

Serial No. 01
Supplementary List-1

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 68 of 2019

Date of Decision: 08.02.2023

Shri Dwijen Sharma

Vs.

The North Eastern Hills
University & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. P.K. Tiwari, Sr. Adv. with
Mr. S.P. Sharma Adv.
Mr. P.R. Sarma, Adv.
Ms. S.K. Nongrum, Adv.

For the Respondent(s) : Mr. S. Sen, Adv. (For 1-3)
Mr. S. Das, Adv. (For R 7)

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. The petitioner who is presently serving as Professor in English in North Eastern Hills University (Tura Campus), being aggrieved by the non-counting of his past service rendered in the

Institutions where he served earlier, for the purposes of coverage under the relevant Pension Scheme, is before this Court by way of the instant writ petition.

2. The brief facts are that the petitioner was first appointed as Lecturer (English) in B.B. Kishan College in the District of Barpeta, Assam, and in that capacity was regularized in service on 15.11.2002. Thereafter, the petitioner was selected as Assistant Professor in the Central University of Jharkhand and after serving the said University for a brief period, joined North Eastern Hills University as Assistant Professor on 27.06.2012. As B.B. Kishan College had been provincialized by the Assam Colleges Employees (Provincialization Act, 2005), the services of the petitioner which had been regularized on 15.11.2002 therefore became pensionable and the petitioner was brought under GPF and allotted a GPF Account Number. Under Section 7 of the Act, the existing employees were to be governed by the existing Pension Rules, with the proviso that employees who joined on or after 01.02.2005, shall not be covered by the existing Pension Rules. The petitioner's case is therefore founded on the basis that he would be covered by the Old Pension Scheme, counting his past service, and cannot be placed under the New Pension Scheme, as has been sought to be done by the North Eastern Hills University.

3. Mr. P.K. Tiwari, learned Senior counsel assisted by Mr. S.P. Sharma, learned counsel for the petitioner submits that the petitioner while serving in B.B. Kishan College and being appointed prior to 2005, came under the Assam Services (Pension) Rules, 1969, which were amended thereafter and made applicable to employees joining their service in the State on or before 10.02.2005. The learned Senior counsel submits that the petitioner on being appointed on 21.12.2011 to the Central University of Jharkhand, was granted lien for 2 years w.e.f. 18.02.2012, to facilitate his joining at Jharkhand Central University. However, he submits after joining at Jharkhand on 20.02.2012, the petitioner came to be selected by NEHU as Associate Professor in the Department of English, and an offer of appointment was issued on 08.06.2012. Accordingly, the petitioner tendered his technical resignation on 25.06.2012, which was duly accepted and vide a letter dated 07.07.2012, issued by the Director, Education Krokrajhar was granted lien for 2 years w.e.f. 18.02.2012.

4. Learned Senior counsel submits that in the offer of appointment letter, it was mentioned that the petitioner would be governed by the New Pension Scheme as applicable to Central Government Employees w.e.f. 01.01.2004, but however, in case his present service is governed by CCS (Pension) Rules, 1972, he shall be

entitled to retirement benefits in accordance with the said Rules, subject to production of certificates substantiating the same. Thereafter, he submits several communications were exchanged between the respondent NEHU and the respondent No. 8 (B.B. Kishan College) to ascertain as to whether the services of the petitioner were to be governed by the New Pension Scheme or the Old Pension Scheme, which was akin to the CCS (Pension) Rules, 1972. Attention of this Court has been drawn to the query of NEHU contained in a letter dated 18.05.2015, and the reply thereof dated 12.10.2015, wherein the Principal of B.B. Kishan College had informed that the petitioner was eligible to be governed by CCS (Pension) Rules, 1972. Learned Senior counsel then submits that further information was sought by NEHU vide letter dated 18.08.2016, which was replied by the respondent No. 8 (B.B. Kishan College) on 08.09.2016, with regard to the petitioner's contribution to the GPF Account. This however, he submits came to naught as the NEHU authorities, declined his request for counting his past services, on the ground that the petitioner contributed to his GPF Account only from April, 2013, when he had already joined NEHU since 27.06.2012. It has been contended by the learned Senior counsel, that there is no break in the services of the petitioner, as he had obtained lien for joining his other post, and furthermore the position as regards

his service, being clear as to what Pension Scheme he was to be governed by, the action of the respondent NEHU in not granting him the benefits of the Old Pension Scheme is illogical and arbitrary. The learned Senior then submits that the offer of appointment, and the letter of appointment placing the petitioner under the New Pension Scheme, is of no relevance, inasmuch as, the case of the petitioner is covered by the Office Memorandums of the Government of India dated 26.07.2005, 28.10.2009 and 18.03.2014, which satisfies the requirement as sought by NEHU. It is also argued that there can be no estoppel against law and the acceptance of the appointment by the petitioner in the terms contained therein cannot deprive him of his just entitlements. Learned Senior counsel in conclusion, has placed reliance on the judgment in the case of *Valsan P. vs. State of Kerala and Ors.* reported in (2022) 1 SCC 362 which he submits that the Hon'ble Supreme Court has held that for the purpose of computing qualifying pensionable services where permissible, a holistic consideration of applicable Rules is to be taken.

5. Mr. S. Sen, learned counsel for the respondent in reply, submits that the non-counting of the earlier service rendered by the petitioner in B.B. Kishan College, before joining the NEHU on 27.06.2012 is based on cogent reasons. He firstly submits that

admittedly the writ petitioner in his earlier institution, was under the CPF Scheme and after the GPF Scheme was introduced an Account for the same was allotted only in the year 2013, when the writ petitioner was already in the service of NEHU. He further submits that the Pension Scheme under the Central Civil Services (Pension) Rules, 1972, ceased to be effective w.e.f. 31.12.2003 with the introduction of the New Pension Scheme which came into force from 01.01.2004.

6. The learned counsel submits that the writ petitioner even in his brief stint in Jharkhand University had accepted an appointment, wherein it has been categorically mentioned that he was to be governed under the New Pension Scheme of GOI/UGC. He further submits that similarly the offer of appointment made by NEHU, vide letter dated 08.06.2012, also mentioned that the petitioner would be governed by the New Pension Scheme, and though it was clarified therein that he was permitted produce a certificate from his old employer to prove otherwise, the petitioner at the time of joining NEHU, did not produce such certificate, which clearly was due to the fact that the petitioner was under the CPF and not GPF. The learned counsel has referred to Annexure-P-10 of the writ petition to substantiate his submissions, that the petitioner contributed a sum of Rs. 22,198/- towards his GPF Account only on 14.03.2014, in his earlier Institution after he was

already in the service of NEHU, and that too after he had submitted his technical resignation on 18.02.2014. The learned counsel then submits that the petitioner having accepted the terms of appointment to be under the New Pension Scheme, has resorted to this writ petition claiming to be put under the CCS (Pension) Rules, 1972, only as an afterthought and as such the writ petition deserves no consideration.

7. From the part of respondent No. 7, the Commissioner & Secretary to the Govt. of Assam, Education Department, represented by learned counsel Mr. S. Das, the stand on affidavit, is however that as the writ petitioner was serving as Assistant Professor in B.B. Kishan College w.e.f. 15.11.2002 to 17.02.2012 and having deposited the Government share of CPF money, is eligible for pro rata pensionary benefits as per Rule 98 of the Assam Services (Pension) Rules, 1969. It is also stated in the affidavit that as per the Provincialisation Rules, 2010 at the proviso to Rule 21 (ii), it has been provided that employees who joined service after 2005, shall be governed by Pension Rules or Scheme as may be framed by the Government.

8. Having heard the learned counsels for the parties and after examining the materials on record, in the view of this Court, the entitlements of the petitioner can be simply decided by recounting the

service journey of the writ petitioner, alongside the Acts and Rules that are relevant for the purpose.

9. When the petitioner initially started his career at the B.B. Kishan College, wherein his services were regularized on 15.11.2002 the said College was under the Deficit System of Grant-in-Aid. On 22.12.2005, the College was provincialised under the Assam College (Provincialisation) Act, 2005 and accordingly the Government of Assam brought the services of the Teachers of Provincialised Colleges under the Assam Services (Pension) Rules, 1969. It would be worthwhile to note at this juncture, that had the petitioner continued in service in B.B. Kishan College, he would be covered by the Assam Service (Pension) Rules, which are akin to the CCS (Pension) Rules, 1972, as he entered service in the year 2001 prior to the cutoff date of 01.02.2005 prescribed by the Provincialisation Act. As per Rule 21 of the Assam College Employees (Provincialisation) Rules, 2010, the existing Rules and Orders applicable to State Government employees on Pension, GPF, Leave, TA etc. would also be applicable, to him.

10. On his acceptance of appointment in the Central University of Jharkhand, lien was granted to the petitioner for 2 years w.e.f. 18.02.2012, and he joined on 20.02.2012, maintaining lien and continued there till 25.06.2012. In the intervening period while in

service, an offer of appointment dated 08.06.2012 was issued by NEHU. It is important to note herein that in Para-3 of the said offer of appointment, it was mentioned that the petitioner would be governed by the New Pension Scheme as applicable with effect from 01.01.2004, and further he was permitted to produce certificates from his present employer to show that he was governed by CCS (Pension) Rules, 1972. The offer of appointment dated 08.06.2012, for the sake of convenience is reproduced hereinbelow:-

“North-Eastern Hill University

NEHU Campus, Shillong – 793 022 (Meghalaya)

F. No. 26-2/Estt.II(B)/2012-995 Dated, the June, 2012.

Subject: Offer of appointment to the post Associate Professor (UR) in the Department of English, Tura Campus, Tura.

On acceptance of the recommendation of the Selection Committee by the Executive Council in its 28th Emergent meeting held on 31.5.2012 vide resolution No. EEC:28:2012:6:1(i) Dr. Dwijen Sharma, is hereby offered the appointment to the post of Associate Professor (UR) in the Department of English, NEHU, Tura Campus, Tura. The post shall carry Pay Band of Rs.37400-67000/- with Academic Grade Pay of Rs.9000/- plus other allowances as admissible.

The appointment, however, will be subject to the following terms and conditions:-

- 1. That his services will be governed by the Act, Statutes, Ordinances, Rules and Regulation of the University in force including CCS (Rules) as amended from time to time.***
- 2. That he will be on probation for a period of one year from the date of joining the post.***

3. *That he will be governed by New Pension Scheme as applicable to the Central Government employees w.e.f. 1.1.2004. However, in case his present service is governed by CCS Pension Rules, 1972, he shall be entitled to retirement benefits in accordance with the CCS (Pension) Rules, 1972 subject to production of Certificates from the present employer stating that he is governed by CCS (Pension) Rules, 1972 and shall also transfer the service of Dr. Dwijen Sharma after confirmation of her service in NEHU. This document is required to be submitted at the time of joining the post failing which he shall be governed by New Pension Scheme in NEHU.*
4. *If the above terms and conditions are acceptable to Dr. Dwijen Sharma he may report for duties to the respective Head of the Department (within one month from the date of issue of this Offer).*
5. *At the time of reporting for duties to the respective Heads of the Departments following are to be submitted:*
 - a) *Verification of character and antecedent certificate issued by the Deputy Commissioner/Magistrate of the District or any Gazetted Officer in the prescribed proforma enclosed.*
 - b) *Medical Certificate of fitness issued by the Civil Surgeon of the District that he/she resides or by the Medical Officer of NEHU in the prescribed format enclosed.*

(NOTE: Clause 3 and 5 above are not applicable to those who are already in NEHU service as Permanent Employees).

(T.K. Singha)
Deputy Registrar (Estt. II)”

11. Thereafter, the respondent No. 8, (B.B. Kishan College) vide letter dated 30.06.2012, intimated the respondent NEHU about the factum of the petitioner being covered by the Assam Service (Pension)

Rules, 1969, that he had been accorded lien leave, for a period of 2 years w.e.f. 18.02.2012, and that he had served as Assistant Professor in the said College from 19.03.2001 to 17.02.2012. The respondent NEHU then issued the appointment letter dated 12.07.2012 appointing the petitioner as Associate Professor. It is to be noticed that the clarification regarding the coverage of the petitioner under the Old Pension Scheme was communicated to the respondent NEHU, before the issuance of the final appointment order, which however, contained the same condition that the petitioner was to be covered by the New Pension Scheme. This was reiterated by a letter dated 21.08.2012 issued by the respondent NEHU, on the ground that the petitioner's earlier service was not covered under the CCS (Pension) Rules, while in service in B.B. Kishan College.

12. This back and forth exchange, to ascertain the status of the petitioner continued between the respondent No. 8 and the respondent NEHU and the same culminated in the impugned letter dated Nil.11.2016, wherein the respondent NEHU rejected the prayer of the petitioner finally, on the ground that the GPF contribution of the employees of B.B. Kishan College, including the petitioner started only from April, 2013, whereas he had joined NEHU on 27.06.2012 under the New Pension Scheme. Thus, it is seen that the placement of the

petitioner under the New Pension Scheme, notwithstanding the offer of appointment and letter of appointment, mentioning that he would be governed by the New Pension Scheme, was finally decided on the date in which he started his GPF contribution in the place of his initial appointment i.e. B.B. Kishan College.

13. Looking back into the entire sequence of events, there are certain uncontroverted facts that are in favour of the petitioner. First, is the date of his regular appointment and secondly, the lien obtained from his original Institute, which covered his transition from B.B. Kishan College to Central University Jharkhand and finally NEHU. The only hiccup, is the date on which he started his GPF contribution which is noted was done on 14.03.2014, for salary for the month of April, 2013, admittedly after he had joined his present post at NEHU. This however, has been explained by the petitioner on affidavit, that the contribution was for a period he was on lien from B.B. Kishan College, before his permanent absorption in NEHU, and made shortly after his technical resignation, and as such cannot be taken to be a disqualifying feature or unauthorized, in the consideration of his case. As observed above, the uncontroverted position, being that he was by the operation of Section 7 of the Assam Provincialisation Act and Rule 21 of the Rules covered by the Old Pension Scheme, the non-counting of his earlier

service to be eligible under the Old Pension Scheme will therefore be incorrect. Section 7 of the Provincialisation Act and Rule 21 are quoted hereinbelow:-

“7.(1) The existing employees shall be governed by the existing pension Rules of the Government for the time being in force:

Provided that the employee who join on or after the 1st day of February, 2005 shall not be covered by the existing pension Rules of the Government. They shall be governed by such pension Rules or Scheme, as the case may be, as may framed by the Government from time to time.

(2) The Director of Higher Education, Assam shall process all pension cases and send them to the Accountant General, Assam as per laid down procedure.”

Rule 21 of the Assam College Employees
(Provincialisation) Rules, 2010

“21. i) Notwithstanding anything contained in these Rules, the existing Rules and orders applicable to State Government employees on pension, GPF, Leave, TA etc. will be applicable in case of Provincialized College Employees.

ii) The existing employees shall be governed by the existing pension Rules of the Government;

Provided that the employees who joined on or after 1st day of February, 2005 shall not be covered by the existing Pension Rules of the Government. They shall be governed by such Pension Rules or Scheme as the case may be framed by the Government in respect of other similarly situated employees of the Government;

iii) The Director, Higher Education, Assam shall forward a college wise list of employees already retired or due to retire within the next calendar year in the

format as prescribed for government Degree College, so as to reach the Accountant General by 30th September every year;

iv) The College shall process all Pension cases and submit to the Director who shall sanction and authorize provisional Pension/Gratuity on the basis of these rules and the “Assam Service (Pension) Rules, 1969” as applicable;

v) The employees who have opted for pension scheme under the provision of Clause 8 of the Act will discontinue their C.P.F. contribution, open G.P.F. account with the Accountant General. Such employees will compulsorily subscribe to the Fund at the prescribed minimum rate of 6.25 % of basic pay per mensem;

vi) The Pension shall be authorized from the date of coming into force of the Act i.e. 1st day of December, 2005;”

14. Coupled with the above, it is also relevant to mention herein that certain Office Memorandums of the Government of India dated 26.07.2005, 28.10.2009 and 18.03.2014 (Annexures 19, 20 & 21 to the writ petition) which are applicable to all Central Educational Institutions, have laid down the conditions for counting of past service. O.M. dated 26.07.2005 has provided that where such employees submit technical resignation on or after 01.01.2004, but entered Government service etc. before 31.12.2003, and who were governed by the Old Pension Scheme under the CCS (Pension) Rules, 1972 will continue to be governed by the Scheme for the purpose of counting their past service. Further, the other office Memorandums, dated 28.10.2009 and

18.03.2014, with regard to mobility of personnel amongst Central/State and Autonomous Bodies, while working under pensionable establishments, have mentioned that on further review by the Government of India, it was decided to continue the Old Pension Scheme to those employees appointed on or before 31.12.2003, as also the employees between State and Central Government who were appointed before 31.12.2003.

15. The entitlements of the petitioner being clear, the fact that he had accepted the appointment wherein it was clearly written that he would be governed by the New Pension Scheme, cannot be held against him, inasmuch as, there can be no estoppel against law. This observation is being made in view of the fact that in the normal course of his service, by the operation of law, in this case the Assam College Employees (Provincialisation) Act, 2005, the petitioner would have been covered under the Old Pension Scheme i.e. the Assam Services (Pension) Rules, 1969 which are akin to CCS (Pension) Rules, 1972. The Hon'ble Supreme Court in the case of ***Krishna Rai (Dead) Through Legal Representatives & Ors. vs. Banaras Hindu University Through Registrar & Ors.*** reported (2022) 8 SCC 713 has held at Para-32 as follows that there can be no estoppel against law.

“32. Further in Tata Chemicals Ltd. v. Commr. of Customs, it has been laid down that there can be no

estoppel against law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Para 18 of the said judgment is reproduced below: (SCC p. 636)

“18. The Tribunal’s judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the clearing agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.”

16. The case cited by the learned Senior counsel for the petitioner in the case of *Valsan P... vs. State of Kerala and Ors.* (*supra*), has also held that when permissible, there is a necessity of taking a holistic view to condone the non-qualifying period to reckon

the qualifying service for the purpose of computation of pensionable service, which however does not arise in the present case as the service of the petitioner is continuous and unbroken and therefore eligible to be placed under the cover of the Old Pension Scheme.

17. The writ petition on the reasons aforementioned is allowed. Needless to add, the petitioner is to make good any short fall in his contribution towards his GPF Account.

18. This writ petition accordingly stands closed and disposed of.

19. No order as to costs.



JUDGE

Meghalaya
08.02.2023
"V. Lyndem-PS"