



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 45 of 2015 with
WP(C) No. 46 of 2015

Date of Decision: 24.06.2024

Shri. Panna Lal Shome
Son of (L) P.S. Shome,
Resident of Polo Hills,
Shillong, East Khasi Hills, Meghalaya

..... Petitioner

Vs.

1. North Eastern Hill University (NEHU)
NEHU Campus, Shillong-793002
Meghalaya, represented by the Registrar
2. The Registrar,
North-Eastern Hill University
NEHU Campus, Shillong-793022
Meghalaya
3. The Deputy Registrar (Establishment-I),
NEHU Campus, Shillong-793022
Meghalaya
4. Local Cadre Review Committee, NEHU
NEHU Campus, Shillong-793022,
Meghalaya, represented by its Chairman

..... Respondents

AND

Shri. Ajoy Krishna Bhattacharjee,
Son of (L) A.C. Bhattacharjee,
Resident of Laban,



Shillong, East Khasi Hills, Meghalaya

..... Petitioner

Vs.

1. North Eastern Hill University (NEHU)
NEHU Campus, Shillong-793002
Meghalaya, represented by the Registrar
2. The Registrar,
North-Eastern Hill University
NEHU Campus, Shillong-793022
Meghalaya
3. The Deputy Registrar (Establishment-I),
NEHU Campus, Shillong-793022
Meghalaya
4. Local Cadre Review Committee, NEHU
NEHU Campus, Shillong-793022,
Meghalaya, represented by its Chairman

..... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. A. Paul, Sr. Adv. with
Ms. R. Dutta, Adv.

For the Respondent(s) : Mr. S. Sen, SC, NEHU with
Ms. S. Shallam, Adv.

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

1. It is the petitioners' case that there has been an incorrect interpretation of para 5 of the Modified Assured Career Progression (MACP) Scheme by the respondent/NEHU resulting in denial of grant of the appropriate grade pay under the 6th Central Pay Commission which has prompted the petitioners to approach this Court with respective application under Article 226 of the Constitution of India with the prayer made therein.
2. Heard Ms. A. Paul, learned Sr. counsel for the petitioners who has submitted that the background facts of the case of the petitioners is that the petitioner in WP(C) 45 of 2015, was appointed as Junior Stenographer in the North Eastern Hill University (NEHU) on 06.03.1986 in the pay scale of ₹ 330-10-380-EB-15-560.
3. In course of his service, on completion of 8 years of service, he was granted the 1st financial upgradation under the One Time Upward Movement (OTUM) Scheme and his pay was then revised to ₹ 5500-175-9000 w.e.f. 06.03.1994. This was on account of the recommendations made under the 5th Central Pay Commission which was also adopted by the University Grants Commission (UGC), whereby the One Time Upward Movement Scheme was also made applicable to the staff of NEHU.
4. Again, on the introduction of the Assured Career Progression (ACP) Scheme effective from the month of August, 1999, the scheme which provides for financial upgradation on completion of 12 years' service, the petitioner on completion of 12 years' service was granted the 2nd financial upgradation vide Office Order No F.2-25/CRC/2004-942 dated 24.04.2006 w.e.f. 06.03.2006 in the pay scale of ₹ 6500-200-10500.



5. It is the contention of the learned Sr. counsel that pursuant to the 6th CPC recommendations, the pay scales were restructured with the pay scales of ₹ 5000-8000/-, ₹ 5500-9000/- and ₹ 6500-10500/- merged in the pay band of ₹ 9300-34800/- with the corresponding grade pay of ₹ 4200/-. However, vide Office Memorandum dated 13.11.2009, the Ministry of Finance, Department of Expenditure, Government of India has granted revised pay structure of grade pay of ₹ 4600/- in PB-2 to the posts that existed in the pre-revised scale of ₹ 6500-10500/-. The petitioner who was in the pay scale of ₹ 6500-10500/- was granted grade pay of ₹ 4600/- w.e.f. 01.01.2006.

6. In this regard, when the petitioner, under the 6th Pay Commission recommendations was entitled to the said pay scale of ₹ 6500-10500/- with grade pay of ₹ 4600/- w.e.f. 01.01.2006, on 03.06.2006, he was given the 2nd ACP, therefore, the financial upgradation which was to be given to him should be the next higher grade pay than the one he was receiving as revised pay scale under the 6th CPC recommendations, such grade pay being ₹ 4800/. But instead, he was given the relevant pay scale with grade pay of ₹ 4600/- only. Hence this petition.

7. The learned Sr. counsel has further submitted that pursuant to the recommendations of the 6th Central Pay Commission at para 6.1.15 of its report, the Modified Career Progression Scheme (MACPS) was formulated on the strength of Office Memorandum No. 35034/3/2008-Estt. (D) dated 19.05.2009 which provides for financial upgradation at intervals of 10, 20 and 30 years of continuous regular service of an employee of the Central Government. Vide letter No.F.4-5/2009(JCRC) dated 09.07.2010, the UGC has informed all concerned that the MACP scheme would also apply to all non-teaching employees of all Central Universities, including NEHU.



8. The learned Sr. counsel has reiterated that the provision of paragraph 5 of the MACP Scheme is relevant for consideration of the petitioners' case as the same has been misinterpreted by the respondent/authorities, particularly as regard the issue of merger of pay scales/upgradation of posts recommended by the 6th Pay Commission, wherein the petitioner was granted the 1st financial upgradation w.e.f. 06.03.1994 was placed in the pay scale of ₹ 5500-9000/- and on being granted the 2nd financial upgradation, he was placed in the pay scale of ₹ 6500-10500/-. Again, under the 6th Pay Commission, the two pay scales mentioned herein being merged into one scale of ₹ 9300-34800/- with grade pay of ₹ 4200/-, therefore the petitioner is entitled to be placed in PB-2 of ₹ 9300-34800/- in the 1st upgradation with grade pay of ₹ 4600/- and on the 2nd financial upgradation he is to be placed in pay band PB-2 with grade pay of ₹ 4800/-.

9. Under the MACP Scheme, after a period of 10 years from 06.03.2006, the petitioner is due to receive the 3rd MACP w.e.f. 06.03.2016 which was given to him. However, the pay scale that was given to him was in the grade pay of ₹ 4800/-, when he ought to have got ₹ 6600/- which is also evident when other similarly situated employees of NEHU were given the grade pay of ₹ 6600/- for the relevant period.

10. The learned Sr. counsel has also referred to Memo No. F.75-1/Estt-I/Per/MACP/2009 (Part File)-3638 dated 19.12.2014 (Annexure-10 of the petition), issued by the respondent No. 3 herein, by which communication, also issued upon the petitioner Shri P. L. Shome, the respondent/NEHU has clarified that the merger of the pay scales etc. in terms of para 5 of the MACP Scheme will cover only those in the pay scale of ₹ 5000-8000/- and ₹ 5500-9000/-. This, was based on an erroneous interpretation of para 5 of the



MACP Scheme, wherein nowhere has it been stipulated that the upgradation should be from a particular pay scale to those grades which now carry the same grade pay due to the merger of pay scales/upgradation of posts, submits the learned Sr. counsel.

11. Per contra, Mr. S. Sen, learned Standing Counsel, NEHU while contradicting the stand of the petitioner has submitted that the fact that the petitioner is entitled to the financial upgradation on completion of 8 years of service when he was granted the 1st financial upgradation on 06.03.1994 w.e.f. 06.03.1992 is admitted. On completion of 12 years of service from the date when he received the 1st financial upgradation, that he was granted the 2nd financial upgradation under the ACP Scheme vide order dated 24.04.2006, the same being effective from 06.03.2006 is also admitted.

12. In course of these proceedings, the petitioner was granted the 3rd financial upgradation under MACP Scheme vide order dated 15.11.2016 w.e.f. 17.07.2016. The contention of the learned counsel for the petitioner that the MACP Scheme became operational w.e.f. 01.01.2006 is factually incorrect, submits the learned counsel for the respondent/NEHU since on perusal of the office memorandum dated 19.05.2009 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) notifying the operation of the MACP Scheme, the same also being extended to central universities, including NEHU by relevant notifications of the University Grants Commission (UGC), at para 9 of the same, it is clearly mentioned that the Scheme would be operational w.e.f. 01.09.2008.

13. The learned counsel has further submitted that in the case of the



petitioner, his first financial upgradation was under the OTUM Scheme, his second was under the ACP Scheme and his third was under the MACP Scheme.

14. It is also submitted that the petitioner at the relevant period when he was granted the first financial upgradation, the relevant pay scale was as per the 5th Central Pay Commission (CPC) recommendation and his scale at that point of time was ₹ 5500-9000/-. When he was granted the second financial upgradation under the ACP, his pay scale was ₹ 6500-10500/- in pay band PB-2 with grade pay of ₹ 4600/-. This scale was made applicable under the 6th CPC recommendation.

15. The learned counsel has pointed out that under the 6th CPC, revised pay bands and grade pay have been fixed. At page 32, Annexure-A7 of the counter affidavit of the respondents is found the First Schedule of Part-A wherein at serial No. 10, 11, 12 and 13 the scale of ₹ 5000-8000/-, ₹ 5500-9000/-, ₹ 6500-6900/- and ₹ 6500-10500/- were all merged together at pay band PB-2 for a revised pay scale of ₹ 9300-34800/- with grade pay of ₹ 4200.

16. This being the situation, even if the petitioner has been granted the second ACP with pay scale of ₹ 6500-10500/-, he would not have been financially benefitted since his earlier pay scale was ₹ 5500-9000/- which was merged with the same pay scale of ₹ 6500-10500/- the revised pay scale being ₹ 9300-34800/- and grade pay of ₹ 4200/-.

17. To correct this anomaly, the Ministry of Finance has issued office memorandum dated 13.11.2009 and has inter alia taken out the pre-revised scale of ₹ 6500-10500/- as on 01.01.2006 and has replaced the same with the



revised grade pay of ₹ 4600/-. This being the case, since the pay scale of ₹ 6500-10500/- has been taken out of the merger, there is no requirement of granting fresh financial upgradation to the petitioner, para 5 of the MACP Scheme will thus not be applicable to the case of the petitioner as far as the relevant financial upgradation is concerned, submits the learned counsel.

18. This contention is to counter the reliance of the petitioner with regard to the provision of para 5 of the MACP Scheme which states as follows:-

“5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.”

19. Following the pattern of grant of financial upgradations to the petitioner, the 3rd MACP which was due and entitled to by the petitioner as on 03.06.2016, his pay scale was fixed at ₹ 9300-34800/- with grade pay of ₹ 4800/- which is next in the hierarchy.

20. As to the contention of the petitioner that there are similarly situated employees of NEHU who have been granted the 3rd financial upgradation under MACP Scheme with grade pay of ₹ 6600/- following which the petitioner is also entitled to the same but was given only in the grade pay of ₹ 4800/-, the learned counsel has submitted that looking into the date of appointment and other related details as far as financial upgradation to such employees are concerned, there is a difference between their case and the case of the petitioner and as such, no comparison can be made between the two to entertain the demand of the petitioner on this score.



21. The dispute between the parties appear to be based on different interpretation and understanding of the manner the financial upgradation has been fixed vis-à-vis the entitlement of the petitioner to the relevant pay scale and corresponding grade pay, particularly as regard the grant of benefit under the ACP Scheme under the payment regime of the 6th CPC.

22. There is no disagreement between the parties as far as the grant of the 1st financial upgradation under the OTUM Scheme given to the petitioner. However, even though the respondent authorities would concede that the petitioner has been subsequently granted the 2nd financial upgradation under the ACP Scheme on 06.03.2006, the calculation of the pay scale and grade pay that the petitioner ought to have been placed has become the bone of contention.

23. The respondent NEHU would maintain that since the petitioner was granted the 2nd financial upgradation under the ACP Scheme, his pay scale was fixed at ₹ 6500-10500/- as per the 5th CPC. Under the 6th CPC, the pay scale of ₹ 5000-8000/- and ₹ 5500-9000/- as well as the pay scale of ₹ 6500-10500/- were merged together in pay band PB-2 with grade pay of ₹ 4200/, the petitioner would not have been financially benefited. Therefore, when the pay scale of ₹ 6500-10500/- was taken out of the merger of the pay scale of ₹ 5000-8000/- and ₹ 5500-9000/- with grade pay of ₹ 4200/- and was now placed in pay band PB-2 with grade pay of ₹ 4600/- his financial upgradation under the 2nd ACP with grade pay of ₹ 4600/- was deemed to be the proper placement as far as the petitioner is concerned.

24. Again, since the said pay scale of ₹ 6500-10500/- which was earlier merged together with that of ₹ 5000-8000/- and ₹ 5500-9000/- with grade



pay of ₹ 4200/- was taken out of the merger and placed in the grade pay of ₹ 4600/-, therefore the benefit of para 5 of the MACP Scheme cannot be availed by the petitioner and accordingly, when he was due to receive the 3rd financial upgradation under the MACP Scheme, he was given the same with grade pay of ₹ 4800/- which is next in the hierarchy.

25. This, according to this Court is not the correct interpretation of the actual position as it ought to be. The mistake of the respondent authorities was the confusion created at the time when the 2nd financial upgradation under the ACP Scheme was given to the petitioner. It must be reminded that the petitioner was due to receive the 2nd financial upgradation on 06.03.2006 when in receiving the same, he was placed in the pay scale of ₹ 6500-10500/. But in view of the revised pay scale under the 6th CPC, he is now entitled to be placed in the pay scale of ₹ 6500-10500/- with grade pay of ₹ 4600/- as on 01.01.2006. Therefore, as on 03.06.2006, taking into consideration that he was then receiving his salary in the pay scale of ₹ 6500-10500/- with grade pay of ₹ 4600/-, his next financial upgradation ought to be in the grade pay of ₹ 4800/-.

26. Even if the provision of para 5 of the MACP Scheme is not applicable to the petitioner, his next financial upgradation under the 3rd MACP which is due to him on 03.06.2016 should be given to him in the next higher grade pay of ₹ 5400/-. Being placed in the grade pay of ₹ 4800/- under the 3rd MACP which was given to him as on 03.06.2016 is also erroneous.

27. The above, is the correct calculation of the entitlement of the petitioner to the pay scale under the 6th CPC and his corresponding entitlement under the 2nd and 3rd financial upgradation respectively, in the



considered opinion of this Court.

28. As to the demand of the petitioner that he ought to be placed in the relevant pay scale with grade pay of ₹ 6600/- when the 3rd financial upgradation under the MACP Scheme was given to him as other similarly situated employees of the NEHU were also given their 3rd financial upgradation with grade pay of ₹ 6600/-, this Court on perusal of the additional affidavit dated 06.04.2022 filed by the petitioner to bring certain documents on record, one of such documents being the information received by way of RTI filed by the petitioner wherein is shown the details of some of the employees of NEHU who have been granted the financial upgradation at various stages, for example, one Shri Dhiraj Chakraborty, Rtd. Senior Private Secretary got his 3rd MACP with pay scale of ₹ 9300-34800/- with grade pay of ₹ 5400/-, while Smti. Virginia Diengdoh, Rtd. Senior Private Secretary, got her 3rd MACP with grade pay of ₹ 6600/-, the same is the case with Smti. Miracle Shabong, Rtd. Private Secretary, who at the relevant period got her 3rd MACP with grade pay of ₹ 6600/-.

29. On trying to convince this Court that the above cited employees have received their financial upgradation under the MACP Scheme with a higher grade pay than was received by the petitioner, what is noticed is that the date of joining of all the said employees are different to that of the petitioner and that they have joined service before the petitioner was ever appointed. Therefore, even on this ground, no comparison can be made in this respect. The claim of the petitioner cannot be accepted in this regard.

30. In the case of Shri. Ajoy Krishna Bhattacharjee, the petitioner in WP(C) No. 46 of 2015, the circumstances are almost identical to the case of



the petitioner in WP(C) No. 45 of 2015 as has been discussed hereinabove, except for the fact that there is a difference as far as the date of appointment is concerned correspondingly affecting the dates on which he was also granted financial upgradation under the OTUM Scheme, the ACP Scheme and the MACP Scheme.

31. According to this petitioner, he was given the 1st financial upgradation under the OTUM Scheme w.e.f. 04.09.1997. He was thereafter granted the 2nd financial upgradation vide order dated 24.04.2014 w.e.f. 04.09.2009 when he ought to be upgraded in the pay scale of ₹ 9300- 34800/- with grade pay of ₹ 4800/- as per the provision of para 5 of the MACP Scheme, which the petitioner assert is applicable to his case. Vide order dated 22.04.2019, he was granted the 3rd financial upgradation under the MACP Scheme and his pay scale was fixed at Level-8 (47600-151100) under the pay matrix of 7th CPC, which according to the petitioner is incorrect.

32. The petitioner has also submitted that some of the employees of NEHU who are similarly situated to him are getting the 3rd financial upgradation under the MACP Scheme with grade pay of ₹ 6600/- and as such, he ought to be given the same, which was not done so.

33. The case of this petitioner is similar to that of the petitioner in WP(C) No. 45 of 2015 except for the fact that the date of joining does not fall on the same day. The petitioner has, however, admitted that he has been granted the financial upgradation from the first one, that is under the OTUM Scheme and the next two was granted to him under the MACP Scheme, since on the date he is due to receive his 2nd Financial Upgradation on 04.09.2009, the ACP Scheme is no longer applicable since it was replaced by the MACP Scheme.



Be that as it may, after the grant of the 2nd financial upgradation, the 3rd MACP was granted to him on 22.04.2019 w.e.f. 01.09.2018.

34. As has been observed herein above, at the time when the petitioner was granted the 1st financial upgradation, his pay scale was revised to ₹ 5500-9000/- under the 5th CPC. The 6th CPC became applicable with effect from 01.01.2006. In view of the pay revision affected across the board, the pay scale of the petitioner ought to have been revised to enable him to draw a new pay scale of ₹ 6500-10500/- with grade pay of ₹ 4600/-. When he was due to be granted the 2nd financial upgradation on 04.09.2009, at that point he was drawing his pay scale with grade pay of ₹ 4600/-. It is therefore, but logical for the authorities concerned to grant him his 2nd financial upgradation on the next higher pay scale which ought to be in the grade pay of ₹ 4800/- but which was not given to him, instead he was confirmed in the grade pay of ₹ 4600/-. As in the case of the petitioner, P.L. Shome, this petitioner was also entitled to the grade pay of ₹ 4800/- w.e.f. 04.09.2009. His 3rd financial upgradation under the MACP Scheme was also given to him w.e.f. 01.09.2018 in the grade pay of ₹ 4800/-. This too, ought to be revised to the grade pay of ₹ 5400/- under the circumstances.

35. In the opinion of this Court, the petitioner Ajoy Krishna Bhattacharjee is entitled to the grade pay of ₹ 4800/- at the time of grant of the 2nd financial upgradation and the grade pay of ₹ 5400/- when the 3rd financial upgradation was given.

36. As in the case of the petitioner in WP(C) No. 45 of 2015, the claim of parity with those employees who have been granted their 3rd MACP with grade pay of ₹ 6600/- at the relevant point of time, since there is an evident



difference in the date and year of joining, the former having joined employment earlier than the petitioner herein, he is therefore not entitled to the said grade pay of ₹ 6600/-.

37. The case of Union of India v. Dineshan K.K. reported in (2008) 1 SCC 586 at para 12 and also the case of State of Punjab and Ors. v. Jagjit Singh & Ors., (2017) 1 SCC 148, para 42.14, 44.2, 58 and 60 cited by the learned Sr. counsel for the petitioners are not applicable in this case as the said judgment speaks about the principle of equal pay for equal work, which principle cannot be applied in the case of the petitioners herein.

38. In the final analysis, this Court hereby find that the petitioners have made out a case in their favour to the extent indicated herein above and the prayer made in this regard is allowed.

39. The respondent authorities in the NEHU are hereby directed to take necessary steps by passing relevant orders to correct the anomaly made out by granting the said 2nd and 3rd financial upgradation to the petitioners as determined herein above and to make necessary arrangement for payment of arrears etc. in this connection. The steps taken should be done so within 3(three) months from the date of receipt of certified copy of this order.

40. With the above, these petitions are hereby disposed of. No costs.

Judge

Meghalaya
24.06.2024

TIPRILYNTI
KHARKONGOR

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