

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP(C) 169(AP) 2010

Shri Shashi Bhusan Kumar

S/o Sri Ramashish Singh,
Presently residing at 'E' Sector
Naharlagun, P.O. & P. S.: Naharlagun
District : Papum Pare
Arunachal Pradesh.

..... *Petitioner*

- Versus -

1. The State of Arunachal Pradesh (represented through the Chief Secretary), Government of Arunachal Pradesh, Itanagar.
2. The Commissioner & Secretary (Finance), Government of Arunachal Pradesh, Itanagar.
3. The Secretary, Department of Administrative Reforms, Government of Arunachal Pradesh, Civil Secretariat, Itanagar.
4. The Director of Audit & Pension, Government of Arunachal Pradesh, 'D' Sector, Naharlagun.
5. Shri Abdul Basit, Joint Director of Audit & Pension, Government of Arunachal Pradesh, 'D' Sector, Naharlagun.

..... *Respondents*

Advocates for the petitioner :- Mr. T. Son
Mr. A. Rebe
Mr. D. Maidam

Advocate for the respondents :- Mr. N. Lowang, Addl. Sr. Govt. Advocate

P R E S E N T
THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing :- **02.02.2011**

Date of Judgment & order :- **02.02.2011**

JUDGMENT AND ORDER(ORAL)

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Heard Mr. T. Son, learned counsel for the petitioner. Also heard Mr. N. Lowang, learned Addl. Senior Government Advocate for State respondents.

2. By filing this petition, the writ petitioner is seeking a direction from this court to the authorities concerned for grant of financial benefits as provided under the Assured Career Progression (ACP)/Modified Assured Career Progression(MACP) Scheme, forthwith and also for setting aside and quashing the impugned communication/order dated 07.10.2009(Annexure-8 to the writ petition) and also consider and dispose of the various representations submitted by him before the authorities concerned (Annexure-7 series to the writ petition).

3. The writ petitioner was appointed as Assistant Auditor on 04.09.1989 and his service was regularized on 31.03.2003. The aforesaid post was re-designated as Assistant Audit Officer(AAO) enhancing his pay scale from Rs. 5500-9000/- p.m. to Rs. 6500-10500/- p.m.. In the meantime, the 6th Central Pay Commission (hereinafter referred to as 6th CPC, in short) recommended revision of pay scale of its employees. The pay scale of the AAO has been revised to Rs. 7400-11500/- p.m.. The said post was re-designated as Finance & Account Officer(FAO) and there was further enhancement of pay scale to Rs. 8000-13500/- p.m. but the

petitioner was given the pay scale of Rs. 7500-12000/- p.m. as was given under the 5th Central Pay Commission for Senior Accounts Officer(SAO). This anomaly was not rectified by the authorities concerned. When the petitioner raised this question of anomaly, he was transferred to Seppa as AAO without granting him financial benefits under the ACP scheme. The petitioner applied for *study leave* and joined MBA course in NERIST at Nirjuli, Arunachal Pradesh. He successfully completed the said course and his transfer order was also subsequently revoked.

3. The State Government issued O.M. dated 21.11.2003 adopting the ACP scheme as formulated by the Central Government. An expert committee was also constituted by the State Government for implementation of the aforesaid scheme. The said committee submitted its report on 27.02.2003 recommending adoption of Central Government's ACP scheme without any modification. Accordingly, all the State Government departments implemented the said ACP scheme except the Directorate of Audit & Pension. The petitioner claims that as he has already served more than 10 years regular service, he became entitled to get the financial benefit under the said ACP scheme in the year 1999 itself but he was not granted the same inspite of various representations submitted by him before State respondents No. 4 and 5, from time to time. By another notification dated 06.12.2007, under the signature of Development Commissioner(F), respondent No. 2, the pay scale of employees in various departments of State Government was upgraded. In the said notification, at serial No. 7, the pre-revised pay scale of the

Accountant & Training/Audit/Training and Account and Assistant Auditor was enhanced from Rs. 4500-7000/- p.m. to Rs. 5000-8000/- p.m. in respect of the post held by the petitioner which according to the petitioner, is not at par with the recommendation made under the 6th CPC. The petitioner raised objection before the authorities concerned but till date, no action has been taken in this regard.

4. In the meantime, Central Government issued notification dated 19.05.2009 granting MACP Scheme to those employees who have completed 12 years continuous service in the same grade. The State Government again adopted the aforesaid Central Government MACP scheme by issuing notification dated 31.07.2009. This State Government notification dated 31.07.2009 is under challenge in the present writ proceeding inasmuch as the petitioner has not been granted financial benefits under the ACP scheme. According to the petitioner, the State Government has to first grant financial benefits under the ACP scheme as per his entitlement and then only, it has to grant financial benefits under the MACP scheme. It has been submitted by Mr. Son, learned counsel, that granting of financial benefits under MACP scheme prior to granting financial benefits under the ACP scheme would affect his retirement benefits, etc., and as such, the financial benefits granted under the MACP scheme by the State Government is not acceptable to him and the impugned notification dated 31.07.2009 should not be given effect to in respect of the present petitioner.

5. I have gone through the counter affidavit filed by the State respondents No. 1, 2 and 3. The vital points raised by the petitioner in the writ petition have not been answered by the authorities concerned in the said counter affidavit. The petitioner admittedly has completed required minimum regular service of 10 years making him eligible/entitle for getting financial benefits under the ACP scheme. From the pleadings of the parties and perusal of Central Government's notification dated 19.05.2009, it is found that the petitioner shall complete another 12 years of regular service from 1999 in the month of March, 2011. It means that he would be entitled to MACP only after March, 2011. It is not understood as to how the petitioner has been granted financial benefits under the MACP scheme before due date. This point has also not been clarified by the State respondents in their counter affidavit, there is no statement in the affidavit in regard to the various representations (Annexure-7 series) submitted by the petitioner before the appropriate authorities and whether those representations have been considered and disposed of.

6. Mr. Son, learned counsel for the petitioner, submits that the authorities concerned may be directed to dispose of the aforesaid representations submitted by the petitioner in the light of the scheme formulated by the Central Government and adopted by the State Government and pass appropriate order.

7. I have considered and found the submission of the learned counsel for the petitioner as cogent and reasonable and accordingly, this writ petition is disposed of with a direction to respondents No. 2 and 4 to consider and dispose of the representations (Annexure-7 series to the writ petition) by a speaking order within a period of 3(three) months from the date of receipt of a certified copy of this order from the petitioner.

8. Petitioner shall furnish a certified copy of this order alongwith a copy of the present writ petition including the annexures appended thereto before the appropriate authorities for consideration and disposal thereof.

9. There shall be no order as to costs.

JUDGE