

Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.13/2023 in
WA No.15/2023

Date of Order: 05.06.2023

North Eastern Hill University & ors Vs. Dwijen Sharma & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. S. Sen, Adv with
Ms. S. Shallam, Adv

For the Respondents : Ms. A. Pradhan, Adv vice
Dr. N. Mozika, DSGI
None appears for R/1, 5, 6 & 7

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

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

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The delay of about 84 days in preferring the appeal is condoned and the appeal is taken on board.

2. The appeal is taken up for immediate consideration.

3. The appellants question the propriety of an order dated February 8, 2023 by which a writ petition instituted by the first respondent herein succeeded. The writ petitioner claimed that he was entitled to the benefit under the old pension scheme. By a reasoned

judgment, the Single Bench found that the writ petitioner was justified in his claim.

4. The facts are undisputed and may be culled out from the impugned judgment.

5. The writ petitioner was appointed as a lecturer in English in B.B. Kishan College in the district of Barpeta in Assam and his services were regularised on November 15, 2002. The writ petitioner was then selected as an Assistant Professor in the Central University of Jharkhand and, after serving such university of Jharkhand only for a few days, the writ petitioner accepted an appointment with the North-Eastern Hill University, the first appellant herein, as an Assistant Professor on or about June 27, 2012.

6. B.B. Kishan College was taken over by the Assam government by an Act of 2005. The writ petitioner's services, which had been regularised on November 15, 2002, entitled the writ petitioner to pension and he was brought under the GPF and allotted an account number. Section 7 of the Act of 2005 indicated that the existing employees would be governed by the existing pension rules, with the proviso that employees who joined on or after February 1, 2005, would not be covered by the existing pension scheme. On the basis of the facts as aforesaid, the writ petitioner was covered by the old pension scheme.

7. The writ petitioner got an appointment in the Central University of Jharkhand on December 21, 2011 and was granted lien for a period of two years by his previous employer for the purpose of joining such Central university. However, within a couple of months, the writ petitioner secured appointment as an Associate Professor in the Department of English at NEHU and the offer for appointment was issued on June 8, 2012. The writ petitioner tendered his resignation from the Jharkhand University and he was granted a further lien of two years with effect from February 18, 2012 by the original employer. In the offer of appointment issued by NEHU as aforesaid, it was specified that the writ petitioner would be governed by the new pension scheme as applicable to Central government employees with effect from January 1, 2004. However, the relevant clause contained this further clarification:

“... 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...”

8. Vide letter dated June 30, 2012, B.B. Kishan College, which was also arrayed as a respondent to the writ petition, informed the appellants herein that the writ petitioner was covered by the Assam Service (Pension) Rules, 1969 and had been accorded lien leave for a period of two years with effect from February 18, 2012. The letter also

asserted that the writ petitioner had served as an Assistant Professor in the College from March 19, 2001 to February 17, 2012.

9. The formal letter of appointment was issued by the appellants herein to the writ petitioner on July 12, 2012, after the receipt of the letter from B.B. Kishan College confirming that the writ petitioner was covered by the old pension scheme. The communication between B.B. Kishan College and the appellants herein continued, with the appellants insisting that the writ petitioner was not covered by the old pension scheme. It also transpires that the writ petitioner had been allotted a GPF number and the writ petitioner's contribution was made therein only on March 14, 2014, after the completion of his period of lien and after he tendered his technical resignation from B.B. Kishan College.

10. At the same time, it was the writ petitioner's case that such money was in respect of the previous period that he was in service and was covered by the lien, albeit the money have been actually tendered after the period of lien was over. The appellants herein tried to impress the writ court by referring to the time of the writ petitioner's payment to the GPF account. However, the Single Bench referred to the provisions of the Act of 2005, particularly Section 7 thereof, and the rules framed thereunder to arrive at a conclusion that the writ petitioner was governed by the old pension scheme. Towards such end, the writ court also referred

to several office memoranda issued by the Government of India on July 26, 2005, October 28, 2009 and March 18, 2014.

11. Several judgments were cited on behalf of the parties, but in the end it was the fact that the writ petitioner's services were confirmed in the year 2002 together with the writ petitioner being covered by the old pension scheme during his stint in B.B. Kishan College that weighed with the writ court in finding that an appropriate certificate had been produced by the writ petitioner in terms of the offer of appointment issued to the writ petitioner before a formal appointment letter was issued to him. In such circumstances, the writ court reasoned that the writ petitioner would be governed by the old pension scheme and not by the new pension scheme.

12. The writ court took relevant considerations into account, applied its mind and came to a appropriate conclusion that the mere fact that there was a technical oversight on the part of the writ petitioner to tender the payment on account of his GPF contribution prior to the lien running out, would matter little since the payment tendered was for the past period.

13. Accordingly, since the judgment and order impugned rightly found in favour of the writ petitioner that he would be governed by the old pension scheme by virtue of his having been governed by such old

pension scheme at B.B. Kishan College for a long period of time before he switched over to the Central University of Jharkhand and, then, to the appellants herein, there is no room for interference therewith.

14. As a consequence, WA No.15 of 2023 is dismissed.

15. MC (WA) No.13 of 2023 is disposed of.

16. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
05.06.2023
'Lam DR-PS

