

(2015) 04 MAN CK 0015
In the Manipur High Court
Case No : Writ Appeal Nos. 33 and 65 of 2005

The Sate of Manipur and Others	Vs	APPELLANT
Ambition Ragui and Others		RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 GLT 517 : (2015) 2 LLN 775

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : R.S. Reisang, Senior G.A., for the Appellant; Serto T. Kom, Advocates for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, C.J—These two writ appeals, at the instance of the State Authorities, have been filed against two different orders passed in two different writ petitions. Since the question involved is same in both the writ appeals, on the consent of the learned counsel for the parties, they were taken up together for hearing and are disposed of in this common judgment.

2. The brief background of the case is that the respondents in both the appeals were serving as Headmasters in various Primary schools in Ukhrul District. There was agitation for implementation of the recommendations made by the Fifth Central Pay Commission and consequently an MOU was signed on 11.1.1999 between the Chief Minister of Manipur from the side of the Government and the President of Joint Action Committee of AMTUC and AMGEU on the other side representing all the employees working under the Government including the respondents in both the appeals. Under the said MOU, the Govt. Of Manipur agreed to frame revised pay rules in terms of the recommendations of the Fifth Central Pay Commission by 31.1.1999 and making the said Rules effective from 1.1.1996. It was further agreed that the arrears for the period from 1.1.1996 to 31.12.1998 shall be deposited in the GPF accounts of the employees. Consequent

upon such an MoU, the Govt. Of Manipur in the Finance Department vide notification dt. 11.1.1999 framed a new set of rules called, "Manipur Services (Revised Pay) Rules, 1999." The said Rules were again amended vide notification dt. 10.3.1999. The first revision of pay as per 1999 Rules was made effective from 1.1.96 and the pay scale of Headmasters of JB/Primary Schools was enhanced from 1400-2300 to 4500-7000 and senior scale (after 15 years of regular service) from 2000-3500 to 6500 to 10500. Not being satisfied with the pay revision, the school teachers including the respondents submitted representation to the Government praying for removal of anomaly in the said pay revision and demanded that their pay should be same as their counterparts working under the Government of India. Consequently, the Government of Manipur rectified the anomaly by issuing order No. 1/115/98-PIC of the Finance Department (Pay Implementation Cell) under which pay scale of Headmasters of JB/Primary Schools was enhanced from 4500-7000 to 5500-9000/- So far as senior scale is concerned, the revised pay scale was not changed and remained same i.e. 6500-10500, but the regular period of service was reduced from 15 years to 12 years. However, this amended revised scale was made effective from the date of issuance of the order i.e. from 7.9.1999. The revised pay scale as per the order No. 1/115/98-PIC of the Finance Department having not been made effective from 1.1.1996, two writ petitions were filed before the High Court. W.P(C) No. 1818 of 2001 was filed by some Headmasters whereas W.P(C) No. 31/2005 was filed by another set of Headmasters. WP(C) No. 1818/01 was allowed by the learned single Judge vide order dt. 18.11.2004 which has given rise to Writ Appeal No. 33 of 2005. WP(C) No. 31/2005 was allowed by the learned single Judge following the judgment delivered in WP(C) No. 1818 of 2001 on 7.3.2005 and challenging the said judgment and order, the State has preferred WA No. 65 of 2005.

3. Undisputedly, in terms of a Memorandum of Understanding (MOU) the Govt. Of Manipur through Finance Department vide Notification No. 1/115/98-PIC dt. 11.1.1999 framed a set of Rules called " Manipur Services (Revised Pay) Rules, 1999." In terms of the said Rules, pay of the Headmasters of JB/Primary Schools was revised from the scale 1400-13000 to 4500-7000. But for those who have completed 15 years of regular service were permitted to draw senior scale of pay which was enhanced from 2000-3500 to 6500-10500/-. This pay scale was made effective from 1.1.1996 and as per the MOU the arrears for the period from 1.1.96 to 31.12.1998 were to be deposited in the GPF accounts of the employees. Thereafter, the teachers including the respondents submitted representation to the Govt. Of Manipur to remove the anomaly in the said pay revision and demanded to equate their pay with their counterparts working under the Govt. of India. The said representation was accepted by the State Govt. and Finance Department (Pay Implementation Cell) issued an order bearing No. 1/115/98-PIC. Under this order the pay scale of Headmasters of JB/Primary schools which was enhanced under the 1999 Rules to 4500-7000 and was further enhanced to 5500-9000. So far as senior scale is concerned, there was no

change in the pay scale under the said order, but 15 years of regular service to get senior scale of pay was reduced to 12 years of regular service. This order was published on 7.9.1999 and the enhanced pay scale was allowed to be drawn from 7.9.1999.

4. The question, therefore, is as to whether while rectifying the anomaly, the State Govt. should have given effect to the new scale of pay under order No. 1/115/98-PIC from 1.1.1996 or not.

Mr. RS Reisang, learned Sr. G.A. appearing on behalf of the State in both the appeals submitted that the initial pay revision made under the 1999 ROP had been given effect to from 1.1.96 and the arrears pay as per the MOU were to be deposited in the GPF Accounts of the employees. The enhancement of the pay scale under Order No. 1/115/98-PIC is not under 1999 Rules and said order was passed in order to rectify the anomaly and accordingly it was given effect from the date of its issuance i.e. 7.9.1999. Therefore, the arrears, as claimed by the respondents from 1.1.1996 consequent upon further enhancement of scale of pay, is not justified. It was further submitted by the learned Sr. G.A. that a conscious decision was taken not to make such enhancement effective from 1.1.96 as the State Govt. did not have resources or funds to meet the arrears which could be near about 62 crores.

5. Mr. ST Kom, learned counsel appearing for the respondents submitted that had the pay fixation been done correctly in terms of the 1999 Rules, all the respondents would have received arrears from 1.1.1996. Since the State Govt. committed a mistake in fixation of the pay scale in terms of the 1999 Rules, there was anomaly which was rectified on the basis of the representation filed by the respondents in 1999 and therefore all the respondents are entitled to arrears due to them after rectification of the anomaly from 1.1.1996.

6. In course of hearing, certain Gazette notifications were placed before the court in connection with the dispute. As per the MOU, "Manipur Services (Revised Pay) Rules, 1999" came into effect from 1.1.96. The said Rule was amended by notification dt. 10.3.1999 and amended Rules were called, "Manipur Services(Revised Pay) (Ist Amendment) Rules, 1999". Anomaly was detected in fixation of pay scale in respect of different categories of employees in different departments. While rectifying those anomalies so far Education Department is concerned, the amended scale of pay by way of rectification of the anomaly was made effective from 7.9.1999. So far as PWD, PHED, IFCD, Power Department, MI Department, Agriculture Department, Horticulture Department, Health Department, Family Welfare Department and some other departments are concerned, we find that the rectified pay scale, after removal of the anomaly, has been given effect to either from 7.9.1999 or from 15.11.1999 i.e. the date on which orders were passed in respect of different departments. No one has been paid arrear from 1.1.1996. Therefore, so far the respondents are concerned, they have not been discriminated as after removal of the anomaly, the revised pay scale has been made effective from the date of issuance of the order in respect

of all other departments. It is true that had the pay fixation been correctly done as per the 1999 Rules, the respondents would have received the arrears from 1996. However, it appears that in terms of 1999 Rules pay scale had been fixed but the respondents were not satisfied and they demanded that their pay scale should be same as that of their counterparts working under the Govt. of India. Considering those representations only, there was further enhancement in the scale of pay which is termed as rectification of the anomaly. Had it been done only in respect of those employees of the Education Department, question of discrimination could arise. The State Govt. has taken a conscious decision to make the notification effective from the date of issuance of the same, in respect of all the departments stated above. Therefore, there is no question of discrimination as pointed out by the learned counsel for the respondents. It was also pointed out that several employees whose pay fixation had been done correctly got the arrears from 1.1.96. Therefore, the respondents have been discriminated. We are unable to accept such contention as further revision of pay was made on the basis of representation filed by the respondents in order to rectify the anomaly. While rectifying anomaly in revision of pay, employees of all the departments have been treated equally.

7. Mr. ST Kom, learned counsel for the respondents relied upon a decision of the Supreme Court in the case of Purshottam Lal and Others Vs. Union of India (UOI) and Another, AIR 1973 SC 1088 : (1973) LabIC 604 : (1973) 1 LLJ 407 : (1973) 1 SCC 651 . The dispute in the said case was that the employees of Forest Research Institute were getting revised pay in terms of second Pay Commission from 1962 while other employees from 1959. Such discrimination among the employees in two departments was held to be illegal.

So far as the present case is concerned, as stated earlier, scale of pay attached to different posts in different departments were revised in order to rectify the anomaly and such revision has been made effective from the date of issuance of the order and not from 1.1.1996 as claimed by the respondents. There is no discrimination among the employees of one department and another. A Similar view expressed by the Supreme Court in the case of P. Parameswaran and Ors v. Secretary to the Government of India reported in 1987 (Suppl) SCC 18 has also no application in the facts of the present case.

8. Considering the stand taken by the State that it does not have funds to pay the arrears, reference may be made to a decision of the Supreme Court in the case of State of Bihar and Others Vs. Bihar Pensioners Samaj, AIR 2006 SC 2100 : (2006) 109 FLR 1088 : (2006) 5 JT 131 : (2006) 2 LLJ 1038 : (2006) 4 SCALE 600 : (2006) 5 SCC 65 : (2006) SCC(L&S) 913 : (2006) AIRSCW 2324 : (2006) 3 Supreme 743 . Para 18 of the decision which is relevant for the purpose of this issue is quoted below:

"18. A supplementary affidavit on behalf of the State Government by Mukesh Nandan Prasad dated 9.9.2002 brings out in para 8 that the total amount of financial burden, which would arise as a result of making effective the payments

from 1.1.1986 would be about 2038.34 crores. In other words, the State Government declined to pay the arrears from 1.1.1986 on the ground of financial consideration, which, undoubtedly, is a very material consideration for any administration. In *State of Punjab and Others Vs. Amar Nath Goyal and Others*, AIR 2006 SC 171 : (2005) 4 ESC 489 : (2005) 106 FLR 1062 : (2005) 7 JT 301 : (2005) 3 LLJ 759 : (2005) 6 SCC 754 : (2005) SCC(L&S) 910 : (2005) 3 SCR 549 Supp : (2005) 3 SLJ 475 : (2005) AIRSCW 5664 : (2005) 6 Supreme 469 this Court had occasion to consider the very same issue. After referring to a number of other authorities, it was held that financial constraints could be a valid ground for introducing a cut-off date while introducing a pension scheme on revised basis. Thus, refusal to make payments of arrears from 1.1.1986 to 28.2.1989 on the ground of financial burden cannot be held to be an arbitrary ground or irrational consideration. Hence, the argument based on Article 14 of the Constitution must fail."

9. It was also contended by Mr. RS Reisang, learned Sr. G.A. for the State that benefit of higher scale of pay granted by the Government to a class of employees with effect from a particular date does not amount to discrimination specially when there is no provision in the Pay Commission's recommendations to be given effect from any particular date. Reliance was placed on a decision of the Apex Court in the case of *Union of India (UOI) Vs. Arun Jyoti Kundu and Others*, (2007) 10 SCALE 368 : (2007) 2 SCC(L&S) 695 : (2007) 10 SCR 463 : (2008) 1 SLJ 424 .

10. We are, therefore, of the view that the State having not discriminated among the employees of different departments while taking decision to make the revised scale of pay for the purpose of rectification of the anomaly existing in the pay scale with effect from a particular date i.e. the date of issuance of the order, such decision is not discriminatory. There is no illegality in giving effect to the revised pay scale from the date the orders were passed. The Court also takes note of the fact that this decision of the State Govt. was based due to non availability of funds to pay the arrears and such stand taken by the State is also material for taking an administrative decision.

11. In the impugned order, the learned Single Judge allowed the writ petition filed by the respondents in the appeal relying on the two decisions referred to above on the question of discrimination. Since we hold that the above two decisions are not applicable considering the facts of the present case, we set aside the impugned orders and allow both the writ appeals.