



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

Case No. : WP(C) 373/2021

1:Arunachal Pradesh State Government Pensioners Association and Anr.
A Society registered under Societies Registration Act, 1860 having its registered Office
at High Court Road, D Sector, Naharlagun, District Papum Pare, Arunachal Pradesh,
through its Vice President Shri Chukhu Talar, resident of Model Village, PO and PS
Naharlagun, District Papum Pare, Arunachal Pradesh

2: Malo Tagio
S/o Late Malo Chatum
Village Old Palin
PO and PS New Palin
District Kra Dadi
Arunachal Pradesh
and Joint Secretary
Arunachal Pradesh State Government Pensioners Associatio

VERSUS

1:THE STATE OF AP and Anr.
Through the Commissioner/Secretary, Department of Finance, Govt. of Arunachal
Pradesh, Itanagar

2:The Chief Secretary
to the Govt. of Arunachal Pradesh
Itanagar
District Papum Pare
Arunachal Pradesh

Advocate for the Petitioner (s) : Mr. T. Pertin.

Advocate for the Respondent (s) : Mr. R. H. Nabam, Addl. AG, AP.

Date of hearing : 12.06.2023
Date of Judgment : 26.06.2023

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT AND ORDER(CAV)

Heard Mr. T. Pertin, learned counsel for the petitioners. Also heard Mr. R.H. Nabam, learned Additional Advocate General, Arunachal Pradesh, appearing for the State respondents.

2. This writ petition, under Article 226 of the Constitution of India, is instituted by the petitioners seeking following relief(s):-

- (i) To direct the State respondents to revise the pension of pre01.01.2016 pensioners/family pensioners in terms of the decision of the Govt. of India, vide Office Memorandum dated 12.05.2017, towards implementation of Government's decision on the recommendation of the 7th CPC on revision pension of pre-2016 pensioners/retirees as per Formulation (i) of Item 11 of Resolution F.No. 38/37/2016-P & WA (A) dated 04.08.2016, and
- (ii) To direct the State respondents to pay the arrears of revised fixed medical allowance to the pre-01.01.2016 pensioners/family pensioners of the Govt. of Arunachal Pradesh for the period from 01.07.2017 to 31.03.2018.

3. The background facts, leading to filing of the present writ petition, are adumbrated as under:-

"In the year 2014, the Government India had appointed

7th Central Pay Commission (7th CPC), with specified terms of reference. Accordingly, the 7th Pay Commission has submitted its report on 19.11.2015. Thereafter, the Govt. of India, after due consideration has accepted the report of the Commission, vide Resolution F.No.38/37/2016-P & PW (A) dated 04.08.2016. Thereafter, on the same day the Government of India has issued one Office Memorandum F.No.38/37/2016-P & PW (A) (ii) for implementation of the decision of the Government on revision of pension of pre-2016 pensioners/family pensioners in terms of the Formulation-II, as contained in Item 11 of the Govt. of India Resolution F.No.38/37/2016-P&PW(A) dated 04.08.2016.

Thereafter, on 12.05.2017, the Govt. of India, Department of Pension and Pensioners Welfare, New Delhi had issued another Office Memorandum, dated 12.05.2017, giving effect of re-fixation of pension of pre 01.01.2016 pensioners/family pensioners based on Formulation (i) of Item 11 as recommended by the 7th CPC.

The Government of India, Ministry of Finance, Department of Expenditure, had issued another Office Memorandum on 14.07.2017, revising the fixed medical allowance from Rs.500/- to Rs.1000/- payable w.e.f. 01.07.2017.

The Government of Arunachal Pradesh also, instead of appointing a Pay Commission, used to implement the

report of the Central Pay Commissions, so constituted by the Government of India. Thereafter, on 16.01.2017, the Government of Arunachal Pradesh also adopted the Office Memorandum F.No.38/37/2016-P&PW(A)(ii), dated 04.08.2016 and issued one Office Memorandum No.DAP/PEN/27/2016, dated 16.01.2017, and the same was published in the Arunachal Pradesh Gazette, and extended the benefit of revision of pension of pre-01.01.2016 retirees in terms of the Formulation-(ii) as contained in Item 11 of the Government of India Resolution dated 04.08.2016.

But, the Government of Arunachal Pradesh has not extended the benefits of re-fixation of pension of pre-01.01.2016 pensioners/family pensioners based on Formulation (i) of Item 11 as recommended by the 7th CPC, in the similar line with the Notification, dated 12.05.2017, issued by the Govt. of India, Department of Pension and Pensioners Welfare, New Delhi.

Apart from this the Government of Arunachal Pradesh has also not paid the arrears of revised fixed medial allowances to the pre-01.01.2016 retirees for the period from 01.07.2017 to 01.04.2018, @ Rs.1000/, even though policy decision on the same was announced by the Finance Minister of Arunachal Pradesh in his budget speech on the floor of the House on 12.03.2018. However, the Govt. of Arunachal Pradesh by issuing one Office Memorandum, dated 05.10.2015, the

pensioners/family pensioners of Arunachal Pradesh Government were paid fixed medical allowance @ Rs.500/- per month, retrospectively w.e.f. 01.12.2014.

The present petitioner No.1, which is an association of Arunachal Pradesh State Government pensioners, had filed several representations to the State Government functionaries for implementation of the Formulation (i) of Item 11 as recommended by the 7th CPC, and also to fixed medical allowance @ Rs.1000/- per month. But, they received no response from the Government.

Being aggrieved, the petitioners approached this court by filing the present writ petition seeking relief(s) as aforementioned."

4. The respondent No.1 had filed affidavit-in-opposition denying the averments made in the petition. It is stated that though the Government of Arunachal Pradesh has adopted the recommendation made by 7th CPC, yet, it has not implemented the said recommendation in toto and due to acute financial constraint, the Government has decided to implement Formulation-(ii) of the 7th CPC, vide O.M. No.DAP/PEN/27/2016 dated 16.01.2017 and the State has a liberty to implement or not to implement any of the recommendations made by the 7th CPC, considering its financial capacity and as per law and the matter is within the administrative domain of the State Government. And as such, the prayer made by the petitioners in this petition, are not maintainable and it is, therefore, contended to dismiss the petition. The respondent No.1 also filed one additional affidavit stating that the medical allowance @ Rs.

1000/, w.e.f. 01.04.2018 is being paid to the pensioners, despite financial constraint.

5. The petitioner No.1 had filed their affidavit-in-reply and the respondent No.1 also filed its reply to the affidavit-in-reply of the petitioners, denying the averments made therein. In the counter affidavit to the additional affidavit of the petitioners, the respondent had stated that though the Government has extended the benefit of medical allowance to the petitioner, yet the same is from 01.04.2018, not from 01.07.2017 and thereby denied the dues of nine months of arrear to the petitioners.

6. Mr. T. Pertin, learned counsel for the petitioners submits that the petitioners are the association of retired pensioners of Government of Arunachal Pradesh and the Government of Arunachal Pradesh has refused to revise the pension of the petitioners w.e.f. 01.01.2016 as per Formulation-(i) of Item 11 of Resolution F.No.38/37/2016-P&WA(A) dated 04.08.2016, by which the Government of Arunachal Pradesh has decided to implement the recommendation of the 7th CPC. Mr. Pertin further submits that and the Office Memorandum,(O.M.) dated 04.08.2016, was succeeded by another O.M., F.No.38/37/2016P&PW(A)(ii) of the Govt. of India of the same date, i.e. 04.08.2016, for implementation of the decision on revision of pension of pre 01.01.2016 retirees in terms of Formulation (ii), as contained in Item 11 of the Government of India Resolution dated 04.08.2016, as an interim measure pending completion of necessary computation for revision of pension as per Formulation (i). Mr. Pertin further submits that the Government of Arunachal Pradesh vide O.M. dated 16.01.2017, adopted the O.M. dated 04.08.2016, of the Government of India and revised the pension of pre 01.01.2016 as per Formulation-(ii) as an interim measure, but the Formulation (i) has not yet been adopted by the Government of Arunachal Pradesh though the Government of

India has extended the benefit as per Formulation (i) vide O.M. dated 04.08.2016, and thereafter, by another O.M. dated 12.05.2017, the Government of India has re-fixed the pension of pre 01.01.2016, pensioners based on Formulation (i) of Item 11 of the Resolution of Government of India dated 04.08.2016. But, the Govt. of Arunachal Pradesh has not taken any step till date for re-fixation of the pension of pre 01.01.2016, retirees based on the O.M. of Government of India dated 12.05.2017.

7. Mr. Pertin further pointed out that the Finance Minister of the Govt. of Arunachal Pradesh, in his budget speech, in the floor of the House, on 12.03.2018, had announced medical allowances to the pre 01.01.2016 retirees for the period from 01.07.2017 to 01.04.2018 and despite the Govt. of A.P. had not given the arrear thereof and therefore, Mr. Pertin contended to allow this petition by directing the respondents to extend the benefit to the petitioners as per Formulation (i) of the O.M. of the Govt. of India.

8. Per contra, Mr. R.H. Nabam, learned Senior Additional Advocate General, Govt. of Arunachal Pradesh, submits that the Govt. of Arunachal Pradesh had accepted the recommendation of the 7th CPC, but, not in toto, because of its financial constraint. Mr. Nabam, further submits that the report of the 7th CPC is recommendatory in nature and it is not binding upon the Government and Government may, as a policy decision, may adopt it or may not adopt it and in such cases no mandamus can be issued by the Court. It is the further submission of Mr. Nabam that as an interim measure the Government has extended the benefit of Formulation (ii) and the same is within financial capacity of the State and Formulation (i) involves higher financial implications and the State is not in a position to bear the same. Further, Mr. Nabam submits that accepting or rejecting the recommendation of the 7th CPC is in the administrative domain of the State and it is the policy decision of the

Government and the Courts ought not interfere with the same. In support of his submission, Mr. Nabam has referred two decisions, one is of Hon“ble Supreme Court in **M.P. Rural Agriculture Extension Officers Association v. State of M.P. & Anr.**, reported in **(2004) 4 SCC 646** and another decision of this Court in **State of Arunachal Pradesh v. Bamar Yinyo** reported in **2016 (2) GLT 1207**. Mr. Nabam has also relied upon paragraph No.28 of the decision of Hon“ble Supreme Court in **Census Commissioner & Ors. v. R. Krishnamurthy**, reported in **(2015) 2 SCC 796**, wherein referring to its earlier decision in **N.D. Jayal v. Union of India**, reported in **(2004) 9 SCC 362**, the Hon“ble Supreme Court had observed that in the matters of policy, when the Government takes a decision bearing in mind several aspects, the Court should not interfere with the same. Hon“ble Supreme Court also referred to another decision in **Narmada Bachao Andolan v. Union of India**, reported in **(2000) 10 SCC 664**, where it has been held as under:-

“229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the

Constitution.”

9. Mr. Nabam further submits that the State Government will definitely extend the benefit of the Formulation (i) to the petitioners as and when the financial condition of the State will improve and that the medical benefit as per recommendation of the CPC has already been extended to the petitioners and therefore, Mr. Nabam contended to dismiss the petition.

10. In view of the assertions made in the pleadings of the parties and also in view of the submissions, so advanced by the learned Advocates of both sides, the questions, that has arisen for consideration of this Court are formulated as under:-

- (i) Whether the recommendation made by the 7th CPC is binding on the Government of Arunachal Pradesh and whether it creates any legally enforceable right to the petitioner to get the same implemented?
- (ii) Whether the Court can interfere with the policy decision of the Government in respect of implementation or non implementation of recommendation of Pay Commission and issue a mandamus?

12. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the pleadings of the parties and also gone through the documents placed on record and further perused the case law referred by Mr.

Nabam, learned Additional Advocate General, Govt. of Arunachal Pradesh.

13. Indisputably, the Government of Arunachal Pradesh instead of appointing separate pay commission used to accept the recommendation made by the Central Pay Commission and extends the benefits to its employees. And sometimes, it accepts the recommendation in toto, and sometimes, with certain modifications. In the year 2014 the Central Government has appointed 7th CPC, with specified terms of reference, and accordingly, the 7th CPC has submitted its report on 19.11.2015. Thereafter, the Govt. of India, after due consideration has accepted the recommendation of the Commission, vide Resolution F.No.38/37/2016-P&PW(A) dated 04.08.2016. Thereafter, on the same day the Government of India had issued O.M.- F.No.38/37/2016-P&PW(A)(ii) on 04.08.2016 for implementation of the decision of the Government on revision of pension of pre-2016 pensioners/family pensioners in terms of Formulation (ii), as contained in Item 11 of the Govt. of India Resolution F.No.38/37/2016-P&PW(A) dated 04.08.2016.

14. It also appears that in the same line, the Government of Arunachal Pradesh also on 16.01.2017, has adopted the O.M. F.No.38/37/2016-P&PW(A) (ii), dated 04.08.2016, issued by the Central Government and issued one O.M. No.DAP/PEN/27/2016 and the same was published in the Arunachal Pradesh Gazette and extends the benefits of 7th pay commission as per Formulation (ii) of the Item No.11 to its pensioners. Further, it appears that on 12.05.2017, the Govt. of India, Department of Pension and Pensioners Welfare, New Delhi issued another O.M. dated 12.05.2017 effecting re-fixation of pension of pre 01.01.2016 pensioners/family pensioners based on Formulation (i) of Item 11 as recommended by the 7th CPC. Thereafter, the present petitioners have filed

several representations to the State Government functionaries for implementation of the Formulation (i) of Item 11 as recommended by the 7th CPC and also to extend the medical Allowance to the pensioners at the revised rate. Thereafter, on 05.10.2015, the Govt. of Arunachal Pradesh by issuing one O.M., the pensioners/family pensioners of Arunachal Pradesh Government were paid fixed medical allowance @ Rs.500/- per month, retrospectively w.e.f. 01.12.2014. But, the Government of India, Ministry of Finance, Department of Expenditure, has issued one O.M. on 14.07.2017, revising the fixed medical allowance from Rs.500/- to Rs.1000/- payable w.e.f. 01.07.2017. But, such benefits was not extended to the petitioners by the Govt. of Arunachal Pradesh.

15. Further, it appears that the Finance Minister of the State of Arunachal Pradesh in his budget speech dated 12.03.2018, has announced in the floor of the House that the revised fixed medical allowances will be disbursed w.e.f. 01.07.2017. But, on 10.07.2018, the Government of Arunachal Pradesh has issued one O.M. revising fixed medical allowance @ Rs.1000/- per month w.e.f. 01.04.2018 not from 01.07.2017 as per commitment given in the floor of the House.

16. Now, coming to the issue No. I, so formulated above, I find that Mr. R.H. Nabam, learned Additional Advocate General, has categorically submitted that the recommendation of the Pay Commission is not binding upon the Government and Government has the option to accept the same in its entirety or partially or not to accept it, and it is the policy decision of the Government. The proposition of law, regarding the nature of recommendation of pay commission, is well settled by Hon^{ble} Supreme Court in catena of decisions. In the case of

M.P. Rural Agriculture Extension Officers Association (supra),
Hon"ble Supreme Court had held as under:-

"13. Pay Commission are constituted for evaluating the duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations."

17. Again in the case of **Bamar Yinyo** (supra), relying upon the decision in **M.P. Rural Agriculture Extension Officers Association** (supra), a Division Bench of this Court has held that the matter of implementation of the recommendation of the Central Pay Commission is quite settled, the State Government is at liberty to apply the pay recommendation as per their financial capacity and as per law. It need not apply the recommendation of the 6th CPC in toto. As such the Division Bench of this Court is of the opinion that the learned Single Judge was not correct in giving the direction in the WP(C) No.410(AP)/2014 to apply the recommendations of the 6th CPC in toto. The view from that of the Division Bench in **Bamar Yinyo** (supra) and of the Hon"ble Supreme Court in the case of **M.P. Rural Agriculture Extension Officers Association** (supra) is binding upon this court.

18. Thus, having considered the submission of Mr. Nabam, learned Senior

Additional Advocate General, in the light of the facts and circumstances on the record and also in the light of proposition of law discussed herein above, and having not controverted the same by Mr. Pertin, learned counsel for the petitioners, I find sufficient force in the same. In view of above discussion and finding this Court is inclined to answer the first issue in negative. As the recommendation of the pay commission is not binding upon the Government, it creates no legally enforceable right in favour of the petitioner to get the same implemented. Thus, issue No. I, as formulated above, stands answered.

19. Now coming to the issue No. II, so formulated above, I find that the implementation of a decision of pay commission is within the administrative domain of the Government and as the recommendation made by the CPC is only recommendatory in nature. It is not binding upon the Government. The Government may, as a matter of policy may adopt the same or may not adopt the same. Mr. Nabam, the learned Senior Additional Advocate General has rightly pointed this out during argument and the case laws, so referred by him also fortified his submission.

20. The proposition of law in respect of the policy decision, having been settled by the Supreme Court in the case of **R. Krishnamurthy** (supra), this Court is of the view that since the implementation or nonimplementation of recommendation of pay commission, is a policy decision of the Government of Arunachal Pradesh, a writ of mandamus cannot be issued directing the State respondents to implement the Formulation (i) of the 7th Pay Commission while the State has taken a stand that it has financial constraint and Government will definitely look forward to extend the benefit of Formulation (i), whenever the financial condition of the State will improve.

21. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, dismissal of this writ petition will not stand in the way of implementing/giving effect of the Formulation (i) of the 7th CPC in Item 11 to the petitioners and also giving the retrospective effect of the medical allowances, with w.e.f. 01.07.2017, as prayed for by the petitioners.

22. In view of above, the writ petition stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant