



Serial No.11
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 37 of 2022

Date of Decision : 04.09.2024

1. Shri. Emanuel Lamare.
2. Shri. Imjing Mut Sten.
3. Shri. Ram Dkhar.
4. Shri. Shahanawaz Ahmed Khan.

...Petitioners

-Versus-

1. State of Meghalaya represented by the
Commissioner & Secretary (Civil Defence
& Home Guards) Department,
Govt. of Meghalaya, Shillong.
2. The Secretary to the Govt. of Meghalaya,
P.H.E. Department, Meghalaya,
Shillong.
3. The Chief Engineer, P.H.E.
Meghalaya, Shillong.
4. The Executive Engineer, (PHE)
Rural Water Supply Division,
Jowai, West Jaintia Hills,
Meghalaya.
5. The District Home Guards Commandant,
West Jaintia Hills District, Meghalaya.

...Respondents

Coram:



Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Applicant(s) :	Mr. S.A.Shiekh, Adv. Mr. L.N.Areng, Adv.
For the Respondent(s) :	Mr. N.D.Chullai, AAG with Ms. Z.E.Nongkynrih, GA.

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| i) Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) Whether approved for publication
in press: _ | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. The petitioners, 4 in number, are before this Court seeking a direction for payment of revised scale of pay and other admissible allowances as per the Revision of Pay Rules, 2017.

2. The brief facts are that the petitioners are Home Guard Volunteers appointed as Guardsman by the Commandant Home Guards, Jaintia Hills District vide appointment order dated 05-05-1986 in the case of the writ petitioners No. 1, 2, & 3 and on 16-07-1996 with regard to the petitioner No. 4, on a regular pay scale and were deployed for guard duty at the office of the P.H.E, Jowai. The petitioners were paid at the revised pay scale as fixed by the State respondents till 2016, but however, the revised pay scale under the latest revision of pay was not afforded to them.



Representations were then filed praying for salary at the revised rate as per the revised pay fixation, but however, no response was forthcoming from the said respondents, hence the writ petition.

3. Mr. S.A.Shiekh, learned counsel for the petitioners submitted that all along in the entire length of service of over 35 years which was uninterrupted, the petitioners with the implementation of Revision Pay Rules, 1997, and thereafter, were paid pay in accordance with the revised scale and the same continued till 2016. However, he submits with the implementation of the Fifth Meghalaya Pay Commission, though revised pay scale was allowed to other similarly situated Home Guard Volunteers deployed at different government units and organisations or PSUs, the petitioners were deprived of the said revision of their pay structure w.e.f. 01-01-2017. Learned counsel submits that in the appointment order itself, in the terms of engagement, it was clearly spelt out wherein, apart from the scale of pay being prescribed at that relevant point of time, it was given therein that they be paid the scale of pay and other allowances as admissible under the Meghalaya Services (Revision of Pay) Rules, 1980. This he submits, would entitle the petitioners as has been allowed to them till the Fourth Pay Revision, to the revised pay scale as recommended by the Fifth Meghalaya Pay Commission. In this context, learned counsel has placed reliance in the judgment of *Golab Sena Sinha & Ors. vrs. State of*



Meghalaya & Ors. reported in (2013) 2 Gauhati Law Reports 117 wherein he submits, the erstwhile jurisdictional High Court held that the order of appointment is a primary source of determination of the nature of employment and as such accordingly, the petitioners therein, were held to be entitled to receive the benefits of the Fourth Pay Commission. Similarly he submits, the writ petitioners in the instant case are therefore entitled to the same consideration.

4. Mr. N.D.Chullai, learned AAG assisted by Ms. Z.E.Nongkynrih, learned GA on behalf of the respondents has at the outset submitted that the terms of appointment of the Home Guard Volunteers was purely temporary and specifically for guard duty at P.H.E. stockyard wherein they have also been disengaged since December, 2023. He submits that the appointment order itself having described the nature of appointment, the concession granted to them by affording the revised pay scales in the course of the service was an error committed by the respondents, and for which the same cannot be allowed to be taken advantage of by the writ petitioners in demanding payment of the revised scale of pay as per the Fifth Meghalaya Pay Commission. On another limb of submission, learned AAG has drawn the attention of this Court to Annexure-3 of the affidavit-in-opposition filed by the respondent No. 4, which is the Transfer Certificate of the petitioner No. 4 to show that his date of birth was 07-07-



1958 and as such, should have superannuated in the year 2018 itself, but however, for reasons unknown continued in service till 2021. He further submits that if any consideration is given to the writ petitioners, same should not be extended to the petitioner No. 4.

5. Having heard the learned counsel for the parties, the only point for determination in the instant writ petition is as to the entitlement of the writ petitioners to their claim that they be allowed the benefits of pay and allowances as per the Fifth Meghalaya Pay Commission. It is to be noted that the petitioners No. 1, 2 & 3 had entered service having been appointed since the year 1986 and the petitioner No. 4 since 1996. Though the initial terms of engagement described their appointment as temporary, the uninterrupted service rendered by them in the considered view of this Court has vested in them to form a permanency.

6. On another aspect, a fact that cannot be ignored is that notwithstanding the order of appointment allowing the petitioners to pay revision, the petitioners have entered into service as Volunteers, and it has not been disputed that on entering such service, the pay and other benefits was the liability of the requiring agency, on the volunteers being deputed to such organization. As such, on their services no longer being required, their disengagement is not a point in issue, for them to raise any other claim, for their continuation in service.



7. Coming to the main issue in question again, as observed earlier and submitted by the learned counsel for the petitioners, in the order of appointment, a scale of pay has been prescribed which was admissible under the Meghalaya Services (Revision of Pay) Rules, 1980. Subsequent orders, namely, the order dated nil June 1999, the benefits of the Third Pay Commission was also extended to the petitioners and thereafter, similarly on 2010, the benefits of the Fourth Pay Commission was also allowed. This being the case, it can clearly be seen that the respondents in the engagement of the writ petitioners had allowed the pay revision as admissible in terms of the appointment order and therefore, to now raise the question as to the entitlement with regard to the scale of pay as admissible under the recommendation of the Fifth Pay Commission in the considered view of this Court, cannot arise.

8. Accordingly, on this short point itself, the writ petition is disposed of with a direction to the respondents No. 2, 3 & 4 to compute the arrears in pay as admissible to the writ petitioners No. 1, 2 & 3 till the date they were disengaged from service. With regard to the petitioner No. 4, as there has been no rebuttal with regard to his date of birth, the department is to examine his case as per entitlement, and on its own merit.

9. As ordered above, writ petition accordingly stands allowed to the extent as indicated above and is disposed of. It is expected that the entire



exercise shall be completed within a period of three months from the date a copy of this order is presented before the respondents.

Chief Justice (Acting)