

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

WP(C) No. 410 (AP)/2014

Sri Bamar Yinyo
S/o Shri Damba Yinyo
Permanent resident of Village Belo
PO/PS : Yomcha,
District: West Siang, Arunachal Pradesh

.....*Petitioner.*

By Advocate:
Mr. D. Boje

-Versus-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Minister of Finance, Government of Arunachal Pradesh, Itanagar.
3. The Commissioner (Finance), Government of Arunachal Pradesh, Itanagar.
4. The Secretary (Finance), Government of Arunachal Pradesh, Itanagar.

.....*Respondents*

By Advocates:
Mr. R. H. Nabam, Additional Advocate General

:::BEFORE:::
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 03.09.2015
Date of Judgment & Order: 10.09.2015

JUDGMENT & ORDER (CAV)

Heard Mr. Domo Boje, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Pubi Pangu, learned Government Advocate, for State Respondents No. 1 to 4.

2. The petitioner, by filing this petition under Article 226 of the Constitution of India, has prayed for invoking the extra-jurisdiction of this Court, for implementation of the recommendations of the 6th Central Pay Commission (CPC), in toto.

3. The brief facts, of the instant case, are that, in compliance to the directives of the Central Government for implementation of the Central Civil Services(Revised Pay) Rules, 2008, the respondent authorities have issued the Office Memorandum dated 05.01.2008, under Order No. FIN/E-II/ 22/2008, by the Commissioner(Finance), Government of Arunachal Pradesh, Itanagar.

4. Learned counsel for the petitioner Mr. Boje, has contended that Central Civil Services(Revised Pay) Rules, 2008, is accepted by the State respondents and made applicable to the employees under the Government of Arunachal Pradesh as per their entitlement/admissibility from 01.01.2006 by notional fixation of pay in the revised pay band/structure with drawl and release of actual financial benefits, w.e.f. 01.01.2009.

5. It is further contended that the State respondent authorities have only partially implemented the 6th Central Pay Commission(CPC), for which, being aggrieved by the impugned action of the respondent authorities; the Confederation of Service Associations Arunachal Pradesh(CoSAAP) submitted a memorandum before the respondent authorities on 13.05.2009 for redressal of their grievances with a prayer for implementation of the recommendations of the 6th Central Pay Commission(CPC), in toto.

6. In response to repeated requests and Memorandums, the respondent authorities partially granted some of the allowances i.e. House Rent Allowances(HRA), Leave Travel Concession Allowances(LTC), etc., but to the utter dismay, the respondent authorities have not implemented the recommendations of the 6th Central Pay Commission(CPC), in toto, and have not

granted important allowances like Children Education Allowances and Transport Allowances, for which the petitioner along with entire employees of various Departments of the Government of Arunachal Pradesh have been deprived.

7. Admittedly, the respondent authorities have accepted and implemented Travelling Allowance Rule/LTC, enhancement of quantum of Maternity leave and introduction of Child Care Leave(CCL), of the 6th Central Pay Commission(CPC) vide Office Memorandums dated 23.07.2009 and 05.03.2012. However, despite several assurances, the respondent authorities are yet to grant Children Education Allowances Scheme, Reimbursement of Tuition Fees, Hostel Subsidy, Transport Allowances, Uniform Allowances, etc..

8. Learned counsel for the petitioner has further contended that the State Government is the only implementing authority/agent of the Central Government until it constitutes its own State Pay Commission. According to the petitioner, it is mandatory for the State Government to implement all the provisions and schemes so recommended by the 6th Central Pay Commission in letter and spirit and partial implementation of the same by the respondent authorities is utter total violation of the mandatory provision of 6th Central Pay recommendation and as such, it has caused wrongful loss and harassment to the petitioner.

9. As per Rule 3 of the Office Memorandum dated 30th August, 2008, the revised rate of all allowances, such as House Rent Allowances, Transport Allowances, Children Education Allowances, Special Compensatory Allowance, Special Duty Allowances, Hard Duty Allowances, etc., will be paid prospectively w.e.f. 01.09.2008 but the same have not been granted till date. The petitioner sent a Legal Notice to the respondents urging the implementation of all the schemes of the 6th Central Pay Commission (CPC).

10. In response to the said Notice, the Respondent No. 3/Under Secretary(Finance), Government of Arunachal Pradesh, Itanagar, has given a

reply that due to fund constraints, the same could not be implemented but the same will be implemented in phased manner. However, there is no response from the respondent authority to initiate any positive action for implementation of 6th Central Pay Commission in toto.

11. The further case of the petitioner is that after acceptance of the recommendations of the 6th Central pay Commission(CPC) and in suppression of all earlier orders on the subject of Children Education Allowances and Reimbursement of Tuition Fees; the Government of India have issued order Vide-G.I., Dept. of Personnel & Training, vide O.M. No. 12011/03/2008-Estt (Allowance), dated 02.09.2008, with effect from 01.09.2008. Situated thus, the petitioner have been claiming all the admissible allowances to the respondent authorities as per the said CPC, more particularly, the Children Education Allowances and Transport Allowances.

12. Learned counsel Mr. Boje, has also contended that as per sub-section (1) of Section 46 of the State of Arunachal Pradesh Act, 1986; all laws, in force, immediately before the appointed day in the existing Union Territory of Arunachal Pradesh; shall continue to be in force, in the State of Arunachal Pradesh until altered, repealed or amended by a competent legislature or other competent authority. Further, sub-section (2) of Section 46 of the State of Arunachal Pradesh Act, 1986 clearly stipulates that for the purpose of facilitating the application of any law in relation to the State of Arunachal Pradesh, the Government of the State of Arunachal Pradesh, as the appropriate Government; is empowered by the order, to make such adaptations and modification of the law, whether by way of repeal or amendment, as may be necessary and expedient, and thereupon, every such law shall have the effect subject to adaptations and modifications so made until altered, replaced, or amended by a competent legislature or other competent authority. Therefore, in exercise of the aforesaid powers the State respondents have made the following orders which is called after the Arunachal Pradesh Adaptation of Law and order, 1987 vide order

dated the 10th April, 1987, 2nd February, 1989 and 16th February, 1989 and the same shall be deemed to have come into force on the 20th day of February, 1987. It is needless to say that the expression under sub-section (2-0 of Section 46 of the State of Arunachal Pradesh Act, 1986 "Appropriate Government" means as respects any law relating to a matter enumerated in the Union List in the Seventh Schedule to the Constitution, the Central Government and as respects any other law, the Government of Arunachal Pradesh. Therefore, according to the petitioner, it is mandatory for the respondent authorities to fully implement all the recommendations of the 6th CPC and all the admissible allowances and schemes.

13. Furthermore, as per the State of Arunachal Pradesh Act, 1986, and the Arunachal Pradesh Adaptation of Laws Order, 1987, the employees of the Government of Arunachal Pradesh comes under the Union List and they are at par with the central employees in all aspects inasmuch as the Central employees have been given all the admissible allowances in toto as per the 6th Central Pay Commission, however, the State respondents have not given the lawful dues to the state employees including the petitioner thereby depriving the petitioner of his lawful rights and as such, impugned action of the respondent authorities is a clear violation of fundamental rights and a violation of the directives of the Central Government and other standing rules in force.

14. An affidavit-in-opposition has been filed by the State Respondents No. 1, 3 and 4, in which, they have categorically contended that the Central Pay Commissions are being appointed by the Central Government to decide the pay and allowances for Central Government employees only and not applicable for State Government employees till it is accepted and notified accordingly by the State Governments. The recommendations of the 6th Central Pay commission is being implemented in the State by the State Government in a phased manner with due consideration of its financial constraints and available resources. It has been contended that despite

financial hardships, the State Govt. has implemented the 6th Central Pay Commission Recommendations to the fullest possible extent in a modified form after thorough examination *vis a vis* the availability of funds/resources with the State Government. That apart, according to the State respondents, it is not mandatory to implement the Central Pay Commission for State Government employees in toto.

15. In the said counter affidavit, it has contended that Arunachal Pradesh is a special category State which does not have enough resources of its own and is hundred per cent dependent on central assistance. It is a full-fledged state in the Indian Union and has a legally appointed Legislature and Government to decide the affairs of State and employees under it. Furthermore, in absence of its own Pay Commission and Pay Rules, as a matter of policy, the State Government is so far following the Central Pay Commission and Rules with modification, as deemed necessary, with due consideration of its finances and resources, for application in the State Government employees.

16. It has also been contended in the said counter affidavit, that no specific tied funds are being provided by the Central Govt. to the State Govt. for implementation of 6th CPC and its allowances. The State Govt. is ready to implement the 6th CPC and all its fringe allowances in toto including Transport Allowances and Children Education Allowances, as has been urged by the petitioner, for all the State Govt. employees at par with the Central Govt. employees, if the requisite earmarked funds are provided in this regard to the State Government by the Central Government.

17. In the said counter affidavit, it has been averred that though most of the allowances of 6th CPC have already been implemented for State Govt. employees by the State Government, the Children Education Allowances and Transport Allowances, etc., could not be implemented in the State so far, due to acute financial constraints of State Govt.. However, it has been categorically

stated that the Children Education Allowances and Transport Allowances, etc., would be implemented in a *phased manner* as and when the financial health of the State improves for which the State Govt. is striving hard. However, the Transport Allowances and Children Education Allowances of 6th CPC are subject to certain inherent terms and conditions and therefore, they are not uniformly admissible to all the Government employees and thus, it cannot be claimed as a matter of right. Nonetheless, it has also been stated by the State respondents that the State Govt. is also providing passage at concessional rates for State Govt. employees through its State Transport Services Buses in some locations, and similarly, providing stipend and book grants, etc., for all APST students including the wards of State Government employees. Further, it has been contended by the respondents that the legal notice dated 08.07.2014 served on the matter, has been adequately responded by the State Government vide letter No.FIN/E-II/22/08/Pt/356 dated 28.10.2014.

18. According to the State respondents, the State Govt. is committed for all-round development of the State and its Government employees. In that regard, the petitioner has already been granted the benefits of 6th CPC as admissible to other employees under the State Govt. and the demand for implementation of Children Education Allowances and Transport Allowances etc., as admissible to the Central Government employees; cannot be considered to, at this juncture, due to huge financial involvement on the state exchequer which is estimated to be approx. Rs. 250 Crores per annum. The specific contention of the respondent authorities is that the State Government alone may not be able to meet the demand with its limited resources because of the fact that the State Government is already spending too much expenses on salary and other allowances of 65000 Government employees after implementation of 6th CPC in a modified manner, with its limited resources. The high salary component has already affected the quantum of fund meant for other development activities of the State and any escalation may further lead to bankruptcy of the State

Government. Moreover, the State Government had inherent powers to decide the pay and allowances of the employees.

19. That apart, the other contention of the State Respondents in the said affidavit, is that the Pay Commission only recommends the pay and it is not mandatory on the part of the State to adopt its recommendation in toto. It is the financial and policy decision of the State authorities whether it can be implemented fully depending upon the financial condition of the State. Moreover, the scope of judicial interference in respect of implementation of the Pay Commission is very limited. The State respondents, have, therefore, urged the Court that this writ petition may be dismissed.

20. I have considered the contentions of the rival parties. According to the learned counsel for the petitioner Mr. Boje; the Annexure-1 which is the reply of the respondent Under Secretary, Finance, Government of Arunachal Pradesh, Itanagar, is enough to support the case of the petitioner and the Court can decide the case on the basis of the said admission by the respondent authority. It may be mentioned herein that claiming the benefits like Children Education Allowance, Hostel Subsidy, Transport Allowance, Uniform Allowance, etc., under the 6th CPC, the petitioner sent a legal notice to the Commissioner, Finance, Government of Arunachal Pradesh, dated 18.07.2014, vide Annexure-F, in response to which the Under Secretary, Finance, Government of Arunachal Pradesh, Itanagar, has given the reply on 28.10.2014, vide Annexure-I(which is not disputed by the respondent side), which reads as follows:

"Sub: Reply to the Legal Notice dated 18.07.2014

Ref : Your Notice No. LM-10/14 dated 08.07.2014

Sir,

While admitting the averment made in your aforesaid legal notice to the extent borne by the records, I am directed to inform you that taking the financial constraint of the State into consideration, the 6th CPC recommendations is being implemented in the State Government in a phased manner. It

may be appreciated by the State employees that despite financial constraint, the State Government has implemented 6th CPC recommendations to the fullest possible extent in a modified form, after thorough examination of the matter vis-à-vis the availability of resource/funds.

However, though most of the 6th CPC allowances have already been implemented for the State Government employees, the State Government, children Education Allowance transport, Hostel Subsidy, Subsidy allowance, etc., could not be implemented due to acute financial constraint, and the same will be implemented in phased manner as and when financial health of the State improves for which the State Government is striving hard.

This issues with the approval of the Dev. Commissioner (Finance)."

21. The same aspect has been asserted by the State Respondents while giving counter affidavit. Equally, it is also submitted that the Government is not bound to implement the recommendations of the 6th CPC in toto and the petitioner cannot claim it as a matter of right. On the other hand, the petitioner has asserted that he being the poor Teacher of a State run school, and all other persons, similarly situated, suffered a lot for not providing the benevolent facilities provided at the wisdom of the State Government.

22. Admittedly, as there is no Pay Commission in the State of Arunachal Pradesh, so the State Government of Arunachal Pradesh, by issuing Office Memorandum dated 05.01.2008 has adopted the revised pay-scale structure of the Central Civil Services(CCS) (Revised Pay Rules) 2008 and decided to make it applicable to the employees under the Government of Arunachal Pradesh as per their entitlement and admissibility, vide OM No. FIN/E-II/22/08.

23. Under relevant Office Memorandum vide Annexure C under No. FIN/E-II/22/08 dated 05.03.2012 issued by the Development Commissioner, Government of Arunachal Pradesh, Itanagar, the State Government has clarified that implementation of CEA, Travelling Allowance/LTC, etc., will be applicable in the State of Arunachal Pradesh w.e.f. 01.04.2012.

24. Apparently, there is no dispute that all provisions, as has been prayed by the petitioner, has been incorporated in the 6th Central Pay Commission(CPC) and there is also no obstacle clause that same will be considered, at certain intervening period. The reply of the respondent authority clearly indicates that only because of fund constraint, they could not implement all those recommendations. In view of the pretext that India is a welfare Country and all schemes has been provided for the welfare of all sections of the Society and the scheme of Children Education Allowance, Hotel Subsidy, Uniform Allowance, Transport Allowance, etc., certainly aim at giving big relief as well as to uplift the socio-economic condition and for all-round development of the people of India. While the State of Arunachal Pradesh has accepted the recommendations of the said 6th Central Pay Commission (CPC), then they, on their own, cannot deny to provide the lawful privilege of the citizens. The State authority is under an obligation to address the grievances of the employees and denial of the same, will tantamount to violation of right to livelihood as enshrined in the Constitution of India. The above-mentioned scheme being a welfare-oriented one, should be implemented by the State authority in letter and spirit. The submission of the respondents that they will implement such recommendations whenever is available is not a proper response while the recommendations was made in the year 2008 and now it is 2015. The State Government is to procure the required funds by their own initiation and lethargy and inaction on the part of the State Respondents may be a matter of serious concern if not properly adhered to.

25. In view of the above, this writ petition is allowed. The respondent authorities are hereby directed to implement all recommendations/admissible

allowances as provided in the 6th Central Pay Commission(CPC), as per Government Guidelines, without further delay, preferably, within a period of **3(three) months** from **today**, to redress the grievances of the petitioner as well as other similarly situated persons.

26. With the above noted directions, this writ petition stands disposed of.

JUDGE

Bikash