

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

ITANAGAR PERMANENT BENCH

WP (C) 435(AP)2013

1. Shri Likha Togur
S/o Likha Tacho, village Yoglu,
PO Talo, Lower Subansiri District,
Arunachal Pradesh.
2. Shri Nabam Reekam, Headmaster
Government Secondary School Saikiang
PO & PS : Mengio, Papum Pare District,
Arunachal Pradesh.
3. Shri Tai Tadar
S/o Late Tai Tabak, village Pakba,
PO & PS - Sangram, Kurung Kumey District,
Arunachal Pradesh.
4. Shri Tader Kame
Village Longtooth,
PO & PS - Nyapin, Kurung Kumey District,
Arunachal Pradesh.
5. Smt. Byabang Kyochi
W/o Darie Sopin, village Palin,
PO & PS - Palin, Kurung Kumey District,
Arunachal Pradesh.
6. Shri Phassang Sama
S/o Late Phassang Taaniaa, village Mayariang,
PO & PS - Nyapin, Kurung Kumey District,
Arunachal Pradesh.
7. Shri Kocho Jomoh
S/o Late Fangcho Jomoh, village Jomoh,
PO Khenwa, East Siang District,
Arunachal Pradesh.
8. Smt. Epi Sono Yangfo
W/o Monipa Sono Yangfo, village Seppa,

PO & PS - Seppa, East Siang District,
Arunachal Pradesh.

*All are presently working as officiating
Headmaster/*

*Vice Principal at different Schools of the State of
Arunachal Pradesh.*

.....**Petitioners**

Advocates for the Petitioner:

Mr. D. Mazumdar
Mr. A. K. Singh
Ms. K. Wangmo
Mr. D. T. Samupa

– Versus –

1. State of Arunachal Pradesh, represented by its Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Commissioner(Education), Govt. of Arunachal Pradesh, Itanagar.
3. The Director of School Education, Govt. of Arunachal Pradesh, Itanagar, PO & PS - Itanagar, Arunachal Pradesh.

.....**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 (MRS.) JUSTICE RUMI KUMARI PHUKAN

Dates of hearing : 04.06.2015/14.07.2015

Date of Judgment & Order : **17.07.2015**

JUDGMENT & ORDER [CAV]

Heard Mr. Dilip Mazumdar, learned senior counsel, assisted by Mr. A. K. Singh, learned counsel, appearing on behalf of the petitioners. 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 and 3.

2. The grievance of the petitioners, altogether 8 in nos., in this case, is that although they are substantively appointed as Junior Teacher(J.T.) in their respective Middle English(ME) Schools, but they have been discharging the duties of Head Master/Vice-Principal in different Higher Secondary Schools of the State of Arunachal Pradesh pursuant to various orders passed by the competent authority appointing them as HM/VP on officiating basis. However, as many as 3(three) Junior Teachers who are also discharging the duties of HM/VP like the petitioners, on the basis of officiating appointment in H.S. Schools, are being paid the pay and allowances of HM/VP despite the fact that their substantive appointment is of JT only. In contrast, the officiating appointment of the petitioners as HM/VP contains a condition that such appointment is in their/his own scale, whereas, in the order of officiating appointment of the aforesaid three JTs, it has been mentioned that their appointment is in the scale of pay of HM/VP.

3. The petitioners, hereinbefore, earlier approached this Court by way of filing a writ petition, viz. WP(c)436(AP)2012, which was disposed of, on 13.06.2013, with a direction to the respondents to dispose of the representation jointly filed by all the petitioners and another Mr. Gyamar Tajap, as on 20.08.2012. Vide order dated 08.08.2013, the said representation has been disposed of by the State Respondents stating that there is no merit in their representation because the similarly situated teachers viz. Dakme Abo and Nabam Cheng are posted in schools in remote places and the scale of Head Master/Vice-Principal is provided to them as an incentive to work in remote places.

4. Learned counsel for the petitioners have submitted that on being appointed as the HMs/VPs, they have been rendering their services with utmost sincerity and devotion. The further contention of the petitioners is that at no point of time, they were aware that those three persons were given the pay scale of HM/VP and as such, they did not object to take the officiating promotion

at the scale of pay of Junior Teacher. Just prior to the first representation submitted by them on 08.12.2009, they came to know that some of the similarly situated persons who were substantively appointed as Junior Teacher but were appointed as officiating HM/VP, have been given the scale pay of HM/VP vide orders dated 29.06.2007 and 27.10.2008.

5. Aggrieved by the said action, on 05.12.2009, 03.01.2012, 10.04.2012 and 20.08.2012, they submitted separate representations before the competent authority claiming that they should also be treated as par with those three teachers and the scale of pay of HM/VP be given to them. The respondents, however, neither, rejected their representations, nor, did they give higher scale of pay to the petitioners. Finding no other alternative, the petitioners approached this Court by filing the said WP(c)436(AP)2012, praying for a direction to the respondents to pay them the scale of pay and allowances attached to the post of HM/VP, as has been given to the other three persons stated above. On 13.06.2013, this Court was pleased to dispose of the said writ petition, with a direction to respondent No. 2 to dispose of the petitioners, representation, by passing a speaking order and vide order dated 08.08.2013, the respondent authorities disposed of the same rejecting their claim on the ground that the Court itself held in WP(c)299(AP)2011 dated 19.03.2013, that ***"On perusal of the appointment order of the private respondents to the posts of Head Master was given/mentioned in the order of the petitioner whereas the same has been mentioned in the order of the department orders of private respondents, it is also noticed that the petitioner accepted his appointment order of Head Master, on officiating basis, without raising any objection . The petitioner also did not join his posting as Headmaster, on officiating basis, without any financial benefit."***

6. With regard to the grant of pay and allowances attached to the post of HM/VP to the three persons mentioned above, the respondent authorities, in the same order, have reflected that Sri Dakme Abo and Sri Nabam Cheng were posted in the schools, which were located in remote places and therefore, they were provided with higher scale of pay, as an incentive to work in remote places.

This Court dealt with the case of the above two persons in the said WP(c)229(AP)2011 as under:- ***"It is averred by the private respondents No. 4, 5, and 6 that the petitioner accepted the Headmaster post in his own pay scale and joined the said post, on officiating basis. The private respondents contend that their terms and conditions of appointment to the post of Headmaster are completely different from that of the petitioner. Initially, the private respondents refused to move to the said places where they were posted as Headmaster, the place being difficult areas, and since the post of Headmaster was lying vacant for long, they, however later on, accepted the appointment to the post of Headmaster with financial benefit. The private respondents further contended that Tali and Sangram are the places where a person has to walk on foot for 4 days to reach the said places since there is no motorable road. The person has to carry his own luggage and ration, and there is also no infrastructure for accommodation. The private respondents have to reside in the chowkidar Quarters. The places where the private respondents were posted to as Headmaster were upgraded in the year 1997, and till the private respondents joined the post of Headmaster, on officiating basis, the posts were lying vacant. Although the respondent authorities appointed Headmaster on regular basis from the time to time, but none of the teachers joined the said School as Headmasters."***

7. It is the further contention of the petitioners that the respondents acted arbitrarily and unfairly by putting a condition in their officiating appointment orders to the post of HM/VP, that the appointment of the petitioners shall be in their own scale of pay. The three persons, mentioned above, who have been granted the scale of pay of HM/VP, are also similarly situated and in fact, posted in a better place than the petitioners, in terms of distance from the town and the need to travel on foot, for performing their duties. As such, the respondent authorities cannot justify the denial of scale of pay of HM/VP, on the ground that in their officiating appointment orders, conditions have been laid down that the petitioners' appointment is in their own scale of pay.

8. Another contention of the learned counsel for the petitioners is that this Court duly considered the appointment orders of the writ petitioners and the

objection raised by the respondents, therein, before passing the order dated 13.06.2013 in WP(c)436(AP)2013. After duly considering all the materials available in the record, this Court found it fit to direct the respondents to dispose of the representations by a speaking order. Thereafter respondent No. 2 cannot reject the representation on the ground which was already considered by this Court before directing the respondents to consider the case.

9. The petitioners have further contended that they are facing acute hardship in performing their duties as HM/VP in the schools due to non-granting of pay and allowances attached to such post of HM/VP. The respondent No. 2, however, has acted in biased manner in rejecting the petitioners' claim for such pay and allowances, though the other three persons referred to above, have been provided with such financial benefits. They have also contended that the duty of the respondent authorities is to look-after the convenience of all its employees to the optimum level.

10. An affidavit-in-opposition has been filed by State Respondents No. 1 to 3, wherein it has been contended that petitioners namely Sri Likha Tagur & 7 ors., are the Trained Graduate Teachers(TGT) of Education Department and they have been allowed to officiate as HM/VP, as stop-gap arrangement and posted in their respective schools in their own grade pay and scale of TGT, as per the appointment orders. It has been contended that as per the terms and conditions laid down in the appointment order, their appointments are purely temporary on officiating basis in his/her own scale of pay and shall be reverted back to his/her original post of TGT, as and when required, without assigning any reasons. The petitioners accepted the appointment orders and joined their respective duties. As such, they cannot claim financial benefits at par with the regular HM/VP. The State Respondents have stated that presently, 18(eighteen) TGTs/PGTs who are holding the charge as officiating/in-charge HM/VP, have not claimed any financial benefit and regularization to their posts since their appointment too is a stop-gap arrangement due to administrative exigencies of the schools concerned.

Furthermore, they have accepted their appointment orders to such post on officiating basis without any objection.

11. The State Respondents have further contended that the present petitioners are not entitled for promotion to the post of HM/VP as they do not fall in the zone of consideration for promotion, as per the existing ***Recruitment Rules of Headmaster/Vice Principal of 2012***. The State Respondents have contended that, as a matter of fact, there are more than 1000 TGTs who are senior to the present petitioners. The reversion of Sri Nabum Cheng, Gyamer Shi and Dakme Abo to their original posts of TGTs, is the prerogative of the State Government and as per the laid down terms and conditions in their appointment orders itself.

12. The State Respondents have also contended that the representation which was disposed of by a speaking order, by the Commissioner, Education Department, Government of Arunachal Pradesh, Itanagar, was in pursuance to this Court's order dated 13.06.2013 passed in WP(c)436(AP)2013, was never an arbitrary order nor discriminatory, since their appointment to the post of HM/VP was strictly a stop-gap arrangement. The petitioners are in fact belong to the batches of 1994, 1996, 2006 and 2007, whereas till date, the zone of consideration for promotion to the post of HM/VP from the serving TGTs, is being taken from the batch of 1987. That apart, the petitioners cannot claim for regularization to the post of HM/VP in violation to the ***Rules of 2012***, and their promotion to such posts can be considered only when their time come and as per seniority-cum-merit basis and the stop-gap arrangement for the posts of HM/VP has been made by the respondents till the posting of regular HM/VP.

13. The State Respondents have also contended that Petitioner No. 3 Sri Tai Tadar is presently posted at Government Secondary School Jote within the Capital Complex which is not a remote place; Petitioner No. 6 Sri Phassang Sama, is currently posted at Government Secondary School Leya under Kurung Kumey District, which is in middle belt of posting; whereas Petitioner No. 7 Sri

Kocho Jomoh, is presently posted at Government Secondary School New Seppa at District Headquarter of East Kameng District. As per records of the Department concerned, the places mentioned above are not hard belts. In fact, the Petitioners No. 1, 2, 4, 5 and 8, are posted in soft belts.

14. The State Respondents have also contended that the State Government is looking after the convenience of all employees including Education Department as per their entitlement and as per their respective Service Rules. They have reiterated that as and when regular HM/VP is posted, all the officiating HM/VP will be withdrawn including the present petitioners. The State Respondents have therefore prayed that the Court may dismiss the instant writ petition to secure the ends of justice.

15. In response to the counter affidavit of the State Respondents, the categorical statement made by the petitioners in their affidavit-in-reply, is that, the authorities concerned have disposed of the representation without applying their mind properly and without considering the case of the present petitioners, who were also serving in remote places, as that of other similarly situated teachers viz. Dakme Abo and Nabam Cheng who have been provided with the scale of HM/VP. It has been strenuously argued by the petitioners that neither in the appointment orders of the present petitioners nor in the appointment orders of Gyamar She, Dakme Abo and Nabam Cheng, any condition was specified regarding granting of financial benefit. However, financial benefits to the post of HM/VP were granted to the said 3(three) persons, who are admittedly junior to the present petitioners; and other similarly situated persons. The stand of the petitioners is that the said 3(three) persons should be reverted back to their original posts of TGTs as they were also appointed on stop-gap arrangement basis. Contrary to the terms and conditions of the appointment orders in which it has been stipulated that the person(s) concerned, shall not claim seniority, the Petitioner No. 7 Sri Kocho Jomoh, who has also been appointed on officiating basis, has been given the financial benefits by the State Respondents, during the

pendency of the instant writ petition but the same has been denied to the other petitioners excluding Petitioner No. 7.

16. The petitioners, in their affidavit-in-reply, have also contended that they were not claiming for regularization and seniority to their officiating posts of HM/VP but only claiming the financial benefits attached with such posts. It is the further averment of the petitioners that Petitioner No. 7 Sri Kocho Jomoh who is posted at Pakoti Secondary School, has been given appointment to the post of DAEO, Seppa, with financial benefit in the pay scale of PB-3 i.e. Rs. 15600-39100+Rs.5400(GP). The said action of the respondent authorities amply demonstrates biasness and pick-and-choose policy being adopted amongst the petitioners by favouring only the Petitioner No. 7.

17. According to the petitioners including Petitioner No. 7, they have never claimed seniority but only the financial benefits granted to the other similarly situated persons which has been admitted by the respondent authorities, themselves. Their contention is that had the financial benefits in respect of Sri Gyamar She and Sri Kocho Jomoh(Petitioner No. 7 in this writ petition) along with Nabam Cheng and Dakme Abo not been granted the financial benefits, the petitioners would not have claimed the financial benefits! Furthermore, the terms and conditions of appointment of the present petitioners and other persons, are identical and same. With regard to stop-gap arrangement, the respondent authorities never laid down any conditions as not to claim the financial benefits, thus, the present petitioners are also entitled for similar financial benefits as granted to the Petitioner No. 7 and other persons, referred to above. Moreover, it is the admitted position that Sri Nabam Reekam, Sri Tadar Kame, Sri Likha Togur & Sri Phassang Sama, who were also the petitioners of this writ petition; were posted in hard belts during their appointment as Vice Principal/Headmaster in-charge at various schools.

18. The learned counsel for the petitioners have categorically contended that if they have not preferred any appeal against the this Court's order dated

19.03.2013 passed in WP(c) 299(AP)2011, that does not mean that they cannot file or challenge the said order, subsequently. Moreover, the case as projected in the writ petition being WP(c)229(AP)2011 was different from the case of the present petitioners. In such facts and circumstances of the case, the rights of the petitioners cannot be curtailed by the State Respondents and the discrimination meted out to the petitioners, is blatantly apparent on the face of the record.

19. It is also the fact that Petitioner No. 3 Shri Tai Tadar who was initially posted at Lumba Secondary School, Kurung Kumey District, is located at a distance of 360 KM from Itanagar, and on medical ground, he was transferred to Govt. Secondary School, Jote, middle belt, since he is a physically handicapped person. Petitioner No. 6 Sri Phassang Sama has been subsequently transferred to Govt. Higher Secondary School Palin, middle belt. Prior to the said transfer to Palin, he had already served in Hard Belt at Leya. The State Respondents have acted arbitrarily in putting a condition in the petitioners' officiating appointment orders to the post of HM/VP that their appointment will be in their own scale of pay although the three persons, as mentioned above, who have been granted the scale of pay of HM/VP, are also similarly situated and in fact, they were posted in a better place than the petitioners in terms of distance from the town and the need to travel on foot for performing their duties, hence, the authorities concerned cannot justify the denial of the scale of pay of HM/VP on the plea that in the order of officiating appointment of the petitioners, a condition has been mentioned that their appointment is in their scale of pay.

20. Per contra to the contention of the State Respondents, it is seen that Sri Nabam Cheng is posted in a middle belt school namely Government Secondary School Tarasso and subsequently transferred to Leporiang, another middle belt. Similar is the case with Sri Gyamar She who is posted at Government Secondary School Sangram which is in fact a middle belt and not a hard belt as has been made out by the State Respondents. To set the record straight, the Petitioner No. 1 is presently posted as officiating HM/VP at Government Secondary School Yazali, middle belt; Petitioner No. 2 is presently serving as officiating HM/VP at

Government Secondary School Sakiang(Mengio), middle belt; Petitioner No. 4 is presently posted as officiating HM/VP at Government Middle School Pachim, soft belt (but Dakme Abo and others who were also posted in soft belts, have been granted financial benefits of HM/VP); whereas Petitioner No. 5 is presently posted as officiating HM/VP under Deputy Director of School Education, Government of Arunachal Pradesh, Koloriang, middle belt.

21. The unambiguous argument advanced by the petitioners in this case, is that they are entitled for financial benefits at par with Sri Gyamar She, Dakme Abo; Nabam Cheng and Sri Kocho Jomoh(Petitioner No. 7 in this writ petition). The said action of the State Respondents more particularly, Respondent No. 2, in denying the scale of pay of HM/VP to the petitioners excluding Petitioner No. 7 although they were working in the posts of HM/VP, is highly illegal and arbitrary in nature, and therefore, the petitioners have prayed for a direction to the State Respondents to provide the instant petitioners, the scale of HM/VP to which they are entitled to, in view of the above facts and circumstances of the case.

22. It is the clear stand of the petitioners that they having been able to clearly establish that there is no denial to the allegation of the petitioners that the two persons, namely Sri Gyamar She, Dakme Abo and Sri Nabam Cheng, were given the pay-scale of Headmaster although they were posted in Baliyan, which is a soft place of posting, and as such, the whole basis of the impugned order falls through, on that count only. Consequently, the denial of similar benefits to the petitioners is clearly arbitrary and grossly discriminatory since they all are discharging identical function as those of the persons, mentioned-above.

23. According to the petitioners, it is the settled law that if there is a wholesale identity between two types of employees, the similar pay for similar work principle would apply and denial of similar pay would not be permissible.

24. To buttress the point of the petitioners, Mr. Mazumdar, learned senior counsel for the petitioners, has cited the following cases:

- (1). ***State of Haryana & anr. v. Tilak Raj & ors.*** reported in **(2003) 6 SCC 123**, wherein in **Paragraph No. 12**, the Apex Court has held as under :

"12. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

- (2). ***State of Kerala v. B. Renjith Kumar & ors.*** reported in **(2008) 12 SCC 219**, wherein in **Paragraph No. 21**, the Apex Court has held as under :

"21. The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of State policy in Article 39(d) of the Constitution. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of fundamental right."

25. I have considered the legal principles so pronounced by the Apex Court with regard to **"equal pay for equal work"**. In the given case, undisputedly, all the petitioners as well as the other persons who have been paid the pay of HM/VP as an incentive, as referred to above, are equally situated and all were allowed to officiate as HM/VP with a condition that they cannot claim the pay scale of HM/VP, in future, without regularization. However, it is seen that though identical conditions have been laid down in all the appointment orders so issued to the petitioners as well as others, however, Sri Gyamar Shi and Sri Nabam Cheng, and Petitioner No. 7 Sri Kocho Jomoh, have been afforded the special consideration by providing the pay scale of the HMs without assigning any

reasons, whatsoever, for which act of the authority concerned, such action can be termed as biased as has been alleged by the petitioners, in this case.

26. There is nothing to show that the persons, quoted above, have been given special consideration of providing the pay scale of HM/VP for some other reasons except the reason of incentive for hard belt posting. It is also hard to accept the fact that they have been given the incentives because of hard belt postings as some of the petitioners are also posted in hard belt postings as well as medium belt postings. In such background, the reply of the authorities concerned that Sri Gyamar She, Sri Dakme Abo and Sri Nabam Cheng, have been given special incentives because of hard-place postings, can be considered as an afterthought only and the observation of the authority concerned in the impugned order that the petitioners are not within the zone of consideration for promotion to the post of HM/VP, is also not tenable in law, in view of the fact that all the petitioners and other similarly situated persons were temporarily promoted to the posts of HM/VP irrespective of their seniority position, then how the authority can differentiate and treat the case of the petitioners in a different manner, as to that of the persons, mentioned-above.

27. As has been pointed-out, above, most of the petitioners are also working tirelessly in hard-belt places as well as medium-belt places with same devotion and dedication despite lack of basic amenities including accommodation as well as long distances of such hard belt places in the State of Arunachal Pradesh.

28. In that view of the matter, if incentive can be given to some other persons then such incentive should be given to all the petitioners and other similarly situated persons who may not have approached this Court for various reasons, without any hassles.

29. Furthermore, it is seen that since many years back, the petitioners are working in the same position despite the fact that there is uncertainty as to how long they will be allowed to continue in such capacity and discharge their duties

and responsibilities, responsibly, as HM/VP(even if on officiating basis). Situated thus, it is the bounden duty of the authorities concerned that they should be allowed to draw proper remuneration befitting the posts of HM/VP for their respective periods, on the principle of "**equal pay for equal work**" at par with Sri Nabam Cheng, Sri Dakme Abo, and later on, Sri Kocho Jomoh(Petitioner No. 7 in this case).

30. That apart, the plea taken by the State Respondents is not on sound principle of law and hence, not maintainable in the eye of law and hence, the disposal of the representation of the petitioners by the authorities concerned vide order dated 08.08.2013 is quite irrational and illegal and in such consideration of the matter, the said impugned order dated 08.08.2013 is liable to be set aside and quashed. In the above backdrop, the said impugned order dated 08.08.2013 so issued by the Respondent No. 2 viz. Commissioner (Education), Government of Arunachal Pradesh, Itanagar, is hereby set aside and quashed.

31. Consequently, the respondent authorities are hereby directed to award the petitioners, in this case, to the other similarly situated persons, the same incentives/pay & allowances, whatsoever, as attached to the pay scale of the HM/VP as has been already provided to some other persons including Petitioner No. 7, as quoted above in the foregoing paragraphs, without fail, from the date of their respective dates of joining to the said posts of HM/VP.

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

JUDGE

Bikash