

GAHC030004022021



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

Case No. : WP(C)/109/2021

Hausiama and 190 Ors
Mission Veng, Aizawl, Mizoram

2: Victor Lalbiaksanga

3: Lalzuiliana

4: Lalthansangi

5: T.Lallian

VERSUS

State of Mizoram and 4 Ors.
R/b Chief Secretary to the Govt. of Mizoram, Aizawl

2:Secretary to the Govt. of Mizoram

3:Secretary to the Govt. of Mizoram

4:Secretary to the Govt. of Mizoram

5:Director of School Education Dept

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA, Mizoram)

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT (Oral)

Date : 24-08-2023

Heard Mr. Victor L. Ralte, learned counsel for the petitioners along with Mrs. H. Lalmalsawmi, learned Government Advocate for the State respondents.

2. Mr. Victor L. Ralte, learned counsel for the petitioners submits that this is the second time the petitioners have come before this Court. There was an earlier writ petition filed by the petitioner being WP(C) No. 2/2021, which was disposed vide Order dated 01.02.2021 with the following directions:-

“(i) The petitioners shall submit a fresh representation clearly incorporating their grievances along with a copy of this writ petition before the Secretary to the Govt. of Mizoram, School Education Department (respondent No. 2) within a period of ten (10) days from today through the Director of School Education, Govt. of Mizoram (respondent No. 5).

(ii) The respondent No. 5 on receipt of the representation and a copy of the writ petition shall forward the same to the respondent No. 2 without delay and the respondent No. 2 on receipt of the representation shall consider the same by taking into account the seniority of the petitioners and similar benefit granted to the Work Education Teachers of Middle Schools and High Schools. The representation should be disposed of within a period of two (2) months

from the date of receipt of the same by way of speaking order.

(iii) The outcome of the representation should be communicated to the petitioners.”

3. Thereafter, the petitioners had filed a fresh representation to the State respondents with the following prayer:-

“1. Those teachers who have entered into service prior to 1.6.1996 and who have not been granted pay upgradation to senior grade may be granted senior grade w.e.f. 1.6.2012 in order to solve the pay anomaly.

2. Pay anomaly arose due to the fact that those teachers who entered into service after 1.6.1996 were granted double increment as they enjoyed upgradation to senior grade and selection grade and as a result they have superseded those teachers who are 10 years or more senior to them and this could not be held to be justified. As a result, it would be justified if those teachers who have entered into service prior to 1.6.1996 are upgraded to senior grade w.e.f. 1.6.2012.

3. As those teachers who were already upgraded to selection grade prior to 1.1.2006 were not granted an increment when they were placed at selection grade and as they were not granted senior grade, they may be granted 6% (double increment) w.e.f. 1.6.2012 as upgradation to senior grade and selection grade. As for those who were upgraded to selection grade after 1.1.2006 had already enjoyed one increment (3%), they may be granted another one

increment (3%).”

4. In reply to their representation, the State respondents vide its Order dated 30.03.2021 held that:-

“.....”

NOW THEREFORE, in terms of the Hon'ble Court vide Order dt. 01.02.2021 and decision of the Joint Meeting held on 12.03.2021, it is hereby ordered that the pay of petitioners shall be stepped up at par with their junior and all necessary action will be taken up by School Education Department and Accounts & Treasuries, Govt. of Mizoram.”

5. The learned counsel for the petitioners has now again approach this Court, being aggrieved by the said Order dated 30.03.2021, on the grounds that 46 numbers of Middle School Teachers have not been given the up-gradation of their pay in par with their juniors and further the teachers who were already upgraded to Selection Grade, prior to 01.01.2026 were not granted an increment and as they were not granted Senior Grade, they may be granted 6% (double increment) w.e.f. 01.06.2012 as up-gradation to Senior Grade and Selection Grade. He further submits that as for those who were upgraded to Selection Grade after 01.01.2006 had already enjoyed one increment (3%), they may be granted another one increment (3%). The main reason why the petitioners are entitled to 6% (double increment) and 3% (one increment) is because they are much senior than those teachers, who had joined almost 10

years later than the petitioners. Thus by virtue of their early date of joining they should be given higher pay.

6. Mrs. H. Lalmalsawmi, learned Government Advocate, on the other hand submits that the State Government in issuing the order Memo No: C.14011/1/2021-EDN dated 30.03.2021, has adapted the Fundamental Rules for determination of pay of its employees wherein there is a provision for stepping up of the pay of the petitioners *at par with their juniors but there was no provision for getting higher pay.* The GOI's 18(c) below FR 22 (Swamy's Compilation of Fundamental Rules & Supplementary Rules, 22nd Edition, 2013), which is reproduced as follows :-

“ As a result of introduction of Selection Grades in Group 'C' and 'D' cadres – cases have come to notice where a senior government servant promoted to a higher post before the introduction of non- functional selection grade draws less pay than his junior who is promoted to a higher post later, after having appointed in the selection grade.

2. In order to remove the above anomalies, it has been decided that in such cases the pay of senior employees in the higher may be stepped up to make it equal to the pay of the junior person, subject to the fulfilment of the following conditions:-

“(i) The scale of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.

(ii) The senior employee should have been eligible for appointment to the Selection Grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.

(iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding Selection Grade in the higher scale at the time of his promotion to the higher grade’.

This provision applies to Group C & D, but it is silent in respect of Group A&B. In the absence of different principles for Group A&B, the principle of stepping up of pay prescribed for group C&D is to be followed. Otherwise, there can be case of discrimination between government employees across different groups. “

7. In support of her submission the learned Government Advocated has cited the judgments in the case of *Union of India & Ors. Vs. C.R. Madhava Murthy & Anr.*, reported in (2022) 6 SCC 183 and in the case of *Union of India Vs. Indian Navy Civilian Design Officers Association & Anr.*, reported in 2023 SCC Online SC 173.

8. Having heard and considered the submissions made by both the parties, it

is seen that the Apex Court in *Union of India v. C.R. Madhava Murthy*, (Supra) held that:-

“10. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under:

“(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior — (a) As a result of application of FR 22-C. [Now FR 22 (I)(a)(1)]. In order to remove the anomaly of a government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the

senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[GI, MF, OM No. F.2 (78)-E.III (A)/66, dated the 4-2-1966].”

9. In view of the judgments of the Apex Court wherein pay of petitioners was stepped up at par with their juniors as per the Fundamental Rules for determination of pay of its employees wherein there is a provision for stepping up of the pay of the petitioners at par with their juniors but there was no provision for getting higher pay, this court is constraint to dismiss the instant writ petition, since grounds of seniority by itself cannot be made a claim for getting higher pay than those said to be juniors.

10. However, on the submission of the learned counsel for the petitioners, those 46 numbers of petitioners, whose pay have not been updated in par with their juniors, the State respondents are to take immediate steps to ensure that the pay of the 46 numbers of petitioners is upgraded in terms of their order dated 30.03.2021 Memo No: C.14011/1/2021-EDN .

11. Accordingly, the writ petition stands disposed of as above.

JUDGE

Comparing Assistant