

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

WP (C) 556(AP) 2013

1. Mr. Khoda Gambo, S/o Late Khoda Sala, Library Assistant Dera Natung Govt. College, Itanagar.
2. Mr. L. R. Singh S/o Late Ibohal Singh, Physical Education Teacher (PET) Dera Natung Govt. College, Itanagar.
3. Mr. Biri Tako, S/o Late Biri Taje, Laboratory Assistant (Geography) Dera Natung Govt. College, Itanagar.
4. Mrs. Shashi Ranjan S/o Kshaw Prasad Laboratory Assistant (Botany) Dera Natung Govt. College, Itanagar.
5. Gibom Potom, S/o Shri Tagi Potom, Laboratory Assistant (Zology) Dera Natung Govt. College, Itanagar.
6. Mr. Joram Tayam, S/o Late Joram Tado, Library Assistant, Dera Natung Govt. College, Itanagar.
7. Mr. A. B. Malik, S.o Late M. Malik, Library Assistant, Dera Natung Govt. College, Itanagar.
8. Ms. Geki Mepo, S/o Shri Karja Mepo, Library Assistant, Govt. College, Yachuli.
9. Mrs. Tumyir Loya, S/o Shri. Hitum Loya, Library Assistant, Indira Gandhi Govt. College, Tezu.
10. Nyok Tahar, S/o Shri Gohen Tahar, Laboratory Assistant, (Chemistry), Rajiv Gandhi Govt. Polytechnic College, Itanagar.
11. Ms. Pinky Changmai, D/o Late. N. N. Changmai, Laboratory Assistant (garment & Fashion Technology), Rajiv Gandhi Govt. Polytechnic College, Itanagar.
12. Mr. Dani Nobing, S/o Shri Dani Marpu, Laboratory Assistant (Computer Science & Engineering), Rajiv Gandhi Govt. Polytechnic College, Itanagar.
13. Mr. Debia Mopin, S/o Sh Debia Lely, Laboratory Assistant (Electrical & Electronic Engineering) Rajiv Gandhi Govt. Polytechnic College, Itanagar.
14. Mr. Hibu Sha, S/o Late Hibu Tatu, Laboratory Assistant (Automobile Engineering), Rajiv Gandhi Govt. Polytechnic College, Itanagar.
15. Tao Vijay, S/o Tao Arin, Laboratory Assistant (Herbal Technology), Rajiv Gandhi Govt. Polytechnic College, Itanagar.

.....Petitioners

Advocates for the Petitioners:

Mr. K. Tari
Mr. H. Gyati
Mr. N. Talley

-Versus-

1. **The State of Arunachal Pradesh to be represented by represented by the Chief Secretary Government of Arunachal Pradesh, Itanagar.**
2. **The Commissioner, Department of Education, Government of Arunachal Pradesh, Itanagar.**
3. **The Director, Higher Technical Education, Government of Arunachal Pradesh, Itanagar.**

.....*Respondents*

Advocates for the Respondents:

Mr. K. Ete, learned AAG.
Ms. L. Hage, Govt. Advocate.

:::BEFORE:::

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

Date of hearing : 02-03-2016.

Date of Judgment & Order : 10-03-2016.

JUDGMENT & ORDER (CAV)

By filing this application, the petitioners have sought for granting of Part-B Pay Scales under 6th Central Pay Commission corresponding to 6th Central Pay Commission w.e.f. 1st January, 2006 whereby Miscellaneous Teachers (Library Assistant, Laboratory Assistant, Physical Education Teacher (PET, in short)/Physical Instructor Teacher (PIT, in short) of Govt. Schools have been given the benefit vide order dated 08.09.2009 but the petitioners who were working in the Department of Education under different colleges of Arunachal Pradesh as Library Assistant, Laboratory Assistant, Physical Education Teacher (PET, in short)/ Physical Instructor Teacher (PIT, in short) have been denied with the benefit of 6th Central Pay Commission.

2]. Heard Mr. K. Tari, learned counsel for the petitioners and Mr. K. Ete, learned Addl. Advocate General assisted by Ms. L. Hage, learned State counsel appearing on behalf of the State.

3]. The petitioners, herein, are serving under the Govt. Polytechnic College, Itanagar. Initially the said College was running under State project implementation unit but as on now the College is being run by the State Government since 2007. In the year 2009, the respondent authorities passed an order for implementation of Part-B Pay Scales under 6th Central Pay Commission in accordance with the approval of Finance Department for the Miscellaneous Teachers serving in various Govt. Schools of Arunachal Pradesh. But the Miscellaneous Teachers working in various Colleges and Govt. Polytechnic College were not provided with the same benefit.

4]. It is submitted that the Miscellaneous Teachers i.e. Library Assistant, Laboratory Assistant, PET/PIT of Directorate of School Education and Directorate of Higher and Technical Education are analogous post under the Education Department and the Recruitment Rules are also same. On being aggrieved by the said order, the Miscellaneous Teachers serving under Directorate of Higher and Technical Education submitted representation stating inter-alia that they too fall under the category of Miscellaneous Teachers so their Pay Scale should also be enhanced as per Part –B of 6th CPC as has been given to the Teachers of the Directorate of School Education. After their long persuasion and various representations since 2009, the respondent authorities passed an order for implementation of Part-B Pay Scale under the 6th CPC for Miscellaneous Teachers serving under Govt. Colleges and Polytechnic Colleges of Govt. of Arunachal Pradesh corresponding to 5th Pay Commission w.e.f. 28.01.2011 vide order dated 16.03.2011. Again against the said order, the petitioners submitted representation for rectification of the date of implementation of the 6th CPC w.e.f. 01.01.2006.

5]. The contention of the petitioners is that in spite of same post and same nature of works they have been deprived of the benefit as provided to the Miscellaneous Teachers serving under the Directorate of School Education. The respondent/Director Higher and Technical Education in his affidavit-in-opposition have averred that the Department has taken up the matter with the Govt. immediately after receiving the petitioners' representation. Even their case is with the Finance Department to place it to the Pay Anomaly Committee. In another affidavit-in-opposition filed on behalf of respondent Nos. 2 & 3, it has been contended that on receipt of the representation from Miscellaneous Teachers of Govt. Colleges, the Finance Department vide order dated 06.01.2015 concurred for extension of Part-B Pay Scale of 6th Central Pay Commission in respect of Miscellaneous Teachers of School Education to Laboratory Assistant, Junior Librarian and PET etc., of Govt. Colleges and Polytechnic Colleges w.e.f. 01.01.2006 instead of 28.01.2011 without drawal/payment of arrears. It has been averred that there is difference between Miscellaneous Teachers of School Education and Higher and Technical Education in view of the fact that that employees of Higher and Technical Education are not taking classes, therefore, the petitioners cannot claim same benefit given to the Miscellaneous of School Education.

6]. According to the petitioners during the pendency of this writ petition, the respondent authorities passed an order by which the petitioners have been granted Part-B Pay Scale of 6th Pay Commission w.e.f. 01.01.2006 without arrears vide order dated 06.01.2015, therefore, they are entitled for arrears with interest w.e.f. 01.01.2006..

7]. In the cited case of *Secretary, Finance Department and Others-vs- West Bengal Registration Service Association and Others* reported in 1993 Supp (1) SCC 153, it was held as under.

"12 *We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales*

is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing

different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertically relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to

an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

8]. The same principle was reiterated in the case of *Manipur Secretariat Stenographers Association Imphal and Another-vs-State of Manipur and Others reported in 1997 (III) GLT 502*. In the cited cases, the Court declined to interfere in to the matter in view of the fact that equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore, ordinarily the Court shall not enter upon task of Job evaluation which is generally left for expert bodies like the pay commission etc. Even the bodies having the assistance of staff with requisite expertise have found difficult to undertake some time on account of want of relevant data and scales for evaluating performance of difference groups of employees.

9]. In another case cited by the petitioners in the case of *Habung Rambya-vs- State of Arunachal Pradesh and Others reported in 2015 (1) GLT 397*, this Court interfered with the matter because the offer of appointment to the post with lower Pay Scale was accepted by the petitioner and it cannot be held that the claim of the petitioner for equal pay should be rejected on principle of estoppels and waiver, it was held that the respondent cannot pay different pay scales to employees working the same cadre and discharging the same responsibilities unless it is able to show that the petitioner and the respondent belong to two different class of employees which justifies differential treatment.

10]. Here, in this case, the Govt. of Arunachal Pradesh has extended the benefit of Part-B Pay Scale of 6th CPC in respect of Miscellaneous Teachers of School Education, Laboratory Assistant, Junior Librarian, Library Assistant, PET/PIT serving under Govt. Colleges and Govt. Polytechnic College of Arunachal Pradesh w.e.f. 01.01.2006 but why drawal/payment of arrears has been withheld has not been properly explained.

11]. In view of the circumstances, considering the ratio laid down by the Supreme Court in various Judgments, this Court directs the Govt. of Arunachal Pradesh to refer the matter to finance department/High Level Standing Committee of Pay Scale matters/anomalies who have expertise in the matter and after considering the recommendation of such expert body, take fresh decision at an earliest date within a period of 6 months from the date of receipt of certified copy of this order.

12]. With the aforesaid observation and directions, this writ petition stands disposed of.

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JUDGE