

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

**WP (C) 329 (AP) 2013**

1. **Sri. Nyodek Yonggam,  
S/O Lt. Rinyo Yonggam,  
R/O Oyan, P.O/P.S. Sille,  
Dist. East Siang,  
Arunachal Pradesh.**
2. **Sri Bani Danggen,  
S/O Lt. A. Danggen,  
R/O Yingkiong,  
P.O/P.S yingkiong,  
Upper Siang District,  
Arunachal Pradesh.**
3. **Sri. Habung Payeng,  
S/O Lt. Habung Taley,  
R/O Reru, P.O/P.S Ziro,  
Lower Subansiri District,  
Arunachal Pradesh.**
4. **Sri Nipo Nabam,  
S/O Lt. Tajom Nabam,  
R/O Niti Darlong,  
P.O/P.S Sejosa,  
East Kameng District,  
Arunachal Pradesh.**
5. **Sri Toko Anil,  
S/O Sri Toko Rigla,  
R/O Deed, P.O/P.S Hapoli,  
Lower Subansiri District,  
Arunachal Pradesh.**

.....Petitioners.

**By Advocate:**  
Mr. N. Tagia, Advocate.

-Versus-

1. **The State of Arunachal Pradesh,  
Represented by the Chief Secretary, Itanagar,  
Govt. of Arunachal Pradesh.**
2. **The Arunachal Pradesh Information Commission,  
Represented by its Secretary, Hotel Bomdila,  
Gophur Tinali, Itanagar,  
P.O/P.S Itanagar, Dist. Papum pare,  
Arunachal Pradesh.**
3. **The Commissioner,  
Administrative Reforms,  
Govt. of Arunachal Pradesh, Itanagar.**
4. **The Commissioner Finance,  
Govt. of Arunachal Pradesh, Itanagar.**
5. **The Commissioner Personnel,  
Govt. of Arunachal Pradesh, Itanagar. Administrator,**

.....Respondents.

**By Advocate:**  
Mr. R. H. Nabam, Id. Sr. Govt. Advocate for respondent Nos. 1, 3, 4 & 5.  
Mr. R. Saikia, for respondent No. 2.

**BEFORE**

**THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH**

Date of hearing : 31 .07.2014

Date of Judgment & Order : 22 .08.2014

**JUDGMENT & ORDER (CAV)**

Heard Mr. N. Tagia, learned counsel for the petitioners. Also heard Mr. R. H. Nabam, learned Sr. Govt. Advocate for respondent Nos. 1, 3 to 5 and Mr. R. Saikia learned counsel for respondent No. 2.

2] The petitioner No. 1 was appointed as State Chief Information Commissioner, Arunachal Pradesh and the Petitioners No. 2, 3, 4, 5 were appointed as State Information Commissioners, Arunachal Pradesh and they retired as such from their service on superannuation/completion of terms of service. They were appointed in terms of Section 16 of the Right to Information Act, 2005 and in their appointment orders it was not reflected that their pay and allowances and other conditions of services shall be governed by the provision of the Right to Information Act, 2005 and the Arunachal Pradesh Information Commission Regulation, 2006. Although, as per the mandate of Sub-Clause 5 of Section 16 of the Government of the Arunachal Pradesh, the petitioners were paid the salary at par with that of the Election Commissioner/Chief Secretary of the State, several allowances such as House Rental Allowances in respect of the petitioners No. 1, 3 & 5, sumptuary allowance (arrear) at enhanced rate in respect of petitioner No. 1 and Sumptuary allowances in respect of petitioners No. 2, 3, 4 & 5 as well as Special duty allowance in respect of all the petitioners were not given to the petitioners to which the petitioners were entitled under the law. After the retirement, the petitioners are not getting any pension in respect of any previous service under the Government of India or under the Government of State; they are also not getting any retirement benefits in respect of previous services rendered by them.

3] When the petitioner No. 1 was about to demit his office on 1<sup>st</sup> day of March, 2011, he made one representation on 17.01.2011 to the Secretary (AR), Govt. of Arunachal Pradesh praying inter-alia for grant of pension as per the provision of section 16 (5) of the RTI Act. As there was no response from the respondent, the petitioner No. 1 made another representation on 18.07.2011 to the Registrar, Arunachal Pradesh Information Commission, who in turn made a request to the Secretary (AR), Govt. of Arunachal Pradesh for early decision. Like wise petitioner Nos. 2, 3, 4 & 5 also made representation on 10.02.2010 and 02.09.2011 to the Commissioner (Finance), Govt. of Arunachal Pradesh and the Registrar, Arunachal Pradesh information Commission (APIC) respectively. Their subsequent representation was also forwarded to the Secretary by the Registrar.

4] Mr. Tagia, learned counsel appearing for the petitioners has submitted that Section 16 (5) read with the scheme of the RTI, Act, 2005 makes it abundantly clear that the salaries allowances and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioner shall be the same as that of the Election Commissioner and the Chief Secretary respectively. The petitioners, therefore, are entitled to all the benefits, pre-retirement or post-retirement, that are attached to the posts of Election Commissioner and the Chief Secretary respectively.

5] The Deputy Registrar, Arunachal Pradesh State Information Commissioner representing the respondent No. 2 in his affidavit-in-opposition has averred that Arunachal Pradesh State Information Commission has moved a file on 08.02.2011 to the Government of Arunachal Pradesh seeking status of notification issued by the State Chief Information Commission regarding terms and conditions of the Service of the Commissioners under the RTI Act, 2005 and connected laws, which was published in the Arunachal Pradesh Gazette, 20<sup>th</sup> May, 2010. The Arunachal Pradesh Information Commission requested the Government of Arunachal Pradesh to review the decision conveyed on 06.01.2011 whereby the APIC was advised not to go ahead with their notification dated 20.05.2010. The commission, thereafter, received a letter No. AR 108/2011 in the month of June from the Department of Administrative Reforms on 24.07.2012 whereby the Commission was requested to work out the requirement of fund for clearance of the pension and pensionary benefits of the retired State Chief Information Commissioner and the State Chief Information Commissioners to enable the Department to take up the matter with the Government for necessary action. Since there was no reference and precedence available in the Commission regarding the pension and pensionary benefits to the retired State Chief Information Commissioner and the State Information Commissioners and also in absence of laid down rules, the AR Department was requested to formulate rules on the above matter, so that the requirements of fund for the purpose could be worked out but till date no further correspondence is received.

6] In the affidavit-in-opposition filed on behalf of respondent Nos. 1 & 3, it has been averred that the petitioner Nos. 1, 3 & 5 who are claiming House Rent Allowance never applied for rent free accommodation, the proposal for reimbursement in lieu of rent free accommodation is required to be supported by a certificate from the Authority competent to allot Government Quarters for the concerned Government Employees to the effect that no Government accommodation have been provided to the claimant for the purpose for which rent has been claimed but the petitioners did not approach the State Department (Estate) for allotment of accommodation, had they approached the concerned authority for accommodation, they would have been allotted Government accommodation as per their entitlement. As regard to Sumptuary allowances, it was not paid to the petitioner No. 1 as per the rate, however, payment was not given in the revised rate because of non availability of specific orders. The Sumptuary allowances is not admissible to the State Information Commissioners, therefore, it was not paid to the State Information Commissioners. The Special Duty allowances and Sumptuary allowances has not been paid to the State Commissioners as they are not borne under any cadre and without any transfer liability.

7] It is averred that the State Information Commission in Arunachal Pradesh is a new institution and many factors relating to entitlement of the commissioners pre-retirement and post retirement are not settled due to lack of specific guidelines and information. The allowances of State Information Commissioners vary from State to State and most of the allowances are at par with the admissible in the respective States. It is a new subject and has to be settled at par with the other State. The State Government is collecting the information and trying to finalize the terms and conditions of service of Chief Information Commissioner and Information Commissioners. Therefore, the post retirement benefits have not been paid to the Information Commissioners due to lack of specific rule and guidelines in this regard. The petitioners, herein, were not given Sumptuary as they are not in service prior to their joining in the Commission to count their services as qualifying service for pension. Moreover, the Government of India has discontinued statutory pension scheme with effect from 01.01.2004 and has introduced new pension scheme with effect from 01.01.2004 for Civil Service including all India Service Officers appointed after this cut off year. Petitioners joined in the year 2006 and one of the petitioner joined in the year 2007 that means after introduction of new pension scheme, they all joined post Government service as freshers without any background of past Govt. Service to count qualifying service for pension. The Government of Arunachal Pradesh has written to the ministry of Personnel Public Grievance and pension, Department of Personnel and training vide letter dated 23.08.2011,22.09.2011,08.12.2011 seeking information regarding post retirement benefits of the Information Commissioners and they are waiting for the reply.

8] Mr. Tagia, learned counsel for the petitioner has referred to the Judgment passed in *WP (C) 60 (AP) 2013 of the Gauhati High Court, Aizawal Bench* wherein in Para-20, it has been observed as under:-

**“20 This contention of the respondents is fallacious inasmuch as entitlement to pension of State Chief Information Commissioner is traceable to section 16 (5) of the Act. Once the Statue provides such a benefit, the same cannot be curtailed or given effect to from a latter date by a subordinate legislation. Moreover, when the 2012 Rules expressly provides pensionary benefit to State Chief Information Commissioner, it would be incongruous and an anomalous situation to grant pension to one State Chief Information Commissioner and deny the same to another State Information Commissioner only on the ground that the latter had retired before coming into force of the 2012 Rules.**

9] All the respondents in their counter affidavits are not specifically denying the claims of the petitioners and it appears from their pleadings that the pre-retirement and post retirement benefits of the petitioners have not been given by way of specific rules or guidelines. As per Section 27 of the RTI Act, 2005 the State Government is empowered to make rules and in terms of Section 27 of the Act,

some of the neighboring States i.e. Mizoram, Assam have already made and published rule notifying in their Gazette.

10] In view of the circumstances and for future guidance, the respondent No. 1 is directed to formulate a rule inconsonant with section 16 (2) (5) (B) of the RTI Act, 2005 and to decide the representation of the petitioners expeditiously in terms of the rules.

11] An Endeavour shall be made to complete the process within 3 months with effect from receipt of copy of this Judgment.

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JUDGE