

-AND-

IN THE MATTER OF

Chau Khewseng Singthi

S/O Chau Cheylu Singthi

Serving as HFA , Namsai

Office of the Sub- Division Horticulture
Officer, Namsai

District : Namsai, Arunachal Pradesh

Mobile No.-9863905383

.....Petitioner.

-VERSUS-

1. The State of Arunachal Pradesh,
Represented by the Chief Secretary,

Government of Arunachal Pradesh
Itanagar.

2. The Director of Audit and Pension, Govt. of Arunachal Pradesh, Naharlagun.
3. The Secretary, Department of Finance, Govt. of Arunachal Pradesh, Itanagar.
4. The Secretary, Horticulture Government of Arunachal Pradesh, Itanagar.
5. The Director of Horticulture, Chimpu, Itanagar Government of Arunachal Pradesh, Itanagar.
6. The District Horticulture Officer, Lohit District Tezu Arunachal Pradesh.
7. The District Horticulture Officer, Namsai District, Namsai, Arunachal Pradesh.

.....Respondents

WP (C) 83 (AP) 2016

::BEFORE::

THE HON'BLE MR JUSTICE KALYAN RAI SURANA

24.05.2017

JUDGMENT AND ORDER (ORAL)

Heard Mrs. S. Nag, learned counsel for the petitioner as well as Ms. G. Ete, learned Addl. Sr. Govt. Advocate appearing for the State respondents.

2]. The petitioner is presently serving as Horticulture Field Supervisor (Senior) at Namsai under the District Horticulture Officer, Namsai District. The petitioner was initially appointed on ad-hoc basis on 01/07/1996 and his name is shown in Serial No. 2 in the common appointment order. However, the appointment was sent in a wrong address and therefore, the said notice was resent to the petitioner vide WT Msg dated 04.09.1996 and accordingly, on the basis of the WT Message, the petitioner joined on 11.09.1996 at Tezu. On the basis of the recommendation by the Departmental Promotion Committee (DPC, in short), the petitioner's ad-hoc appointment was regularized vide order dated 20.05.1997. The State of Arunachal Pradesh vide Office Memorandum dated 21.11.2003, which was published in the Arunachal Pradesh Gazette Extraordinary dated 02.12.2003, the Office Memorandum dated 09.08.1999 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) by which the Central Government had started the Assured Career Progression (ACP, in short) Scheme, was adopted without any modification. Accordingly, the petitioner along with others were granted with the benefit of financial up-gradation under the said ACP scheme on the basis of the recommendation by the Screening Committee/ Departmental Promotion Committee vide order No. HORT/ACP-1/2008-09 dated 22.08.2008 which further

provided that their pay shall be fixed under the provision of FR-22 (1)(a)(1) subject to a minimum financial benefit of Rs.100/-. It was provided that the financial benefit under the ACP Scheme would be final and no pay fixation benefit would be approved at the time of regular promotion i.e. posting against a functional post in the higher grade.

3]. Thereafter, by order No. HORT/ PPD /E/GEN-45/2008-09 dated 23.01.2009 issued by the District Horticulture Officer, Yupia, the pay scale of the petitioner along with others were re-fixed on the basis of the earlier order dated 22.08.2008 and revision of pay was granted as per the 6th Pay Commission recommendation vide order No. FIN/E-11.The Govt. of Arunachal Pradesh vide Office Memorandum dated 31.07.2009 adopted the Modified Assured Career Progression Scheme (MACP, in short) w.e.f. 01.09.2008 and accordingly, the petitioner was enjoying the benefits which had been accrued to him on the basis of MACP Scheme.

4]. Thereafter, the Department of Horticulture vide Order No. HORT/ACP-1/2008-09 dated 01.08.2014, in partial modification of the earlier order No. HORT/ACP-1/2008-09 dated 22.08.2008, reviewed the financial benefit granted to the petitioner and others and the same was re-fixed under the ACP Scheme by stepping down the petitioner's pay. In the said order dated 01.08.2014, the name of the petitioner appears at Serial No. 90. Consequently, the petitioner was served with an order bearing No. LHE-10/2014-15 dated 27.10.2014 issued by the District Horticulture Officer, Tezu, fixing the pay of the petitioner at Rs.10,580+2800 (GP)=13,380/- as on 01.09.2008 being the 1st financial upgradation under MACP Scheme in the scale of PB-1 Rs.5,200-20,200 + 2800 (GP) and further stated that the excess drawn amount of the petitioner be recovered and be deposited in the Govt. Treasury. The petitioner has filed the present writ petition challenging the down gradation of her pay and the order for recovery of the excess amount

drawn from the present salary. The learned counsel for the petitioner submits that the petitioner have been receiving higher scale of pay by virtue of order passed by the authorities and therefore, having enjoyed the up graded pay for almost 6 years, the petitioner has wrongly been subjected to down-gradation of pay and therefore, the recovery was also illegal on the part of the State Govt.

5]. Being aggrieved by the recovery and stepping down of the salary and other allowances, the petitioner had approached this Court by filing WP (C) 374 (AP) 2015. This Court by an order dated 07.09.2015 had straight away suspended the operation of the impugned order dated 27.10.2014 issued by the respondent No. 6 i.e. the District Horticulture Officer, Tezu till the returnable date.

6]. It is submitted that the said order was duly communicated to the concerned respondents, but as the said order was not complied with, the petitioner made an enquiry and was informed that the District Horticulture Officer, Tezu was unable to comply with the said direction because in the meanwhile, the Namsai District was created and the file pertaining to the petitioner was transferred to the District Horticulture Officer, Namsai. The interim order passed by this Court on 07.09.2015 was served on the District Horticulture Officer, Namsai but the said order could not be complied with as the said authority took a plea that was not made a party and in the meanwhile, the recovery of excess drawl of salary had already commenced w.e.f. August, 2015.

7]. Per contra, the learned State counsel has opposed the present writ petition by submitting that the Directorate of Horticulture, Govt. of Arunachal Pradesh through its Screening Committee committed a mistake by granting the petitioner higher pay benefits by over sight. Although, the ACP Scheme envisaged allowing of such benefit after completion of

continuous 12 years service. Hence, the petitioner was not entitled to first financial up gradation on the date when such benefit was granted to the petitioner by mistake.

8]. By referring to the statements made in the affidavit-in-opposition, the learned State counsel submits that as per the ACP notification of the Central Government, which was extended to the State Govt. employees, such employees had to be given 2 financial up gradation during entire period of service either by promotion or by granting ACP in the interval of 12 years of service period and thereupon, after 24 years of service. It is submitted that as per the ACP Guidelines, the employees who have been granted ACP were to be placed in the pay scale of next higher pay scale as per existing hierarchy of post in respective cadre and accordingly, ACP was granted to the Horticultural Field Assistants (HFA, for short). However, in the meanwhile, the Govt. of Arunachal Pradesh has notified the new MACP Scheme for the State Govt. employees vide order No. AR-56/2009 dated 31.07.2009 wherein it was stated that the old ACP Scheme will be valid only upto 31.08.2008 and thereafter, the Government of Arunachal Pradesh has approved the re-designation of 18 posts of HFA to Horticulture Field Supervisor in the pay scale of PB-2, 5200-20200+GP4200/- and accordingly, the present petitioner who is a HFA, has already crossed the existing pay scale and therefore, the petitioner was entitled to the higher pay scale which was wrongly granted to her vide order dated 22.08.2008.

9]. In reply, the learned counsel for the petitioner has referred the judgment of this Court in the case of Nagaland PWD Field Workers Association-vs- State of Nagaland & Ors., reported in 2010 (5) GLT 506, wherein this Court had held that no recovery of an amount given to the employees can be recovered. She also relies in the Case of State of Punjab and Others-vs- Rafiq Masih (White Washer) & Ors., reported in

(2015) 4 SCC 334, wherein the Hon'ble Apex Court has held that "*even though, it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employees*".

10]. Having heard the arguments of both the sides and on perusal of the materials on record, this Court is of the considered view that the benefit of enhance pay was granted to the petitioner by order dated 22.08.2008 which was admittedly mistake on the part of the State. It cannot be a matter of dispute on the date when the enhance benefit was given to the petitioner, the petitioner did not qualify for the said benefits as the petitioner had not attained 12 years of continuous service. Hence, the challenged to the impugned order No. HORT/ACT/2008-09/ 5203 dated 01.08.2014 and Order No.LHE-10/2014-15 dated 27.10.2014 issued by the District Horticulture Officer, Tezu is not sustainable.

11]. In so far as order No. LHE-10/2014-15 dated 27.10.2014 issued by the District Horticulture Officer, Tezu is concerned, this Court is of the view that the petitioner did not obtain the excess payment by unfair means, but the concerned authorities had mistakenly granted the enhanced pay benefit to the petitioner which he was allowed to avail continuously for 6 years and therefore, it cannot be ruled out that the petitioner had taken his enhanced pay to be a matter of his right and therefore, it is found that it would be extremely iniquitous and arbitrary to allow the State respondents to enforce the recovery of refund of such payment which was mistakenly given to the petitioner. This Court does not find that the petitioner can be held responsible of availing higher pay benefit by any of his own act. Hence, the said order No. LHE-10/2014-15 dated 27.10.2014 issued by the District Horticulture Officer, Tezu is hereby set aside and quashed.

As a measure consequent to the quashing of the aforesaid order dated 27.10.2017, it is provided that any recovery which has already been made by the State respondents from the petitioner, the concerned authorities viz. The Secretary, Department of Finance, Govt. of Arunachal Pradesh (respondent No. 3), the Secretary, Department of Horticulture, Govt. of Arunachal Pradesh (respondent No. 4), the Director of Horticulture, Govt. of Arunachal Pradesh (respondent No. 5) and the District Horticulture Officer, Namsai, Govt. of Arunachal Pradesh (respondent No. 7) would refund the same to the petitioner within a period of 4 months from the date of receipt of receipt of certified copy of this order.

The writ petition stands partially allowed as indicated above.

JUDGE

Taloni