petitioners and Th. Sukumar, learned Government Advocate for the respondents.

3. Mr. Y. Nirmolchand, the learned senior counsel for the petitioners submitted that the petitioners are now serving in different Municipal Councils and their service conditions and salary are also governed by the Rules adopted by the State Government for the employees from time to time, which includes pay revision Rules issued from time to time. By placing reliance upon Section 46 of the Manipur Municipality Act, 1994, the learned counsel submitted that the disciplinary action, condition of the service and qualifications in respect of the employees of a Nagar Panchayat or a Council shall be the same as applicable to

the employees of the State Government.

4. The learned senior counsel further submitted that Manipur Services (Revised Pay) Rules, 2010 [for short, "ROP 2010"] was produced on 5.5.2010 and the said ROP shall be deemed to have come into force notionally on 1.1.2006 with cash payment from 1.4.2010 with effect from 1.1.1996 thereby giving financial benefits to all employees under the Government of Manipur with retrospective effect from the date the said pay revision rules came into force. The said ROP 2010 is also applicable to the employees of the Municipal Councils.

5. The learned counsel further submitted that though all the employees in the Municipal Councils were granted the same revised pay scales prescribed for their respective counter parts in the State Government Departments retrospectively for cash payment with all benefits, including arrears of pay etc., for the ROP 2010, the respondents issued the impugned order dated 7.11.2017 wherein the employees of the urban local bodies of Manipur are given cash payment with effect from 1.4.2017 instead with effect from 1.4.2010.

6. The learned senior counsel urged that the revision of pay scales of the petitioners without benefit of arrears of pay from 1.4.2010 results to forfeit the right of the petitioners to get their entitled arrears and that too without benefit of arrears of pay with effect from 1.4.2010 as prescribed in the ROP 2010, which is unreasonable and improper from the part of the respondents. Thus, a prayer is made to quash paragraph No.1 of the impugned order dated 7.11.2017 and to direct the respondents to pay the revised salary to the petitioners with effect from 1.1.2010.

7. Per contra, Mr. Th. Sukumar, the learned Government Advocate submitted that Rule 2(f) of ROP 2010, which was notified on 5.5.2010 provides that these Rules shall not apply to persons whose particulars are not figured in the Computerised Personal Information System and the respondent authorities only clarified the rules in the Office Memorandum dated 7.7.2010 that the revision of pay scales of the employees of the Autonomous Bodies/Local Bodies/Grand-in-Aid Institutions/Public Sector Undertaking etc. shall be made only with the concurrence of Finance Department subject to availability of sufficient fund for the purpose.

8. He would submit that another Office Memorandum dated 28.2.2011 was issued regarding grant of revised pay under ROP 2010 in respect of the employees of Autonomous Bodies/Local Bodies/Grand-in-Aid Institutions/Public Sector Undertaking etc. and as per the above OMs and decisions of the Cabinet, the following grant-in-aid bodies had been granted ROP 2010 with immediate effect or 1st day of months without notional effect:

(i) Manipur Khadi & Village Board w.e.f. 22.09.2016.

(ii) Manipur Remote Sensing Application Centre (MARSAC) w.e.f. 1.5.2015.

(iii) Manipur Public School, Koirengei w.e.f. 1.4.2016.

(iv) Manipur Tribal Development Corporation, w.e.f. 4.10.2016.

(v) Manipur Industrial Development Corporation Limited, w.e.f. 13.10.2016.

(vi) Aided Schools (Both Valley & Hills) w.e.f. 1.10.2019.

9. Arguing so, the learned Government Advocate submitted that there is no illegality in paragraph No.1 of the impugned order and, thus, the writ petition is liable to be dismissed as there is no merit in it.

10. This Court considered the rival submissions and also perused the materials available on record.

11. The petitioner challenged paragraph (i) of the impugned order dated 7.11.2017 contending that all the employees in the Municipal Councils are granted the same revised pay scales prescribed for their respective counter parts in the State Government Departments retrospectively for cash payment with all benefits including arrears of pay etc. However, for the ROP 2010, the respondent authorities issued orders that the employees of the urban local bodies of Manipur are entitled for cash payment with effect from 1.4.2017, instead with effect from 1.4.2010. Paragraph (i) of the impugned order is extracted for ready reference:

"i) Revision shall be made w.e.f. 01.04.2017 and revised pay shall be released in cash with immediate effect."

12. On the other hand, Mr. Th. Sukumar, the learned Government Advocate submitted that the proposal for implementation of ROP 2010 was considered by the Cabinet and the Cabinet meeting took a policy decision and granted approval to the implementation of ROP 2010 to the employees and the pensioners of the Urban Local Bodies with effect from 1.4.2017 and when the matter was referred to the Finance Department and after due process, the Department of MAHUD, Government of Manipur issued the impugned order dated 7.11.2016, thereby granting the revised pay structure 2010 to the employees and the pensioners of 27 Urban Local Bodies in Manipur. Since the matter relating to effect of cash payment is within the prerogative of the State Cabinet as well as the Finance Department, the petitioners have no right to question it.

13. It is no doubt true that the service conditions and salary of the petitioners are governed by the Rules adopted by the State Government from time to time, which includes pay revision rules issued from time to time.

14. Section 46 of the Manipur Municipality Act provides:

"46. Disciplinary action against employees of Nagar Panchayat and Council and condition of their service, etc. – (1) An employee of a Nagar panchayat or a Council who is aggrieved by an order of the Chairperson in a disciplinary proceeding against him shall have right to appeal to the Nagar Panchayat or the Council within thirty days from the date of service of such order on him.

(2) An employee who is aggrieved by an order of the Nagar Panchayat or the

Council may prefer an appeal to the State Government against such an order within sixty days from the date of service of such order.

Provided that no appeal against an order other than an order for removal or dismissal shall lie to the State Government.

(3) Subject to the provisions of the Act, the disciplinary action, conditions of the service and qualification in respect of the employees of a Nagar Panchayat or a Council shall be the same as applicable to the employees of the State Government, from time to time."

15. Thus, under Section 46(3) of the Manipur Municipality Act subject to the provisions of the Act, the disciplinary action, conditions of the service and qualifications in respect of the employees of a Nagar Panchayat or a Council shall be the same as applicable to the employees of the State Government from time to time.

16. Earlier one Mani Singh and six others, who were serving as Executive Officers of different Municipal Councils of the State of Manipur aggrieved by the effective date for revising of their pay scales with effect from 1.4.2004 for cash payment under ROP 1999 has been challenged before Gauhati High Court, Imphal Bench. By the order dated 19.5.2009, the Imphal Bench of Gauhati High Court allowed the writ petition. The operative portion of the order is quoted hereunder:

"For the foregoing reason, this Court has no alternative but to interfere with the effective date of the revision of pay scale of the petitioners under ROP 1999 w.e.f. 01.06.2004 for the purpose of cash payment under the impugned order dated 22.06.2004. Accordingly, the effective date of the revision of pay scale of the petitioners under ROP 1999 mentioned in the impugned order 22.06.2004 is hereby set aside. The effective date of the revision of pay scale of the petitioners as Executive Officers will be the same, i.e. w.e.f. 01.01.1996 as applicable to all the other employees of the different Municipal Councils and also the employees of the Government of Manipur.

13. This writ petition is allowed. It is also made clear that the respondents are to issue necessary orders within two months from the date of receipt of a certified copy of this order."

17. Aggrieved by the said order, the respondent State preferred W.A.No.27 of 2010 and by the judgment dated 11.08.2020, a Division Bench of Gauhati High Court dismissed the appeal. While dismissing the appeal, the Division Bench held as under:

"16. Section 46(3) referred to above provides that the conditions of service in respect of the employees of a Nagar Panchayat or a Municipal Council shall be the same as applicable to the employees of the State Government from time to time. The learned single Judge while passing the impugned judgment and order has duly taken note of the aforesaid position and the status of the writ petitioners who are admittedly, the employees of the Municipal Council.

17. Above being the position, there could not have been any different treatment to the petitioners merely because their status is Executive Officer in the Municipal Council. If the particular recommendation has been accepted by the authority, said recommendation will have to be applied equally to all the employees and there cannot be any discrimination in the matter of effective date solely on the ground of financial crunch."

18. From the above, it is clear that the petitioners herein are similarly situated. In the present case also the petitioners are referring Section 46 of the Manipur Municipal Act and according to the said provision, the service condition of the employees of local bodies will be the same as application with the employees of the State Government.

19. As admitted by both the parties, the effective date of the revision of pay scale of the Government employees under ROP 2010 is 1.1.2006 with cash payment from 1.4.2010 and with effect from 1.1.1996 thereby giving financial benefits to all employees under the Government of Manipur with retrospective effect from the date of the said pay Revision Rules came into force. The petitioners established that ROP, 2010 is applicable for the employees of the Municipal Councils and accordingly, the revision of pay rules issued from time to time was applicable since beginning and till date.

20. Since all the employees in the Municipal Councils are granted the same revised pay scales prescribed for their respective counter part in the State Government Departments retrospectively for cash payment with all benefits including arrears of pay, but for the ROP 2010, the respondent authorities failed to award cash payment with effect from 1.4.2010 instead it had given cash payment with effect from 1.4.2017.

21. At this juncture, it is pertinent to note that the concept of equality embodied in Article 14 of the Constitution of India broadly means that there should not be discrimination between the employees, who were similarly situated and also that the State cannot discriminate between the similarly situated person and also that even though Article 14 of the Constitution of India permit the reasonable classification in different two books, the classification should be on rational basis.

22. The case of the petitioners is that there is no classification between the employees of the same Municipal Councils, inasmuch as the petitioners who were working as Assistant Engineers and Executive Engineers respectively of the different Municipal Councils of the State of Manipur cannot be discriminated from the other employees of the same Municipal Councils in the matter of deciding the effect date of the revision of their pay scales under the same ROP, 2010.

23. In *Satyawati Sharma (Dead) by LRs. V. Union of India and another*, (2000) 5 SCC 287, the Apex Court held:

"16. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality

embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position in the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated person. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon the adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the directive principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been involved in large number of cases for repelling challenge to the constitutionality of different legislations."

24. In the light of the aforesaid judgment of the Hon'ble Apex Court, affording cash payment with effect from 1.4.2017 to the petitioners is discriminatory and violative of Article 14 of the Constitution of India as also Section 46 of the Manipur Municipalities Act, 1994, whereas the petitioners are proved to be entitled to get revised pay scale under ROP 2010 notionally with effect from 1.1.2006 and cash payment with effect from 1.4.2010, as similarly situated were extended the said benefit earlier. For the reasons stated above, paragraph (i) of impugned order dated 7.11.2017, particularly the word "with effect from 1.4.2017" is liable to be quashed.

25. In the result,

(1) The writ petition is allowed.

(2) Paragraph (i) of the impugned order dated 7.11.2017, particularly, the word "with effect from 1.4.2017" is quashed

(3) The respondents are directed to make cash payment and arrears, if any to the petitioners with effect from 1.1.2010 as prescribed under the Manipur Services (Revised Pay) Rules, 2010.

(4) The said exercise is directed to be completed within a period of four weeks from the date of receipt of a copy of this order.

(5) No costs.