

Serial No. 41-43
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 59 of 2022 with
WP(C) No. 112 of 2022
WP(C) No. 113 of 2022

Date of Decision: 21.09.2023

Shri Hillarton Sangma & Anr. Vs. State of Meghalaya & Ors.
Shri Samilson Sangma & Ors. Vs. State of Meghalaya & Ors.
Smti Walchira R. Marak & Ors. Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Mr. A.G. Momin, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA
Ms. S. Laloo, GA (For R 1-3)
Mr. P Yobin, Adv. (For R 4)

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. These writ petitions being similar and involving the same issue are being disposed by this common Judgment and Order. The

core issue in these writ petitions is the claim of the writ petitioners for grant of leave encashment and gratuity which they assert, they are entitled to by virtue of the Judgment and Order dated 04.08.2017 passed in Writ Appeal No. 37 of 2012, and Review Petition No. 9 of 2016. Further, the petitioners have sought to place reliance on an order dated 02.04.2018 passed in SLP (Civil) Diary No. 35923/2017, whereby in this SLP filed against the order dated 04.08.2017 in WA No. 37 of 2012 and Review Petition No. 9 of 2016, the Hon'ble Supreme Court had observed that the respondent Company would pay the amount of gratuity to the persons who have sought voluntary retirement under the Voluntary Retirement Scheme/Golden Handshake Scheme.

2. It has been contended that the concerned employees in these writ petitions, some who are deceased and represented by their legal heirs having availed of the Golden Handshake Scheme, in view of the subsequent orders passed by this Court in the Division Bench and by the Hon'ble Supreme Court would stand covered by these judgments, and therefore, be entitled to payment of gratuity as has been afforded to the other employees of the Respondent No. 3.

3. This contention has been rebutted by the respondents firstly, on the ground that the terms of employment and engagement of these employees which is stated to be under the Agro Custom Hiring Scheme, a Scheme of which, the respondent No. 4 is only the implementing agency, are not regular employees of the Respondent no. 3, but were engaged only for the purposes of the said scheme. It has also been submitted that the said Scheme having since been discontinued, the services of the employees therein, had been terminated and the employees paid a onetime settlement which has been duly accepted by them as far back as in 2001. It has been further submitted, that the Gauhati High Court, the erstwhile jurisdictional High Court, in an identical matter of a similarly situated employee, had dismissed a writ petition being WP(C) No. 157 (SH) 2003 seeking similar relief, vide order dated 31.08.2006, by directing the petitioner therein, to receive the onetime settlement in view of the fact that he was employed under the Agro Custom Hiring Scheme.

4. It has also been contended that the writ petitioners' services having been discontinued since December, 2001, these instant writ petitions being filed only in the year 2022, are severely hit by delay and laches and do not deserve consideration. On the other aspect

that the relief claimed will be permissible due to the subsequent judgments, it has been argued that these judgments will have no application, as the reliefs given therein, are only with regard to the 95 employees who had approached the Court and further it has been reiterated that the concerned employees herein were never regular employees under the respondent No. 3.

5. Heard the learned counsels for the parties.

6. The first undisputed fact as admitted by the petitioners themselves is that these employees were engaged in the Agro Custom Hiring Scheme, a Government Scheme which was being implemented by the respondent No. 3. The other fact that is also undisputed is that the said Scheme was discontinued by the Government which resulted in the termination of the employees employed therein, who were offered a onetime settlement. Paragraphs 6 & 7 of the writ petition which are the statements of the petitioners are reproduced hereinbelow:-

***“6. That the petitioners were inducted under the Agro Custom Hiring Scheme under the Border Area Department for mechanized farming which was introduced in the year 1978-79 but in the year 1992-93 the State Government considered the Scheme inoperative because it was incurring huge financial loss and accordingly proposed payment by way of Golden Handshake.*”**

7. That the Government of Meghalaya, Border Area Development Department vide order No. BRD. 40/91/Pt/84, dated 06.12.2001 discontinued the Agro Custom Hiring Scheme due to various constraint, financial and otherwise on and from the 31st day of December, 2001 and accordingly the petitioners were required to take voluntary retirement with a Golden Handshake.”

8. The above noted facts clearly show that these employees were not regular employees of the respondent No. 3, and they stand on a different footing as far as the terms of appointment and engagement are concerned, which was under a specific Scheme. As such, it can be clearly seen that the grant of gratuity and leave encashment to the other employees who were in regular service under the respondent No. 3, and the non-consideration in respect of the petitioners' herein, was a on the basis of a reasonable classification, due to the difference in their terms of employment and engagement.

9. As submitted, an identical matter had come up for consideration before the erstwhile jurisdictional High Court i.e. Gauhati High Court in **WP(C) No. 157 (SH) 2003** in the case of **Shri Paila Khonghat Vs. State of Meghalaya & Ors.** By order dated 31.03.2006, it was held that the petitioner therein had failed to establish a legally enforceable right for pension and directions were issued for

the immediate payment of the onetime settlement. Para-6, 7 & 8, which are relevant are quoted hereinbelow:-

“6. The above letter dated 17.09.2002 of the Managing Director, MECOFED, would go to show that the decision to pay to the petitioners a lump sum amount on account of one-time settlement instead of gratuity and regular pension had followed a decision to that effect taken by the Government. The petitioner was working under a Scheme which was floated by the Government and implemented by the MECOFED. The responsibility of affording certain relief to the petitioner and other such employees on termination of their service, therefore, primarily lies with the Government. If the Government had taken a conscious decision to withdraw its earlier offer of making available two options to such employees and instead to adopt a decision to pay to all such employees a lump sum amount by way of one-time settlement, it will be difficult for this Court to compel the Government to abide by its earlier decision. It is not the case of the petitioner that the aforesaid decision of the Government was taken for any oblique or questionable purpose. There will, therefore, be no basis for the Court to make any such assumption even though the Government, by not filing any affidavit has failed to disclose the reasons for the decision in question. In the aforesaid fact, it is considered appropriate to proceed on the basis that the decision in question was prompted by administrative reasons and exigencies. Moreover, the decision had been uniformly applied to all similarly situated employees.

7. I am, therefore, unable to hold that the petitioner has been able to establish a legally enforceable right to receive pension and that the action of the Government in withdrawing its earlier decision should be faulted.

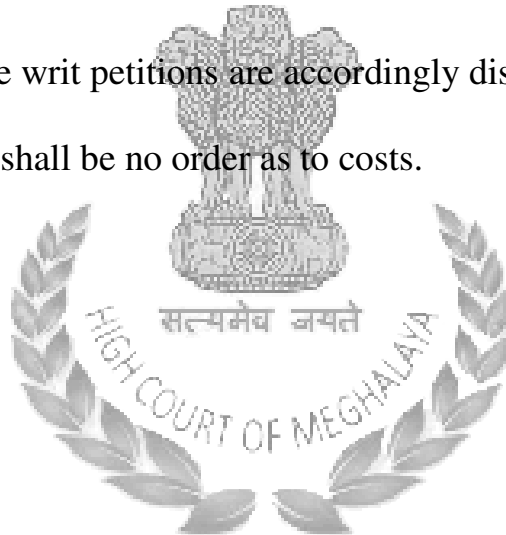
8. For the aforesaid reasons, I decline the reliefs prayed for in the writ petition, but direct the concerned respondents to forthwith pay to the petitioner the

amount that would be due to him on account of the one-time settlement.”

10. The case of the petitioners therefore, is squarely covered by the above noted judgment and as such after receipt of the onetime settlement which was received by them in the year 2001, no rights vested or otherwise exist as on today, to allow them the claim for gratuity or other benefits.

11. In view of the discussions and observations made hereinabove, these writ petitions are accordingly dismissed.

12. There shall be no order as to costs.



JUDGE

Meghalaya
21.09.2023
“V. Lyndem-PS”