



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA 13/2022

1: Phassang Chachok and 12 Ors.
Central Workshop APSTS, Karsingsa, PO/PS Banderdewa, Dist. Papumpare,
Arunachal Pradesh. M. No. 9436676071

2: Choki Tatung
Chowkider
Station Superintendent
Itanagar
PO/PS Itanagar
District Papumpare
Arunachal Pradesh.

3: Takap Dada
Chowkider
General Manager
HQ APSTS
Naharlagun
PO/PS Naharlagun
District Papumpare
AP

4: Techhi Sakap
Chowkider
APSTS
Naharlagun
PO/PS Naharlagun
District Papumpare
AP

5: T. Muri
Chowkider
Central Workshop Karsingsa
PO/PS Banderdewa

District Papumpare
AP

6: Phassang Epo
Chowkider. SS APSTS
Koloriang
Kurung Kumey District
AP

7: Kholie Gungma
Chowkider
Central Workshop Karsingsa
PO/PS Banderdewa
District Papumpare
AP

8: K. Pangking
Chowkider
GM Office
APSTS
Naharlagun
PO/PS Naharlagun
District Papumpare
AP

9: Pakar Gao
Chowkider
SS Yingkiong APSTS
Upper Siang District
AP

10: Langku Toru
Chowkider
Station Superintendent
Daporijo
Upper Subansiri District
AP

11: Ram Lal
Chowkider
Station Superintendent
Tezu
APSTS
Lohit District

AP

12: Attu Miso
Chowkider
Station Superintendent
APSTS
Pasighat
East Siang District
AP

13: Tahong Taga
Chowkider
Superintendent APSTS
Pasighat
East Siang District
Arunachal Pradesh

VERSUS

1: THE STATE OF AP and 4 Ors
Represented through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar

2: The Secretary (Transport)
Govt. of Arunachal Pradesh
Itanagar

3: The General Manager
State Transport Service
Govt. of Arunachal Pradesh
Naharlagun.

4: The Secretary
Finance Department
Govt. of Arunachal Pradesh
Itanagar

5: The Under Secretary cum Sr. Analyst
Department of Administrative Reform
Govt. of Arunachal Pradesh
Itanaga

BEFORE
HONBLE MR. JUSTICE S.K.MEDHI
HONBLE MR. JUSTICE KARDAK ETE

:: JUDGMENT AND ORDER (ORAL) ::

For the appellants : Mr. Lissing Perme

For the respondents : Mr. S. Tapin GA (AP)

Date of hearing :09.05.2023.

Date of Judgment & order :09.05.2023

(Kardak Ete, I)

We have heard Mr. L. Perme, learned counsel for the appellants and Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. This intra-court appeal has been preferred by the appellants against the judgment and order dated 09.05.2022 passed by the learned Single Judge in WP(C) No. 85(AP)/2020.

3. The appellants, thirteen in numbers, have preferred this appeal jointly, who are working as Chowkidar in the Department of Transport, Government of Arunachal Pradesh, assailing the impugned judgment and order dated 09.05.2022 whereby the learned Single Judge has dismissed

the writ petition being WP(C) 85(AP)/2020 thereby rejecting the claim of the appellants/ petitioners for grant of benefit of compensatory pay equivalent to 1 (one) month's pay as that of the operational staff of the Department of Transports, Government of Arunachal Pradesh, the claim based on the Department order dated 09.03.2000.

4. The relevant facts for the purpose of this present appeal is that the Department of Transports, Government of Arunachal Pradesh by order dated 09.03.2000 has decided to grant the benefit of compensatory pay equivalent to one month's pay to the operational staffs consist of 19 categories of employees in the Department in lieu of duty performed by them on Saturdays, Sundays and Holidays with certain conditions. The claim of the appellants/petitioners is that as per the terms of the order dated 09.03.2000, the only parameter required for entitlement of one month compensatory pay is that in addition to their normal duty, the employees concerned need to perform duties on Saturdays, Sundays and Holidays. Though the appellants/petitioners also in addition to their normal duties also performed duties on Saturdays, Sundays and Holidays, the post of Chowkidar in which the appellants are working, did not find place in the said order. The appellants approached the General Manager, State Transport Services, Government of Arunachal Pradesh who in turn had advocated for

grant of compensatory pay equivalent to one month's pay on the ground that the appellants/petitioners are also performing duties on Saturdays, Sundays and Holidays. The appellants have submitted several representations for grant of compensatory pay equivalent to one month's pay by including the appellants post in the order dated 09.03.2000. On not being considered the appellants/petitioners grievances by the authorities, the appellants/petitioners approached this court by filing writ petition being WP(C) 282(AP)/2015 for the said grievances. The writ petition was disposed of on 17.09.2015 by the learned Single Judge of this Court with a direction to the Secretary, Transport Department, Government of Arunachal Pradesh, to consider their representation dated 15.06.2015. Pursuant to the said direction of the learned Single Judge, the respondent authorities considered the representation and vide letter dated 05.01.2017 informed the appellant No. 1 that the prayer for grant of compensatory pay equivalent to one month's pay has been declined.

5. On such rejection, the appellants/petitioners have again approached this Court by filing another writ petition being WP(C) 90(AP)/2017 challenging the rejection order dated 05.01.2017 and prayed for granting of one month's compensatory pay. The learned Single Judge vide order dated 02.04.2019 has disposed of the writ petition with a

direction to consider the grievances of the petitioners based on the justification note of the General Manager, State Transport Services, Government of Arunachal Pradesh with a finding that the Court has not agreed to the grounds of rejection by the Respondents that no such compensatory pay is granted in the neighbouring States and if such pay is granted to the petitioners of the State Transport Services, the other similarly situated category of staff of other departments will also claim such compensatory pay incurring extra financial burden on the State and found it to be irrelevant and extraneous factual considerations thereby setting aside the letter dated 05.01.2017.

6. Pursuant to such direction of the learned Single Judge, the Secretary, Department of State Transport Services, Government of Arunachal Pradesh considered the grievances of the appellants/petitioners and rejected the claims of the appellants by order dated 31.01.2020. Being aggrieved by such rejection order dated 31.01.2020, passed by the Secretary, Department of State Transport Services, Government of Arunachal Pradesh, the appellants/petitioners again filed the writ petition being WP(C)85(AP)/2020 assailing the rejection order dated 31.01.2020 with the same prayer for grant of compensatory pay equivalent to one month's pay claiming that the appellants are also working for 7 (seven)

days in a week without having any holidays including Saturdays, Sundays and other holidays by annexing the attendance roll in the writ petition. The appellant/petitioners claims that the rejection of their claim by the order dated 31.01.2020 amounts to overturning and subverting judicial order of the Hon'ble Court by the respondents on the ground that the Hon'ble Court vide order dated 02.04.2019 has issued a categorical direction to consider fairly the grievance of the petitioners based on the justification note of the General Manager, Department of Transports Services, Government of Arunachal Pradesh and for inclusion of the post of Chowkidar in the order dated 09.03.2000, applicable to the other categories of the operational staff under essential service benefits.

7. State respondents filed their affidavit-in-opposition to the above writ petition by contending that Chowkidars of the State Transport Services are not deployed for 24 hours duty and they are working only for 8 hours in a day and if any Chowkidar had worked beyond 8 hours, they may make claim for honorarium and over-time allowances. The State Respondents have clarified that the Chowkidars are not being used for multiple duties like peon, dak-runner, etc apart from their normal duties. The petitioners are deployed to guard office premises only and they were deployed for night duty only though they perform duties on Saturdays, Sundays and

other holidays. State Respondents also stated that operational staffs in the department are working on Saturdays, Sundays and other holidays beyond their duty as and when required. Therefore, the petitioners are not entitled for compensatory pay equivalent to one month's pay, which is meant for operational staffs under essential service benefits.

8. After elaborate consideration of the case of the appellants/petitioners and the materials available on records, the learned Single Judge has dismissed the writ petition of the appellants/petitioners vide the impugned judgment and order dated 09.05.2022.

9. Mr. L. Perme, learned counsel for the appellants/petitioners assailing the judgment and order dated 09.05.2022 of the learned Single Judge, submits that the learned Single Judge in utter disregard of the judgment dated 02.04.2019 passed in WP(C) 90(AP)/2017, dismissed the writ petition on two grounds namely; no such compensatory pay is granted in neighbouring states and if such pay is granted to the petitioners of the State Services, the other similarly situated categories staff of other departments will also claim such compensatory pay incurring extra-financial burden on the State which had already been found to be irrelevant and extraneous factual considerations by the coordinate Bench. The learned Single Judge has failed to appreciate that the order dated 31.01.2020

passed by the respondent authorities is wilful, intentional and contemptuous act on the part of the respondent authorities in as much as vide judgment and order dated 02.04.2019 in WP(C) 90(AP)/2017 a clear direction was given by this Court to consider fairly the grievances of the petitioners on the justification note of General Manager, State Transport Services, Government of Arunachal Pradesh and also it amounts to overturning the finding of the learned Single Judge. He submits that the order dated 02.04.2019 passed in WP(C) 90(AP)/2017 had attained finality and the dismissal of the writ petition of the appellants by upholding the order dated 31.01.2020 amounts to allowing overturning and subverting the judicial order by the administration authority which is against the principle of judicial propriety.

10. The learned counsel for the appellants/petitioners while referring to the order dated 09.03.2000 submits that the only criteria to grant compensatory pay is that the employee need to do the duty on Saturdays, Sundays and other holidays in addition to their normal duties. The learned counsel for the appellants submits that the parity in employment or equal pay for equal work is not an issue at all in the present case but the learned Single Judge has proceeded to decide on an issue which was not at all an issue for consideration in the present case.

11. The learned counsel for the appellants/petitioners has attempted to distinguish the cases of the Hon'ble Supreme Court in the case of (i) ***State of Maharashtra & Anr Vs. Bhagwan & Ors*** reported in (2020) SCC Online 25 (ii) ***State of Kerala & Anr. Vs. Naveena Prabhu & Ors*** reported in (2009) 3 SCC 649 and (iii) ***State of Haryana & Anr Vs. Haryana Civil Secretariat Personal Staff Association*** reported in (2002) 6 SCC 72, to show that these cases are not at all applicable to the present case of the appellants.

12. The learned counsel for the appellants/ petitioners finally submits that there is no question of invoking or not invoking of the principle of sub-silento in the present case as the same was not at all warranted. He heavily emphasised that since the appellants/petitioners are working for seven days in a week without any holidays and considering the parameter as required in the order dated 09.03.2020 which is only of the employee who perform duty on Saturdays, Sundays and holidays, the appellants are entitled for compensatory pay equivalent to one month's pay though the post of Chowkidar are not included as operational staff therefore, the rejection of the grievance for grant of compensatory pay allowance equivalent to one month's pay to the appellants by the respondent authorities and the dismissal of the writ petition of the appellants by the

learned Single Judge is liable to be interfered with.

13. Mr. S. Tapin, learned Senior Government Advocate while supporting the impugned judgement and order dated 09.05.2022 passed by the learned Single Judge and also relying on the affidavit-in-opposition filed by the State respondents, submits that there is no record to show that the appellants are working more than eight hours. The scheme of the order dated 09.03.2000 is that the benefit of one month compensatory pay would be available to only those operational staff who did not avail leave for one month within one year and who perform duty on Saturdays, Sundays and other holidays and it was specifically provided that the benefit will not be available to those employees who are not being included in the said categories of posts. He submits that the appellants/petitioners are non-operational staff nor are they rendering services apart from their eight hours work therefore, the appellants/petitioners are not entitled to compensatory pay equivalent to one month's pay which is only available to the operational staff of the Department of State Transport Services, Government of Arunachal Pradesh.

14. We have considered the submissions advanced by the learned counsel for the parties and also perused the materials available on record including the judgment and order dated 09.05.2022 passed by the learned

Single Judge.

15. On consideration of the grievances of the appellants/ petitioners and also on perusal of the materials available on record, we find that the issues in the present case is as to whether the appellants/petitioners are entitled to compensatory pay equivalent to one month's pay in terms of the order dated 09.03.2000 And whether mandamus can be issued for inclusion of the post of Chowkidar in the said order.

16. For determination of the above issues it is appropriate to consider the order dated 09.03.2000, which is reproduced herein below:

*“GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF TRANSPORT*

*No. TPT (B) 50/2/96
Dated Itanagar, the 9th March 2000*

ORDER

The Governor of Arunachal Pradesh is pleased to grant the benefit of Compensatory Pay equivalent to one month's pay to the operational staff of Arunachal Pradesh State Transport Services, as mentioned at annexure “A” (attached) in lieu of duty performed by them on Saturdays, Sundays and holidays, subject to the following conditions:

- (1) The above benefit of compensatory pay shall be effected from the financial year of 2000-2001 and shall be payable at the end of the financial year.*
- (2) The benefit of one month compensatory pay would be available to only those operational staff who do not avail themselves (any long leave) i.e., one calendar month or more during the financial year and who actually perform duty on Saturdays, Sundays and holidays. A duty register alongwith record of all office orders shall be duly maintained by all controlling officers for the purpose.*
- (3) The benefit will not be available to those who are under suspension or on extra ordinary leave during the financial year for 30 days or more.*
- (4) The benefit of compensatory pay will also not be available to those operational staff in Annexure “A” during their tenures at posts or stations which do not require working on Saturdays, Sundays and holidays.*

- (5) *In respect of employees who have joined service for the first time, the payment would be admissible to him/her in the first financial year provided he/she by rendered service for not less than 9 (nine) months in that financial year./*
- (6) *The payment of compensatory pay will be equal to the basic pay plus dearness allowance drawn by the government servant on the 31st March of the relevant year.*

The payment will be made from the head of account meant for salary and necessary budgetary provision will be made for the purpose.

*Sd/- P.M. Nair
Chief Secretary
Govt. of Arunachal Pradesh
Itanagar*

Memo No. TPT (B)50/2/96

Copy to:-

- 1. The Secretary to the Governor, Arunachal Pradesh, Itanagar.*
- 2. The Commissioner to CM, A.P. Itanagar.*
- 3. The Accountant General, A.P, Shillong.*
- 4. PS to the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.*
- 5. The Commissioner/Secretaries, Govt. A.P. Itanagar.*
- 6. All heads of Department, Arunachal Pradesh.*
- 7. All the Deputy Commissioners, Arunachal Pradesh.*
- 8. The General Manager, STS, Arunachal Pradesh for information and necessary action*
- 9. The DIPR, Arunachal Pradesh, Naharlagun with the request to publish in Arunachal Pradesh.*
- 10. The Treasure Officer, A.P.*
- 11. Office Copy.*

*Sd/-
(S.C.L.Das)
Secretary (Transport etc)
Govt. of Arunachal Pradesh*

Annexure- "A" attached to the Order No. TPT(B) 50/2/96 dated 09.03.2000

Categories of operational staff for whom the compensatory pay is allowed under State Transport Services:

S.No. Nomenclature of Posts

- 1. Senior Booking Clerk*
- 2. Booking Clerk*
- 3. Driver*
- 4. Conductor*
- 5. Driver Grade II*
- 6. Mechanic- Grade-I, Grade-II, Grade-III*
- 7. Welder-*
- 8. Electrician*
- 9. Accountant-cum-Store Keeper (Technical)*
- 10. Store Inspector*
- 11. Store Keeper Grade-II and Grade-III*
- 12. Upholder*
- 13. Painter Grade-II and Grade-III*
- 14. Artisan- Grade_*

15. Body fitter Grade- III

16. Pump Operator

17. Carpenter- Grade-III

18. Helper to Mechanic/Welder/ Electrician/ Painter/ Store-Keeper

19. Car Washer

Sd/-

(S.C.L.Das)

Secretary (Transport etc)

Govt. of Arunachal Pradesh

17. On bare perusal of the above order dated 09.03.2000 including its annexure, we find that the order only indicates for granting the benefit of compensatory pay equivalent to one month's pay to the operational staff of Department of State Transport Services, Government of Arunachal Pradesh showing the categories with nomenclature of posts of the operational staff which shall be in lieu of duty performed by them on Saturdays, Sundays and other holidays with certain conditions. It does not include the post of Chowkidar, the post(s) in which the appellants/petitioners are working.

18. We took note that though the appellants in the writ petition had prayed for a direction to include the appellants in the order dated 09.03.2000, the main thrust of submission by the learned counsel for the appellants/petitioners is that as per the order dated 09.03.2000, the only parameter to be considered is for those employees who performed duty on Saturdays, Sundays and other holidays and since the appellants/petitioners are working seven days in a week without there being any holidays, they

are entitled to be granted the benefit of compensatory pay equivalent to one month's pay as per the said order and also heavily basing on the recommendation letter by the General Manager, State Transport Services, Government of Arunachal Pradesh. The recommendation by the General Manager would not create any right to the appellants.

19. We also find that the nature, duty and responsibility of a Chowkidar, i.e, the appellants post is as such that they are appointed to work as per the terms of their appointment and to that extent they may have to work on Saturday, Sunday and other holidays. It is the categorical stand of the State respondents that they are only working for eight hours and even if they work for more than their normal hour duties, they are entitled to claim for honorarium and other allowances.

20. Regard being had to the submission that the Chowkidars are made to attend office on Saturdays, Sundays and other holidays with other operational staff attending office is only considered to be rejected in as much as by the very nature of duty and terms of appointment as a Chowkidar, they would not have choice of duty and complain of deploying them on Saturdays, Sundays and other holidays. It is not the case of the appellants that they are also deployed on duty as that of the operational staff other than the duty of a Chowkidar.

21. So far as the applicability of principle of sub-silentio to the facts of the case, we in agreement with the learned Single Judge and would not have any discordant note with it in as much as the learned counsel for appellants had heavily bank on the order dated 02.04.2019 passed in WP(C) 90(AP)/2017.

22. As rightly considered and relied on by the learned Single Judge, to which we are in agreement with, in the case of ***State of Haryana versus Haryana Civil Secretariat Personal Staff Association***, reported in (2002) 6 SCC 72, the Hon'ble Supreme Court has observed which is reproduced herein below:

“10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay, It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration :of the State Government courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the government is patently irrational unjust and prejudicial

to a section of employees and the government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the government to implement the same. As noted earlier, in the present case 'the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of the employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre"

23. The Hon'ble Supreme Court has observed aforesaid after consideration of the case of ***Finance Department versus West Bengal Registration Service Association***, reported in (1993) Supp (1) SCC 53 wherein it has held as under:

"12. We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in

him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of the duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice. ”

24. While referring to above decisions of the Hon'ble Supreme Court, we are conscious that the cases are related to the equation of posts and determination of pay scales, however, as in the present case the grievances of the appellants for inclusion of their post in the order dated 09.03.2000, which is a policy decision of State, and for grant of the benefit of compensatory pay equivalent to one month's pay, in our considered view, are relevant and applicable.

25. In view of above discussions and in the facts and circumstances of the present case, we are of the view that appellants/petitioners are not

entitled for grant of compensatory pay equivalent to one month's pay in terms of the order dated 09.03.2000 and no mandamus can be issued for inclusion of the post of Chowkidar in the said order.

26. Resultantly, we hold that the appellants/petitioners are not entitled for compensatory pay equivalent to one month's pay and there is no infirmity in the judgment and order of the learned Single Judge dated 09.05.2022, which would warrant interference in this intra-court appeal.

27. Accordingly, the writ appeal fails and is dismissed.

No order as to cost.

JUDGE

JUDGE

Comparing Assistant