
(2015) 06 MEG CK 0028
In the Meghalaya High Court
Case No : WP(C) No. 245 of 2014

Tapan Kumar Chakrabarty

APPELLANT

Vs

North Eastern Hill University (NEHU) and Others

RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:

Citation : (2015) 06 MEG CK 0028

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, Senior Advocate, P. Nongbri and N. Mozika, for the Appellant; K. Khan, Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.

1. Heard Mr. H.S. Thangkhiew, learned Sr. counsel, assisted by Mr. P. Nongbri, learned counsel and Mr. N. Mozika, learned counsel, appearing for the petitioner and also Mr. K. Khan, learned Standing counsel appearing for the respondents.

2. It is the admitted case of both the parties that the University Grants Commission guidelines are followed by the Manipur University as well as the North Eastern Hill University. Over and above, it is also the admitted case of both the parties that the recommendation of the Sixth Central Pay Commission had been implemented by both the Universities i.e. the Manipur University as well as the North Eastern Hill University (for short NEHU). It is clear from the pleadings in the writ petition as well as from the orders passed by the NEHU dated 06-02-2006 and 07.03.2006 that the pay of the petitioner as Associate Professor in the Manipur University was protected by the NEHU at the time of fixation of pay of the petitioner soon after his appointment to the post of Reader which carry the same scale of pay of the Associate Professor of the Manipur University. The only issue calls for decision in the present writ petition is as to whether or not the last pay of the petitioner as Associate Professor in the Manipur University

which would have been protected when the petitioner joined as Reader in NEHU, will be the last pay of the petitioner after the benefit of implementation of the Sixth Central Pay Commission was extended to the petitioner by the Manipur University while he was Associate Professor in that University?

3. For deciding the matter in issue formulated above, it will be more profitable to note the concise fact of the case leading to filing of the present writ petition.

4. In the year 1991, the petitioner was appointed as Assistant Professor (Lecturer) in the Manipur University vide appointment order dated 18-07-1991. Subsequently, the petitioner was given the Senior Pay Scale of Assistant Professor by the Manipur University vide office order No. 2828 dated 19-11-1998 (Annexure-3 to the writ petition). While the petitioner was awaiting promotion to Associate Professor in the pay scale of Rs. 12000-420-18300/- plus Career Advancement Scheme of the University Grants Commission, the NEHU issued an advertisement dated 09-01-2004 for appointment to different posts including one post of Reader in Statistics.

5. In response to the said advertisement dated 09-01-2004, the petitioner had applied for the post of Reader after obtaining No Objection Certificate from Manipur University. While the selection process for appointment to the said post of Reader in NEHU was under process, the Manipur University had promoted the petitioner to the post of Associate Professor in the Department of Statistics under Career Advancement Scheme of UGC in the pay scale of Rs. 12000-420-18300/- P.M. w.e.f. 07-02-2002 vide office order No. 479 dated August 20, 2005 which read as follows:

"MANIPUR UNIVERSITY CANCHIPUR : IMPHAL

OFFICE ORDER No. /479 August 20, 2005

No.MU/2-34/03/Fcy: Under Resolution No. 12/189/11.8.2005 of the Syndicate, Dr. TK. Chakrabarty, Asstt. Professor (Sr. Scale) has been promoted to the post of Associate Professor in the Deptt. of Statistics under Career Advancement Scheme of UGC in the pay scale of Rs. 12000-420-18300/- P.M. with effect from 7.2.2002.

Dr. T.K. Chakrabarty, Associate Professor Deptt. of Statistics, MU

Sd/- (Dr. R.K. Ranjan Singh) Registrar"

6. It is clear from the said order of the Manipur University dated 20-08-2005 that the petitioner had already been promoted to the post of Associate Professor in the Department of Statistics in the pay scale of Rs. 12000-420-18300/- P.M. with effect from 07.02.2002 in the Manipur University while the process for appointment to the post of Reader in NEHU was going on.

7. Subsequently, the petitioner was also recommended for appointment to the said post of Reader in the department of Statistics, NEHU, and was appointed as Reader which carries the same pay scale of Associate Professor of Manipur

University. When the petitioner was appointed as Reader in the NEHU his pay as Associate Professor in the Manipur University had been protected vide order dated 07-03-2006 issued by the NEHU. For easy reference the order dated 06-02-2006 for appointing the petitioner as Reader in the NEHU and the order dated 07-03-2006 for protecting the last pay of the petitioner as Associate Professor in the Manipur University are quoted as under:

"NORTH EASTERN HILL UNIVERSITY MAWKYNROH : :UMSHING
SHILLONG : :793022

No.F.18-335/Estt.II/2005-407 Dated Shillong, the 6th February, 2006

ORDER

In continuation of the letter No. 26-2/Estt.II(B)/2005-365 dated 14.12.2005 vis-?-vis on the recommendation of the Selection Committee and approval of the Executive Council in its 123rd meeting held on 14.12.2005, the Vice Chancellor, NEHU is pleased to appoint Dr. T.K. Chakrabarty, to the post of Reader in the department of Statistics, NEHU, Shillong in the scale of pay of Rs. 12,000-420-18,300/- per month plus usual allowances as admissible under the rules to the Central Government employees of the same grade posted at Shillong Campus with effect from 1.2.2006 (A.N.) Dr. T.K. Chakrabarty, will be on probation for a period of 1 (one) year and his service will be governed by the Act, Statutes, Ordinances and Rules of the University including C.C.S. Rules as amended from time to time. He will have to sign a contract with the University.

The initial pay of Dr. T.K. Chakrabarty, is fixed at Rs. 12000/- of the scale with D.N.I. as on 1st February, of subsequent years.

Sd/- Assistant Registrar (Estt.II)"

"NORTH EASTERN HILL UNIVERSITY MAWKYNROH : :UMSHING
SHILLONG : :793022

No.F.18-335/Estt.II/2005-427/Dated Shillong, the 7th March, 2006

ORDER

Consequent upon the appointment of Dr. Tapan Kumar Chakrabarty as Reader in the Department of Statistics, NEHU, Shillong with effect from 1.2.2006 in the scale of Rs. 12000-420-18,300/-, the Vice Chancellor, NEHU, is pleased to fix his pay at the stage of Rs. 13,680 + 840 (QP) with effect from 1.2.2006 with D.N.I. on the 1st February of subsequent years. The Qualification Pay will be absorbed at the stage of Rs. 14,940/- of the aforesaid scale.

This is in continuation of the letter of even No. 407, dated 6th February, 2006

Deputy Registrar (Estt.II)"

8. On conjoint reading of the order dated 06-02-2006 and 07-03-2006, it is clear that when the petitioner was appointed as Reader in the NEHU, his pay as

Associate Professor in the Manipur University had been protected.

9. On implementation of the Sixth Central Pay Commission, the last pay of the petitioner as Associate Professor in the Department of Statistics in Manipur University had been fixed as under:

Vide order of the Manipur University i.e., 798 dated 2nd November, 2010 which reads as follows:

"MANIPUR UNIVERSITY CANCHIPUR : IMPHAL

OFFICE ORDERS No. 798 Dated, the 2nd November, 2010

No. MU/3-196/89/FCY : On implementation of the 6th Central Pay Commission, the pay of Dr. T.K. Chakrabarty, former Associate Professor in the Department of Statistics has been fixed as under:

He was released from the University service on 31-01-2006 (AN).

(Prof. N. Lokendra Singh) Registrar"

10. As stated above, both the Universities i.e. the Manipur University as well as the NEHU had implemented the recommendations of the Sixth Central Pay Commission. As stated above, the only case of the petitioner in the present writ petition is that the last pay of the petitioner as Associate Professor in the Manipur University shall be the last pay of the petitioner after the benefit of the implementation of the Sixth Central Pay Commission was granted to the petitioner by Manipur University while he was Associate Professor in Manipur University. It is the further case of the petitioner that the last pay of the petitioner as Associate Professor in Manipur University after implementation of the Sixth Central Pay Commission will be the one quoted above in extenso. Therefore, it is the submission of Mr. H.S. Thangkhiew, learned Sr. counsel appearing for the petitioner that the petitioner should be allowed to enjoy the benefit of the implementation of the Sixth Central Pay Commission granted to the petitioner while he was Associate Professor in Manipur University vide the said order of the Manipur University dated 02-11-2010.

11. Mr. K. Khan, learned counsel appearing for the respondents contended that the petitioner had been re-designated as Associate Professor from 01-02-2009 after the petitioner had completed 3(three) years of service as Reader. Mr. K. Khan, learned counsel appearing for the respondents referred to para 9, 10, 12 and 13 of the affidavit-in-opposition filed by the NEHU which read as follows:

"9. That with regard to the statements made in paragraph 11 of the writ petition the answering respondent denies the same as correct and states that in accordance with the UGC Regulation 2010 and also as stated by the Petitioner under para-7, the Petitioner was re-designated as Associate Professor w.e.f. 01-02-2009 and was granted Pay band IV of Rs. 37,400/- - 67,000/- with AGP of Rs. 9000/- as the Petitioner had completed 3(three) years of service as Reader in the University (Respondent No. 1).

10. That with regard to the statements made in paragraph 12 of the writ petition the answering respondent denies that same as correct and states it is true that the Petitioner had submitted a representation on 17.12.2010 to protect his pay, on the basis of his placement in Pay band IV with AGP of Rs. 9000/-, from the date of his initial appointment as Reader in the University i.e. 01-02-2006. As a matter of fact, the University on receipt of letter No. 1-32/2006-U.II/U.I(i) dated 31.12.2008 issued by the Deputy Secretary to the Govt. of India, Ministry of Human Resource Development, New Delhi, conveying the scheme of revised scale of pay of the teachers, some points of doubt were raised by the University before the University Grants Commission for necessary clarification, which includes the following:--

"If a Reader joins the present institution on a date after 01.01.2006 while the Reader concerned already rendered more than 3(three) years of service in the scale of Rs. 12,000/- - 18300/- in some other Universities and that the University fixes his pay at a stage in the Pay Band of Rs. 37,400/- - 67,000/- and designate him as an Associate Professor and revised LPC thereof is issued, where such revised pay as per the LPC is admissible in the present institution suo motto." For reference the letter from Ministry of Human Resource Development dated 31.12.2008 and clarification sought by the University, as referred to above, will be relied by the answering respondents.

12. That with regard to the statements made in paragraph 14 of the writ petition the answering respondents denies the same as correct and states that with reference to the letter dated 13.04.2011 (appended as Annexure III), Shri. Satish Kumar, Under Secretary, University Grants Commission, New Delhi, vide his letter dated 23rd October 2012 (Annexure 15 appended to the Writ Petition) has clarified that if an Associate Professor in Pay Band IV with AGP of Rs. 9000/- joins in a Central University in the same capacity after applying through proper channel, his/her pay in old University/College as shown in LPC will be protected. In the instant case, when the Petitioner joined the University the petitioner was not placed in Pay Band IV with AGP of Rs. 9000/- as the order placing the petitioner in Pay Band IV was issued by the Manipur University only on 2nd November, 2010. Further, the Petitioner did not join as Associate Professor in the North Eastern Hill University. In other words, had the Petitioner, while serving as Associate Professor in Pay Band IV at Manipur University applied for the post of Associate Professor in the North Eastern Hill University, the petitioner pay could have been protected on the basis of last pay certificate issued by the parent University of the Petitioner. As mentioned in earlier paragraphs, the pay of the Petitioner was protected on the basis of the last pay certificate submitted by the petitioner drawing the pay scale of Rs. 12,000/- - 18300/- as Assistant Professor (subsequently Associate Professor) which was identical scale to that of Reader. In the light of the clarification given by UGC, further protection of pay of the petitioner is not tenable. However, the factual position of the Petitioner in details was once again presented before the University Grants Commission on 30th September 2013 (Annexure 17 of Writ Petition) by the Respondent No. 1 for

further clarification, as the respondent is of the view that the clarification given by UGC on 23.10.12 does not justifies the petitioners prayer for pay protection in the circumstances as pleaded in the writ petition.

13. That with regard to the statements made in paragraph 16 of the writ petition the answering respondent denies the same as correct and states that in accordance with Clause 6.8.0 sub clause 3.1 of the UGC Regulation 2010 "incumbent Readers and Lecturers (selection grade) who have completed 3(three) years in the current pay scale of Rs. 12000/- - 18300/- as on 2006 shall be placed in Pay band IV of Rs. 37400/- - 67000/- with AGP of Rs. 9000/- and shall be re-designated as Associate Professor." In accordance with the said provision in a similar case one Dr. N.K. Sinha, on having completed 3(three) years of service as Lecturer selection grade in the North Eastern Hill University, prior to 01.01.2006, has been designated as Associate Professor and extended the Pay Band IV i.e. Rs. 37400/- - Rs. 67000/- with AGP of Rs. 9000/-. The writ petitioner pay was also fixed in accordance with the fitment table provided by the University Grants Commission for the said purpose. In so far as the Petitioner is concerned, the petitioner has also been granted Pay band IV with AGP of Rs. 9000/- on completion of 3(three) years of service as Reader as mentioned earlier. Therefore, the Respondent No. 1 did not take any arbitrary decision in the matter of extending Pay Band IV and re-designating the eligible Lecturers (selection grade) and Readers as Associate Professors. The Petitioner by virtue of service rendered by him as Reader for more than 3(three) years at Manipur University the petitioner was granted Pay Band IV with AGP of Rs. 9000/- w.e.f. 01.01.2006 by the petitioner parent University. With regard to counting of past service for the purpose of pensionary benefits, it may be mentioned that as per directives of the Govt. of India, a Govt. establishment may accept pension liability for counting past services in all these cases where an employee move from one organization to another organization with proper permission and discharge the pension liability in the prescribed manner. For this purpose, proper permission means that Government servant applies for the post through proper channel and the petitioner resigns with due intimation that the petitioner is doing so to take up new assignment in a Government establishment. The answering respondent states that provided, the petitioner service under previous organization was governed by CCS (Pension) Rules of 1972 to facilitate to carry forward the petitioner past service for the purpose of combine service benefits. Hence, the period of service rendered by the Petitioner at Manipur University has been counted as qualifying service in NEHU for the purpose of Pension and Retirement Gratuity."

12. From the submission of Mr. K. Khan, learned counsel appearing for the respondents, it is clear that there is no dispute that the petitioner had already been re-designated/appointed as Associate Professor and it is also very clear from the said order of Manipur University dated 20-08-2005 that the petitioner had already been promoted to the post of Associate Professor in the Manipur University w.e.f. 07-02-2002 at the time of appointment of the petitioner as

Reader in the NEHU vide order dated 06-02-2006. For the sake of repetition, it is reiterated that the pay of the petitioner as Associate Professor in the Manipur University had already been protected by NEHU vide order dated 07-03-2006 which has been quoted in extenso in the aforesaid para. This Court is of the considered view that the last pay of the petitioner as Associate Professor in the Manipur University shall be last pay of the petitioner after the benefit on implementation of the Sixth Central Pay Commission was granted to the petitioner by the Manipur University while he was Associate Professor in the Manipur University w.e.f. 01-01-2006 vide the said order dated 02-11-2010 of the Manipur University. This Court is of the further view that the stand taken by the University in the said paragraphs 9, 10, 12 and 13 of the affidavit-in-opposition have no force in the given case inasmuch as NEHU had already protected the pay of the petitioner as Associate Professor in Manipur University and last pay of the petitioner as Associate Professor in Manipur University would be the last pay of the petitioner as Associate Professor fixed by the Manipur University w.e.f. 01-01-2006 while the petitioner was the Associate Professor of the Manipur University.

13. Writ petition is allowed accordingly.