
(2006) 02 GAU CK 0054
In the Gauhati High Court

Wakambam Upendro Singh	Vs	APPELLANT
State of Manipur and Anr.		RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Citation : (2006) 02 GAU CK 0054

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Y.Nirmolchand, Ch.Bidyamani Devi, Advocates appearing for Parties

Judgement

1. Heard Mr. Y. Nirmolchand, learned counsel for the petitioner as well as Mrs. Ch. Bidyamani Devi, learned GA for the respondents.

2. This writ petition relates with the pay anomaly of the post of Computer Operator in the PHE Department, Government of Manipur.

3. It is now fairly settled legal position that decision of the Expert Body/Committee of the Pay Commission is not ordinarily subjected to judicial review because pay fixation is an exercise requiring going into various aspects of posts and also the various service nature and duties of the employees. Judicial review of fixation of scale of pay of an employee by the expert committee, in exercise of writ jurisdiction by the High Court is very limited. The Apex Court in State of U.P. & Ors vs. J./P. Chaurasia & Ors: AIR 1989 SC 19 held that:

?The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations.?

The Apex Court reiterated the same view in Supreme Court Employees Welfare Association Vs Union of India & Ors: AIR 1990 SC 334 and held that; ?It is not

the business of the Supreme Court to fix the pay scales of the employees of any institution in exercise of its jurisdiction under Art. 32. If there be violation of any fundamental right by virtue of any order or judgment, the Supreme Court can strike down the same but; surely, it is not within the province of the Court to fix the scale of pay of any employee in exercise of its jurisdiction under Art. 32.?

Keeping in view of the limited power of judicial review of this court, in exercising the writ jurisdiction, of the fixation of pay scale of the employees by the Expert Committee, this court is taking up the present writ petition.

4. The following short factual matrix of the petitioner's case will be sufficient for deciding the present writ petition. According to the petitioner, he was appointed as Computer Operator in the PHE Department, Government of Manipur. The scale of pay of Computer Operator as per the ROP 1986 was Rs. 13502200/ per month. It is also case of the petitioner that other posts enjoying the pay scales either equal to the pay scale of Computer Operator or less than the pay scale of Computer Operator are Medical Store Keeper (Health Deptt), SubInspector of Police, Sub Inspectors(Sports), SubInspector(M./T.), Jamadar (M.R.), Radio Technician and SubInspector(Civil Police). When the ROP 1996 came into force, the pay scale of Computer Operator was revised at Rs. 45008000/ per month whereas pay scale of other posts mentioned above had been revised to Rs. 55009000/ per month. Being aggrieved by this partial treatment in the revision of pay scale of Computer Operator in the PHE Department, Government of Manipur the petitioner approached the Commissioner, Finance Govt. of Manipur by filing representation dated 5.4.1999 for taking up necessary actions for rectification of the mistake in revising the pay scale of Computer Operator in the PHE Department at Rs. 45007000/ per month under the ROP 1999. And in that representation, it is also specifically mentioned that pay scales of the counter parts of the Computer Operator of PHE Department, in the other Departments, Govt. of Manipur had been revised to Rs. 55009000/ under ROP 1999. It is said that taking into consideration of the said representation of the petitioner dated 5.4.1999, both the Chief Engineers of PHED had forwarded the said representation with the recommendation that the petitioner is the sole computer operator in the Department and he is discharging heavy load of duties entrusted to by both the Chief Engineers and also to examine the request of the petitioner and get rectified at an early date if found reasonable. As the said representation of the petitioner dated 5.4.1999 was not considered and disposed of by the Commissioner, Finance Department, Government of Manipur, the petitioner approached this court by filing the present writ petition. This court by an interim order dated 1.10.2001 passed in the present writ petition had directed the competent authority to dispose of the said representation of the petitioner dated 5.4.1999.

5. The respondents also filed their affidavit in opposition. In the Affidavit in opposition, copy of the order of the Government of Manipur dated 8.7.2000 had been annexed as Annexure R/1. From perusal of the order of Government of

Manipur dated 8.7.2003 it is crystal clear that the case of pay anomaly of the petitioner as Computer Operator under ROP 1999 had been referred to the Expert Body/Committee and the said Expert Committee also had already submitted its report to the Government in the month of August, 2002 for obtaining final decision or/approval of the Cabinet. The report is still pending for finalization by the Cabinet. For easy reference, the order of the Government of Manipur dated 8.7.2003 is quoted herein under:

?GOVERNMENT OF MANIPUR

FINANCE DEPARTMENT

(PAY IMPLEMENTATION CELL)

ORDERS BY THE GOVERNOR: MANIPUR

Imphal, the 8th July, 2003

No. 17/217/2001PIC: Whereas the Hon"ble Gauhati High Court, Imphal Bench passed an order, dated 01.10.2001 in Writ Petition (c) No.255 of 2001 [Shri Wakambam Upendro Singh, aged about 41 years, S/O W. Omor Singh, a resident of Uripok Sorbon Thingel, Imphal West, Manipur Vs The State of Manipur represented by Commissioner/Secretary (Finance), Govt. of Manipur and another] directing the respondents to dispose of the representation of the petitioner dated 05.04.1999 as in AnnexureA/2 to the Writ petition within a period of 3(three) weeks from the date of receipt of the order with a speaking order.

2. And Whereas the petitioner who is holding the post of Computer Operator in the Department of Public Health Engineering Department, in his representation, dated 05.04.1999 has stated that he was enjoying the prerevised scale of pay of Rs. 13502200/ under the Manipur Services (Revised Pay) Rules, 1990 and claims to revise the pay scale of Computer Operator to Rs. 16402900/ under the Manipur Services (Revised Pay) Rules, 1990 on the ground that the post of Computer Operator in various establishments, such as Central Agricultural University, Manipur University, Board of Secondary Education had been given the scale of pay of Rs. 16402900/ and further claims to revise the said scale of pay of Rs. 55009000/ under the Manipur Services (Revised Pay) Rules, 1999 effective from 01.01.1996.

3. And whereas the claim of the petitioner for equalization of the pay scale with those of the Computer Operators of Central Agricultural University, Manipur University and Board of Secondary Education can not be considered as the Central Agricultural University, Manipur University and Board of Secondary Education are autonomous bodies having their own separate statutory rules.

4. And whereas the prerevised scale of Rs. 13502200/ for the post of Computer Operator of the Public Health Engineering Department had already been revised to Rs. 45007000/ under the Manipur Services (Revised Pay) Rules, 1999 in

consonance with the Central Revised scale corresponding to prerevised scale of Rs. 13502200/.

5. And whereas after implementation of the revised pay scales in the form of the Manipur Services (Revised Pay) Rules, 1999, the Government set up a Cabinet SubCommittee on Pay Anomaly vide Government order No. 1/4/97CON, dated 11.05.1999. The recommendations of the said Cabinet SubCommittee were considered the approved by the Cabinet on 17.01.2000 and reaffirmed on 10.03.2000. However, before the order on the basis of the Cabinet SubCommittee Report could be issued, a reference was also received from the Central Government vide Message No. 14(3)P.F. 1/99, dated 13.03.2000 to clarify whether pay revision effected by the State Government is within the parameters of the 5th Central Pay Commission Recommendations. This put a stop to the implementation of the recommendations of the Cabinet SubCommittee since in some categories of the posts, higher pay scales had been recommended.

5. And whereas the Finance Department (PIC) was asked to have a relook at the recommendations in the light of the reference from the Central Government. This exercise substantially dilute the higher pay scales which were recommended by the Cabinet SubCommittee in respect of several categories of employees, where the claims were felt to be unjustified and where adequate justification were available, no modification was proposed.

6. And whereas a Committee of Officers headed by the Chief Secretary, Govt. of Manipur was constituted vide order No. 1/123/99PIC, dated 28.09.2001 to look into the recommendations of the Cabinet Sub Committee to the extent of proposed modifications of the Cabinet Sub Committee to the extent of proposed modifications made by the Finance Department.

7. And whereas the representation, dated 05.04.1999 of the petitioner requesting for grant of the revised scale of Rs. 55009000/ under the Manipur Services (Revised Pay) Rules, 1999 effective from 01.01.1996 was referred to the said Expert Committee and the same was examined by the said Expert Body, the Report of which had already been submitted to the Government in August, 2002 for obtaining final decision/approval of the Cabinet. The Report is pending finalization by the State Cabinet.

8. And whereas the Additional Government (HC), Manipur was requested vide this Department's letter of even number, dated 17.01.2002 to seek time from the Hon''ble Gauhati High Court, Imphal Bench that the matter regarding the rectification of pay anomaly in respect of the post of Computer Operator of Public Health Engineering Department under the provisions of the Manipur Services (Revised Pay) Rules, 1999 was under the active consideration/examination of the said Committee of Officers headed by the Chief Secretary, Government of Manipur.

8. And whereas the representation, dated 05.04.1999 of the petitioner could not

be disposed of in time as the final decision/approval of the Cabinet on the matter of pay anomalies is still awaiting.

9. And whereas the Hon''ble Gauhati High Court, Imphal Bench issued notice under Section 11 & 12 of Contempt of Court's Act, 1971 vide order, dated 28.02.2003 in Contempt Case (c) No.36 of 2003 filed by the present petitioner.

10. Now, therefore, the Governor of Manipur taking into consideration of the Hon''ble High Court's direction as well as the Contempt Proceedings, is pleased to dispose, ad interim, of the said representation, dated 05.04.1999 stating that the representation submitted by Shri Wakambam Upendro Singh, Computer Operator, Public Health Engineering Department requesting for grant of higher pay scale was referred to the Expert Committee and that the Report of the said Expert Committee is pending finalization by the Cabinet.?

6. From bare perusal of the order of the Government of Manipur dated 8.7.03 it is crystal clear that the case of petitioner regarding revision of pay scale under ROP 1999 had already been considered by the Expert Committee and submitted its report to the Government in the month of August, 2002. But, due to non finalization of the report by the Cabinet, the matter regarding the pay anomaly of the Computer Operators (PHED) in PHE Department Government of Manipur under ROP 1999 is not yet finalized. But now the question is, whether the matter of anomaly of pay scale of Computer Operator (PHED) under ROP 1999 shall be kept pending in perpetuity because of non finalization of the said report of the Expert Committee by the Cabinet.

7. According to the considered opinion of this Court the case of anomaly of pay scale of Computer Operator, PHED under the ROP 1999 cannot be kept pending in perpetuity only because of the non finalization of the report of Expert Committee by the Cabinet. It is the bounden duty of the respondents to take up necessary actions to finalize the report of the Expert Committee which was said to have been submitted to the State Government in the month of August, 2002 within a reasonable time but at least before the commencement of 6th Pay Commission. Taking into consideration of the submission of learned counsel of both the parties and also on perusal of the record, this court is of the considered view that justice will be served to the petitioner, if the case of pay anomaly of the pay scale of Computer Operator in the PHED is finalized basing on the report of the Expert Committee within a reasonable time and the reasonable time would be 4(four) months from the date of receipt of judgment and order of this court.

With the above observation and direction, writ petition is disposed of.