

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 165 of 2022

Date of Decision: 24.03.2023

Shri. Wonstar Nongrum Vs. State of Meghalaya & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. V. Kumar, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA (For R 1-4)
Mr. K. Kharmawphlang, Adv. (For R 5)

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

1. The writ petitioner is before this Court in this second round of litigation, praying for sanction of monthly pension and other consequential financial benefits. The case of the petitioner is that, as his case for regularization was delayed inordinately, he had earlier

approached this Court by way of WP(C) No. 292 of 2018, and after orders were passed therein for consideration, the services of the petitioner was regularized from the date of joining service, but however, due to objections to the date of regularization, the respondents have not till date finalized his monthly pension. The petitioner is also aggrieved with the letter dated 13.10.2021, wherein it has been informed that the petitioner is not entitled the benefit of financial upgradation under the ACP/MACP Scheme and letter dated 22.03.2022, directing him to refund the amounts already drawn.

2. The petitioner had entered service as a peon in the Education Department on 16.08.1982, as a casual employee and after completion of 4 years from the date of his initial appointment, his case along with 2 others similarly situated casual employees was taken up for consideration for regularization. Thereafter, it appears though representations were filed by the petitioner for regularization, the same was not effected and it was only in 20.07.1997, when the Education Department initiated the process for conversion of the post of casual employees, that the name of the petitioner along with 7 others, was forwarded for creation of their respective posts in the Department. However, due to the re-designation of the office of the petitioner as the Directorate of Education Research and Training from the State Council of Educational Research and Training,

Meghalaya, when the names of 6 casual employees was forwarded for regularization, the name of the petitioner, due to oversight, did not figure in the said list. The mistake was noticed by the respondents and subsequently the name of the petitioner was forwarded. The Department then by letter dated 30.01.2004, conveyed the Government's approval for conversion of 8 casual employees into regular employees and consequently the services of 7 casual employees was regularized with effect from 30.01.2004, which however, did not include the petitioner, in view of the fact, that he was earlier appointed as officiating peon.

3. Though this mistake was realised, and regretted by the respondents who issued a rectification letter, the case of the petitioner was being pushed back and forth without any positive development, which made him approach this Court by way of WP(C) No. 292 of 2018. The writ petition was then disposed of on 29.08.2018, with the direction to ensure that a decision be taken on the basis of the recommendations made for regularization, as per applicable rules and regulations within a period of 2(two) weeks. The respondent No. 1, then vide letter dated 07.09.2018, conveyed the approval of the competent authority to include the name of the petitioner in the list along with other similar cases of ad hoc employees, but however, as no formal order of regularization was issued, the petitioner through his counsel, issued a legal notice dated 18.02.2019.

The respondent No. 2 then vide office order dated 30.03.2019, conveyed to the petitioner that his services were regularized from the date of joining.

4. After the order dated 30.03.2019, whereby the services of the petitioner stood regularized, the respondent No. 2 vide office order dated 21.11.2019, allowed the petitioner to draw the benefit of extended pay scale of Rs. 2900-65-3875/- and then by office order dated 05.05.2020, granted first and second financial upgradation under the Assured Career Progressive Scheme (ACP), and the third financial upgradation under MACP, on the basis that the regularization was effective from 23.07.1982. The respondent No. 2, then forwarded the pension papers to the respondent No. 5, which however were returned for re-submission after seeking clarification on the regulation of pay. This was then clarified by the respondent No. 2, vide letter dated 13.07.2021, that the fixation of pay had been made in the service roll consequent upon the grant of ACPS/MACPS. The said letter however, did not meet with the approval of the office of the respondent No. 4 (Finance, Pay Revision Department), on the ground that, the petitioner was not entitled to the benefit of financial upgradation as he was regularized w.e.f. 30.03.2019, which was indicated in the letter dated 13.10.2021.

5. Thereafter, the respondent No. 2, clarified vide letter dated 09.11.2021, that the grant of ACP's to the petitioner was due to the fact

that, he was regularized w.e.f. the date of joining, that is, 23.07.1982, and not 30.03.2019, since he had retired on 31.08.2018, and that the government approved his regularization of service, only on 28.03.2019. The Finance Department however, requested the respondent No. 2 to cancel the order of grant of financial upgradations under ACP/MACP by letter dated 10.12.2021 and advised for correction in the entries/regulation of pay in the petitioner's service book. By the same letter, the earlier approved Initial Pay Statements (IPS) were also treated as cancelled. Consequently, the respondent No. 2, in view of the letter dated 10.12.2021, issued by the Finance Department, informed the petitioner that he was not entitled to the benefit of financial upgradation under the ACP/MACP schemes, and directed for refund of the amounts already drawn. The petitioner therefore being aggrieved has filed the writ petition.

6. Mr. V.K. Jindal, learned Senior counsel assisted by Mr. V. Kumar, learned counsel for the petitioner while alluding to the facts, which have been narrated above, submits that, the impugned orders denying the petitioner the benefit of the financial upgradation has resulted in a stalemate, especially on the point of the date of regularization. He further submits that, in view of this situation, the amount of pension has not been finalized, which has caused great distress to the petitioner. He contends that, the date of regularization having been given by the concerned

department as 16.08.1982, the non-acceptance of the same by the Finance Department is unreasonable and arbitrary.

7. Mr. K.P. Bhattacharjee, learned GA on behalf of the State respondents No. 1-4 apart from placing the affidavit filed by the respondents, with regard to the eligibility of ad hoc casual employees or on contract to the Assured Career Progression Schemes (ACP) has submitted that the grant of benefit of extended scale to the petitioner did not have the approval of the Finance Department, or any other authority. He further submits that the respondent No. 2, could not have issued the order dated 30.03.2019, regularizing the service of the petitioner from the date of joining, as the same was in violation of the established rules, executive instructions and procedure, as regularization could have been conferred only subsequent to the date of recommendation. The counting of regular service he submits, should commence only from the date of absorption as a regular employee and earlier service rendered under ad hoc/casual/contract/regulation 3(f) should not be taken into reckoning.

8. Mr. K. Kharmawphlang, learned counsel for the respondent No. 5, submits that the authority for release of pensionary benefits of the petitioner could not be issued due to the non-re-submission of the pension papers in the complete form by the concerned pension sanctioning

authority and that the delay in release of the pensionary benefits cannot be attributed to the respondent No. 5 in any manner.

9. Having heard the learned counsels for the parties and having examined the materials on record, the entire dispute can be seen to have originated from the date of regularization of services of the petitioner. It is worthwhile to note that, pursuant to the orders passed by this Court in WP(C) No. 292 of 2018, the respondents in the Education Department issued orders for regularization, in compliance thereto, however by granting regularization from the date of joining, that is, 16.08.1982. This date being taken as the benchmark, the petitioner was then granted 3 financial upgradations under ACP/MACP schemes, and his pay regulated accordingly. It was only on the objections of the Finance Department that, the anomaly was detected and questions arose as to the correctness of the date from which the petitioner was granted regular status, whereafter the discrepancy was acknowledged and impugned orders were passed directing for recovery of the amounts already drawn by the petitioner. This also led to the inability of the respondents to finalize the pension of the petitioner as his pay would have to be re-calibrated in accordance with the relevant initial pay statement.

10. As the matter stood deadlocked, due to the conflicting orders which were yet to be resolved and rationalized, the result was that the

pension of the petitioner could not be finalized. The submission of the learned Government Advocate, is noted and accepted that regularization in normal circumstances could have been granted only after the date the said post had been converted into a permanent post and that, the period served on ad hoc basis shall not go towards computation of the length of service, which would entitle an employee for Career Advancement Schemes, in this case the ACP scheme. However, what cannot escape the attention of this Court, is the observations in the order dated 29.08.2018, passed in WP(C) No. 292 of 2018, wherein this Court takes note that the proposal for the conversion of the post of casual employees of 8 persons including the petitioner had been initiated, and their cases forwarded, which however, due to oversight did not include the name of the petitioner. The services of the other 7 employees, it is also noted in the order was regularized w.e.f. 30.01.2004. Para – 3 of the order dated 29.08.2018, is reproduced hereinbelow;

“3. Government of Meghalaya (Education Department) initiated the process for conversion of the post of casual employees and forwarded case of 8 casual employees including petitioner. The Directorate of Education Research and Training forwarded names of casual employees for regularization to the Department of Education but as alleged

due to oversight the proposal sent did not include name of petitioner which fact was pointed out by Department of Education vide letter dated 17th December, 1999. In response thereto Secretary, Directorate of Educational Research and Training vide letter dated 18th January, 2000 regretted the mistake then forwarded the particulars of petitioner to the Under Secretary to the Government of Meghalaya, Education Department. Director of Educational Research and Training vide letter dated 1st May, 2001 requested the Government in Education Department for regularization. The Department vide letter dated 30th January, 2004 conveyed Government's approval for conversion of 8 casual employees into regular employees i.e. 7 posts in DERT and 1 post in DSEL. Consequently services of 7 casual employees were regularized w.e.f. 30th January, 2004 excluding the petitioner. In view of the fact that he was earlier appointed as officiating peon, the mistake was regretted by DERT and rectification letter was issued. After hectic correspondences the case of the petitioner was not finalized."

11. The above quoted paragraph would clearly reflect the fact that, the petitioner was due for regularization along with the 7 other employees, inasmuch as, government approval was obtained for the conversion of 8 casual employees into regular employees, of which the petitioner was one of them. However, as has been discussed earlier, due to the other circumstances, which befell the petitioner, his case inspite of the request of respondent No. 2 for processing his regularization, the same could not be resolved until orders were passed by this Court, but even at that juncture, the petitioner's case was not well thought through, which resulted in the regularization being given from the date of joining and undue benefits being granted thereafter.

12. This Court has given its anxious consideration to the matter in its entirety to try and balance the equities, inasmuch as, in the entire sequence of events, no party can be held solely responsible for the situation as it has come to pass. In view of these circumstances therefore, this writ petition is disposed of with the following directions.

- (i) The respondents are directed to re-examine the case of the petitioner and his entitlements by taking into consideration the undisputed fact that, his case for regularization had been proposed and forwarded along with 7 others, as observed by this Court in the order dated 29.08.2018, passed in WP(C) No. 292 of 2018.

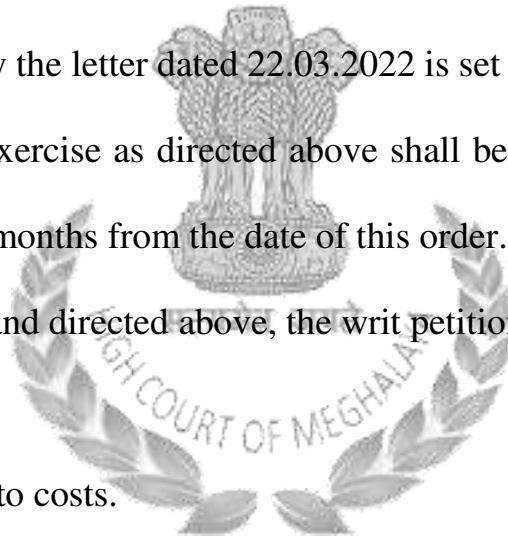
(ii) On such consideration and consequent fixation of date of regularization, the pay shall be accordingly fixed as per the prevalent IPS for that period and finalization of pension, thereafter be processed and concluded.

(iii) As the petitioner has been granted amounts for which refund has been sought by the respondents, which was occasioned not due to any mis-representation or wrong doing on the part of the petitioner, there shall be no recovery of the said amounts, and consequently the letter dated 22.03.2022 is set aside.

13. The entire exercise as directed above shall be completed within a period of 3(three) months from the date of this order.

14. As ordered and directed above, the writ petition accordingly stands disposed of.

15. No order as to costs.



Judge

Meghalaya
24.03.2023
"D.Thabah-PS"