

**IN THE GAUHATI HIGH COURT
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND
ARUNACHAL PRADESH]
ITANAGAR PERMANENT BENCH**

WP (C) 351 (AP) 2014

Shri Duyu Tabin,
S/o Lt. Duyu Doley,
Resident of Damsite, Naharlagun,
P.O & P.S. Naharlagun, District Papum Pare,
Arunachal Pradesh.

.....**Petitioner**

Advocates for the Petitioner:

Mr. B. Lazi
Mr. B. Taming

– Versus –

1. The State of Arunachal Pradesh, represented by through the Secretary (Education), Govt. of Arunachal Pradesh, Itanagar.
2. The Director of Elementary Education, Govt. of Arunachal Pradesh, Itanagar.
3. The Deputy Director of School Education, Papum Pare District, Yupia, Arunachal Pradesh.
4. The Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun.

..... **Respondents**

Advocate for the State Respondents:

Mr. T. Jamoh, Standing Counsel, Education Department
Ms. Hage Laxmi, Government Advocate

B E F O R E
HON'BLE JUSTICE (MRS) RUMI KUMARI PHUKAN

Date of hearing : 20.05.2015

Date of Judgment & Order : 28.05.2015

JUDGMENT & ORDER [CAV]

Heard Mr. Duyu Lazi, learned counsel appearing for the petitioner. Also heard Also heard Ms. Hage Laxmi, learned Government Advocate, for State Respondent No.

1 and Mr. Tagum Jamoh, learned Standing Counsel, Education Department, for Respondents No. 2 to 4.

2. The facts as pleaded by the petitioner, is that, in the year 1970, he was initially appointed as Substitute Teacher, under the Education Department, NEFA (now Arunachal Pradesh), by then Director of Education, NEFA, Shillong. The petitioner was appointed again as Substitute Teacher to the post of Matriculate Teacher under the Education Department, Arunachal Pradesh, (erstwhile NEFA), by the then Director of Education, NEFA, Shillong, vide Appointment Order No. ED.2/3/67 (Part-VII), dated 17.06.1971 in place of Sri Rohini Kalita, who was deputed for SBT at BSB, Changlang.

3. It is the further case of the petitioner that NEFA(now Arunachal Pradesh) became a Union Territory in the year 1972 and the Govt. of Arunachal Pradesh decided to absorb Substitute Teacher serving under the Education Department. Accordingly, 59(Fifty Nine) Substitute Teachers including petitioner, serving under the Department of Education, Arunachal Pradesh, were absorbed in service against the regular post of Matriculate Teachers, with effect from 01.01.1973 vide Appointment Order No. ED.2/3/67(Part-X), dated 01.02.1973. The petitioner had been carrying out his service as Matriculate Teacher with sincerity, dedication and honesty, without any complaint from any angle since his appointment till his retirement on superannuation.

4. It has also been submitted by the learned counsel for the petitioner that the authority concerned has chosen to absorb the petitioner as Matriculate Teacher, intentionally and deliberately despite the fact that the petitioner is an under-matric and on his absorption, the petitioner attended many orientation programmes of the teachers and hold the post of Headmaster for many years being a Matriculate Teacher; and throughout his service tenure, he served and discharged his duties as Matriculate Teacher right from his initial appointment till his retirement on superannuation on 31.03.2014.

5. It is the further case of the petitioner that the petitioner submitted a representation on 25.07.2012 to the Respondent No. 3(Deputy Director of School Education) intimating that he is retiring in the month of March 2014 on superannuation, therefore, his service books be verified in time, for receiving his

retirement benefits. Accordingly, the Respondent authority sent the petitioner's Service Book for IPS checking to the Respondent No. 4 viz. Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun. The same was returned back as there were some discrepancies to the effect that the revision pay w.e.f. 01.01.1986 has been granted to the petitioner on pay scale of A/T 'B', but no entry regarding petitioner's appointment to the post of A/T 'B' from A/T 'C' was available. Thereafter, the petitioner submitted a representation on 18.02.2013 to the Respondent No. 2 viz. Director of Elementary Education, Government of Arunachal Pradesh, Itanagar, through respondent No. 3 viz. Deputy Director of School Education, Papum Pare District, Yupia; for immediate rectification of the Service Book, acting upon which, the same was forwarded to the Respondent No. 2 by the Respondent No. 3 vide letter No. ED/PP/Estt-144/93 dated 19.02.2013.

6. It is the further case of the petitioner that on return of his Service Book by the Respondent No. 4 viz. Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun and despite petitioner's representation dated 18.02.2013 for immediate rectification of his Service Book, the said respondent No. 2 (Director of Elementary Education) did not take any further step. Being aggrieved by the inaction of the Respondent No. 2 and non-rectification of discrepancy/error in Service Book, the petitioner served a Legal Notice on 10.04.2013 to the said Respondent No. 2. Consequently, the Respondent No. 2, partially clarified that the petitioner was appointed as substitute teacher w.e.f. 1970 to 1973, and not as A/T 'C' and his service was regularized as A/T 'C' only with effect from 1973, and as such, there is no question of promotion from A/T 'C' to A/T 'B' vide letter No. EED.2/300/2013, dated 20.09.2013. The said Respondent No. 2 did not clarify on non-granting of correct pay scale to the petitioner from the date of appointment and re-submitted the service book, to the Respondent No. 4 i.e. Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun, for IPS checking.

7. It is the contention of the petitioner that the Service Book has been returned back to the Respondent No. 2/Director of Elementary Education, Government of Arunachal Pradesh, Itanagar, since the said Respondent No. 2 did not clarify that the petitioner have been granted correct pay scale w.e.f. 01.01.1986 only but not from his initial absorption w.e.f. 01.01.1973. As such, the Respondent No. 3 was directed to re-examine and confirm the post held by the petitioner vide letter dated 25.02.2014. The Respondent No. 3, thereafter, requested the respondent No.

2/Director of Elementary Education, Itanagar; vide letter dated 10.02.2015, to confirm the post held by the petitioner and his correspondence pay scale with a false and misleading statement that the petitioner was appointed as Under-matric Teacher by Director Education, Govt. of Arunachal Pradesh, vide order No. ED.2/3/67(Part-X), dated 01.02.1973. The petitioner, in the meantime, retired from service on superannuation on 31.03.2014, before the respondent No. 2 could take any steps for rectification of his Service Book. In the meanwhile, the respondent No. 2/Director of Elementary Education, Government of Arunachal Pradesh, Itanagar, directed the respondent No. 3/Deputy Director of School Education, Yupia; to treat the post held by the petitioner as Under Matric Teacher vide the impugned order/letter dated 13.05.2014, without taking into consideration the fact that the petitioner was appointed as Matriculate Teacher by then Director, Education, Govt. of Arunachal Pradesh, vide order No. ED.2/3/67 (Part-X), dated 01.02.1973 and he rendered his service as Matriculate Teacher throughout his service tenure from the date of appointment till his retirement, as Matriculate Teacher, on superannuation, on 31.03.2014. The petitioner has therefore contended that the post held by the petitioner cannot be treated as an Under Matric Teacher, that too, after his retirement from service tenure by the respondent authority.

8. Aggrieved by the impugned Order/Letter of the Respondent No. 2, directing the respondent No. 3 to treat the post held by the petitioner as Under-Matric Teacher and incorrect pay scale granted to him from the date of appointment till 01.01.1986, the petitioner submitted a representation on 02.06.2014 to the Respondent No. 2 with a prayer for recalling the impugned Order/Letter dated 13.05.2014 and for immediate rectification of service book, release of pensionary benefits, payment of arrear salary, as Matriculate Teacher w.e.f. 01.04.1973 to 01.01.1998, however, the same is till date, lying unattended with the Respondent No. 2.

9. In pursuance to the impugned Order/Letter dated 13.05.2014 of the Respondent No. 2(Director of Elementary Education), the Respondent No. 3(DDSE) issued the impugned order dated 01.07.2014 re-fixing the pay scale of the petitioner by treating the post held by him as Under Matric Teacher and informing that the alleged excess pay & allowances granted to the petitioner w.e.f. 01.04.1998 to 31.03.2014, to the tune of Rs. 4,17,393/-, will be recovered from him.

10. The contention of the petitioner is that the post held by the petitioner all throughout his career, was the post of Matriculate Teacher and as such, his post cannot be treated as Under Matric Teacher, all of a sudden, that too, after his retirement. According to him, the correct pay scale granted was as of the Matriculate Teacher w.e.f. 01.04.1998 and the same cannot be deducted now, from his pensionary benefit, instead he has to be paid arrear salary with effect from date of his initial appointment i.e. 01.01.1973 till 01.04.1998 since the petitioner was not granted correct pay scale in the said period by the Respondent authorities. As such, the Respondent Authorities are deserved to be directed to treat the post held by the petitioner as Matriculate Teacher as per appointment Order and service rendered; and to grant corresponding pay-scale of the post for the entire service tenure to the petitioner and corresponding pensionary benefits.

11. It is the further contention of the petitioner that the respondent authorities cannot perpetuate their illegal action against the petitioner instead of rectifying their act or omission which has caused immense financial loss, mental and physical agony to the petitioner. The action of the respondent authorities in not granting the correct pay scale of the post to the petitioner from the date of appointment till 01.04.1998, and instead, demoting him from the post of Matriculate Teacher to Under Matric Teacher after his retirement from service on superannuation without any opportunity of hearing, and attempting to recover the alleged excess amount, from his pensionary benefits, is most arbitrary and illegal in the eye of law. As such, the petitioner has pleaded for grant of correct pay scale of the post i.e. Matriculate Teacher from the date of appointment till retirement on superannuation and to treat the said post, being the post held by the petitioner, for all purposes including calculation of pensionary benefits.

12. The learned counsel for the petitioner has pleaded that there are a catena of decisions rendered by the Apex Court wherein the Court have restrained the authority from recovering excess pay and allowances wrongly granted, from the incumbent Government servant when the excess pay was not granted due to misrepresentation of the incumbent Government Servant for no fault of the petitioner. Learned counsel had placed reliance on this Court's judgment & order dated 26.05.2014 passed in **WP(c) 427(AP)2012[Shri Taguram Perme – Vs – State of Arunachal Pradesh & Ors.]** wherein the Court had set aside and quashed the

order requiring to refund an amount which was granted to the petitioner in excess of pay and allowances.

13. It is the categorical submission of the learned counsel for the petitioner that, be that as it may be, even if the petitioner was granted excess pay and allowances without any fault of the petitioner, the same cannot be recovered from the petitioner's pensionary benefit after his retirement. As such, the impugned order No. EED.2/300/2013 dated 13.05.2014 and order No. ED/PP/Estt-144/93, dated 01.07.2014, are liable to be set aside and quashed in the interest of justice.

14. In support of his contentions, learned counsel for the petitioner has strenuously placed reliance on the following cited cases:- (i). **(2009) 3 SCC 475 Syed Abdul Qadir v. State of Bihar & ors.**; (ii). **(2010) 14 SCC 323 Yogeshwar Prasad & Ors. v. National Institute of Planning & Administration & ors.**, and (iii). **2013(5)GLT 475; Anuradha Choudhury v. State of Arunachal Pradesh & ors.**

15. The petitioner had also approached this Court earlier by way of filing WP(c) 254(AP)2014 challenging the impugned order dated 13.05.2014 which was withdrawn on 03.09.2014 with liberty to file a fresh petition. The instant writ petition has been preferred by the petitioner for quashing and setting aside the impugned Orders dated 13.05.2014 01.07.2014 directing to treat the post held by the petitioner as Under Matric Teacher and re-fixing the scale of the petitioner and further directing to recover the alleged excess pay and allowances granted to him during 01.04.1998 to 31.03.2014 from his pensionary benefits to the tune of Rs. 4,17,393, by holding the same to be illegal and void and inoperative in law and to direct the respondent authorities to grant correct pay-scale to the petitioner corresponding to the post of Matriculate Teacher from the date of his initial appointment till retirement on superannuation i.e. from 01.01.1973 to 31.03.2014. The petitioner has also prayed for release of pensionary benefits immediately with interest @10% per month from the date of his retirement to the date of actual payment of the pensionary benefits.

16. An affidavit-in-opposition has been filed on behalf of Respondent No. 4 i.e. Director of Audit & Pension, Government of Arunachal Pradesh, Naharlagun; wherein it has been categorically stated that the Service Book of Shri Duyu Tabin, was returned to the concerned Department after verification with an observation vide letter No. DAP/IPS/1/97-99/2917 dated 13.02.2013. However, the Respondent No. 3, namely, Deputy Director of School Education, Yupia, re-submitted the said Service

Book in respect of Shri Duyu Tabin vide letter No.ED/PP/Estt-144/93/621 dated 24.09.2013 without attending properly to the observations as pointed-out by the Respondent No. 4. Hence, the said Service Book was again returned to the said Department for further examination vide Office letter No.DAP/IPS/1/97-99 dated 25.02.2014. However, without delving meticulously into such a serious issue, the said Respondent No. 4 had prayed that the Court may dismiss the instant writ petition as the petitioner has not been able to made-out a case fit to be interfered by this Court involving extra-ordinary jurisdiction, which cannot be permitted at any stage.

17. Mr. Jamoh, learned standing counsel, Education Department, in all fairness, has admitted that the claim of the petitioner which relates to the documents so filed like appointment order, entry in the service book, etc., supports the contention of the petitioner that he was appointed against matriculate teacher post and for this purpose, relevant service book has also been produced for better appreciation of the matter. However, it has been contended that the basic scale of the petitioner should be accepted as has been shown in the appointment letter as there is nothing to show that the petitioner was appointed as under matriculate, so subsequent direction/declaration on the part of the respondent authorities, is not proper.

18. I have considered the submissions of both the parties and the relevant documents so relied as well as the observation of Hon'ble Apex Court relied upon by the learned counsel for the petitioner. There is no denial on the part of the respondent authorities that the petitioner was appointed against the vacant post of matriculate candidate/teacher and though he was initially appointed as substitute teacher in the year 1970, but, he was as absorbed as regular matriculate teacher with effect from 01.01.1973, till the date of his retirement on superannuation. The petitioner discharged his duties throughout his service carrier as a matriculate teacher and the said aspect has also been entered into his service book. The pay scale of the petitioner has been mentioned in the appointment order as well as in the service book. He also underwent training as a matriculate teacher but, while at the time of his retirement while his relevant documents were sent to the Director of Audit and Pension, Govt. of Arunachal Pradesh, Itanagar for checking and preparation, of pension etc. then, on a query made by the Audit Officer suddenly the Director of Elementary Education, Govt. of Arunachal Pradesh, Itanagar has declared that the petitioner may be treated as matriculate teacher and for that

purpose, service book can be rectified vide letter dated 13.05.2014 and thereafter, on the observation made by the Director of Audit and pension, the DDSE further made an order dated 1.04.2014, that drawl of excess pay and allowances w.e.f from 01.04.98 to 30.03.2014, will be recovered from the incumbent and will be deposited in the treasury after making an entry in his service book by holding that the petitioner is an unde- matric teacher. Accordingly, an assessment has been made for the amount to be recovered from the petitioner to the tune of Rs 4, 17,393/-

19. After perusal of the documents so produced by the petitioner which is not at all denied by the respondent authority. It is evident that the petitioner was appointed against the permanent vacant post of a matriculate teacher and had issued the appointment order and accordingly the petitioner worked in his entire service tenure as a matriculate teacher (Even though it was an admitted position that e petitioner was a under matric) and the petitioner was allowed to draw his salary as indicated in the appointment order.

20. In view of such sudden declaration by the respondent authorities that the petitioner may be treated as a n under-matric teacher, the same cannot at all be maintained. Similarly, it can also be found that there as no fault on the part of the petitioner while discharging his duties and there was no deliberate suppression of fact on his part and in fact, no fault can be attributed to him and after doing regular service for a long span of more than 40 years, the respondent authority cannot whimsically declared the petitioner as an under-matric teacher and cannot direct to recover the access pay and allowances, if any, granted by themselves, that too, after the retirement of the petitioner and not giving hum the opportunity of hearing . In view of the pronouncement of the decision so rendered by the Apex Court, a stated above, such direction for recovery of excess amount, whatsoever, is not at all maintainable.

21. This court, in the case of **Anuradha Choudhury**(supra), held that as there is nothing to show that the petitioner was responsible for such excess payment, neither he made any misrepresentation or practice fraud and in such a backdrop, direction for recovery of excess payment cannot be made-out against the petitioner.

22. In the instant case, the respondent authority could not dispute the fact as averred in this writ petition, and on the contrary, the stand of the petitioner remains un-rebutted/un-refuted.

23. In view of the aforesaid reasons, the writ petition is hereby allowed. The impugned orders dated 13.05.2014 and 01.07.2014, regarding recovery of alleged excess amount of Rs. 4,17,393/- from the petitioner's pensionary benefits, etc., are hereby set aside; with further direction to the authorities concerned to release all the pensionary benefits and other benefits to the petitioner, without further delay.

24. Furthermore, as per the provision of Rule 68, CCS(Pension) Rules and the Guidelines framed thereunder, providing for interest on delayed payment of retirement benefits, the respondent authorities shall pay an interest @ 9% per annum on delayed payment of pensionary and other benefits to the petitioner. Such amount of interest shall be calculated from the due date of the payment of such retirement benefits to him. However, as regards the pay scale of the petitioner, it will be treated as the same which was drawn by him earlier to the impugned order dated 01.07.2014, and as per the terms and conditions laid down in his appointment letter.

25. With the above directions and observations, this writ petition stands disposed of. However, there shall be no order as to costs.

JUDGE

Bibash