

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 244 of 2022

Date of Decision: 05.04.2024

1.Shri. Moxadul Amin Mondal, 47 years,
S/o (L) Shri Forezuddin Mondal,
of Rajabala,
West Garo Hills District, Meghalaya

2.Shri. Rakibul Islam,
Aged 41 years,
S/o Md. Manik Miah, of Hallidayganj,
West Garo Hills District, Meghalaya

3.Shri. Wesroy K. Sohtun,
Aged 40 years,
S/o Shri. Klistarwell Sohtun,
of Mawryngkneng,
East Khasi Hills District, Meghalaya

4.Smti. Damangbha Lynrah,
Aged 39 years,
D/o Shri. Plielad Rynjah,
of Umpling, Dong Lumsurok, Shillong,
East Khasi Hills District, Meghalaya

5.Shri. Lambert Khongwang,
Aged 42 years,
S/o Shri. Aurelius Pyrtuh,
of Nongshilliang Nongthymmai, Shillong
East Khasi Hills District, Meghalaya

6.Shri. Fivestar Lyngdoh Nongbsap,
Aged 43 years,
S/o Shri. Shansingh Thawmuid
of Mawripih, PO-Sohiong,
East Khasi Hills District, Meghalaya

7.Smti. Dakynshew Skhembil,
Aged 43 years,
D/o (L) Shri. Atiar Chyne,
of Saitsohpen, Sohra,
East Khasi Hills District, Meghalaya

8.Smti. Restina Khongjoh,
Aged 38 years,
D/o (L) Shri. Silong Kshiar,
of Madanrting, Mawblei, Shillong
East Khasi Hills District, Meghalaya

9.Smti. Bashaisngithiang Bakai,
Aged 42 years,
D/o (L) Shri. N.S. Nongkynrih,
of Mawlai Syllaikariah, Shillong
East Khasi Hills District, Meghalaya

10.Smti. Shirley Naomi Wahlang,
Aged 43 years,
D/o Shri. Banlumlang Lister Rani,
of Lumlyer, Lower Mawprem, Shillong
East Khasi Hills District, Meghalaya

11.Shri. Bashngainlang Blah,
Aged 43 years,
S/o (L) Shri. Kelspar Dondor Nongrum,
of Jaiaw Pdeng (Main Road), Shillong
East Khasi Hills District, Meghalaya

12.Smti. Lashaihun War Thangkhiew,
Aged 46 years,
D/o (L) Shri. Sainkumar War,
of Lummawbah, Upper Block-1, Shillong
East Khasi Hills District, Meghalaya

13. Shri. Banker Kharbhih,
Aged 45 years,
S/o Shri. Land Singh Syiemlieh
of 4th Mile, Upper Shillong,
East Khasi Hills District, Meghalaya

14. Shri. Leavaious Buhphang,
Aged 37 years,
S/o (L) Shri. Alfred Marbaniang,
of Mairang-29, Eastern West Khasi
Hills District, Meghalaya

15. Smti. Juliet Rikynti Pyngrope,
Aged 43 years,
D/o Shri. B.B. Lyngdoh,
of Umpling Dong Lumsurok, Shillong
East Khasi Hills District, Meghalaya

16. Smti. Daniela Della Blah,
Aged 40 years,
D/o Shri. George. C. Nongbet,
of Kenches Trace, Shillong
East Khasi Hills District, Meghalaya

17. Shri. Mark Roger Blah,
Aged 38 years,
S/o Shri. George C. Nongbet
of Kenches Trace, Shillong
East Khasi Hills District, Meghalaya

18. Shri. Sandor David Sawian,
Aged 39 years,
S/o Shri. Pherbah Nongkynrih,
of Jaiaw Upper Sonalane, Shillong
East Khasi Hills District, Meghalaya

19. Shri. Sankupar Thongni,
Aged 39 years,
S/o Shri. Hainwell Snaitang,

of Mawlai, Motsyiar, Shillong
East Khasi Hills District, Meghalaya

20. Shri. Davis Lovell D. Marak,
Aged 42 years,
S/o Shri. Walter M. Sangma
of Lawmali, Shillong,
East Khasi Hills District, Meghalaya

21. Shri. Sujeeb Hajong,
Aged 39 years,
S/o Shri. Amiya Hajong,
of Garobada,
South West Garo Hills District, Meghalaya

22. Shri. Rajesh Saha,
Aged 43 years,
S/o (L) Shri. Satyendra Saha,
of Dobasipara,
West Garo Hills District, Meghalaya

::::Petitioners

-Vs-

1. The State of Meghalaya,
Represented by Chief Secretary to the
Government of Meghalaya, Shillong

2. The Commissioner & Secretary to the
Government of Meghalaya,
Finance (Pension Cell) Department,
Meghalaya, Shillong

3. The Joint Secretary to the
Government of Meghalaya,
Finance (Estt. & Pension Cell)
Department, Shillong

4. Director of Accounts & Treasuries,
Government of Meghalaya, Shillong

5.The Under Secretary to the
Government of Meghalaya,
Finance (Estt) Department,
Meghalaya, Shillong

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Mr. H. Wanshong, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA.
Ms. S. Bhattacharjee, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. The petitioners 22 in number, are before this Court with a prayer that they be governed by the Meghalaya Civil Services (Pension) Rules 1983, by striking down the condition contained in the letter dated 19.02.2021, by which their services were regularized, but however, their services had been put under the New Defined Contribution Pension Scheme.

2. The prayer of the petitioners is based on their claim for counting of their past services under Regulation 3(f), as Junior Divisional Accountant for the purposes of pension, which if taken from the date of initial appointment under Regulation 3(f) in the years 2008 and 2009, would be covered under the Old Pension Scheme. The petitioners it is noted, pursuant to an advertisement dated 27.09.2007, inviting applications for temporary appointment as Junior Divisional Accountant for vacancies available, in various offices of the PWD/PHE/Irrigation, had applied for the same and were thereafter selected, and appointed to the post of Junior Divisional Accountant under Regulation 3(f) of the Meghalaya Public Service Commission (Limitation of Functions) Rules, 1972 and posted at different offices. The petitioners were covered by separate appointment orders, which were as follows.

- (i) Petitioners No. 1, 2, 4, 5, 7, 8, 20, 21 & 22 are covered by Office Order No. DA/M-73/73/Pt.V/85, Dated Shillong the 10th December, 2008 (Annexure 3);
- (ii) Petitioners No. 3, 6, 9 & 10 are covered by Office Order No. DA/M-73/73/Pt.V/89, Dated Shillong the 7th January, 2009 (Annexure 4);

- (iii) Petitioners No. 11, 12, 13, 14, 15, 16, 17 & 18 are covered by Office Order No. DA/M-73/73/Pt.V/90, Dated Shillong the 22nd January, 2009 (Annexure 5); &
- (iv) Petitioner No. 19 is covered by Office Order No. DA/M-73/73/Pt.V/95, Dated Shillong the 17th February, 2009 (Annexure 6).

3. Thereafter, the services of the petitioners on the approval of the MPSC (Meghalaya Public Service Commission) being obtained, by letter dated 02.03.2020, were regularized. This was followed by a letter dated 19.02.2021, whereby the State Government approved the regularization of 38 Junior Divisional Accountant, including the petitioners herein. In the said letter dated 19.02.2021, though the past service under Regulation 3(f) was taken into account towards leave, pay and increment as per existing provisions provided under FR 28(a), the petitioners by clause (iv) contained in the letter thereof, were to be governed by the New Defined Contribution Pension Scheme, which came into effect on and from 01.04.2010. The petitioners being aggrieved with this stipulation in the letter dated 19.02.2021, are therefore seeking directions that the same be set aside and quashed, and the services of the petitioners under Regulation 3(f), as per an earlier policy decision dated 20.11.1978, be counted not only towards leave,

pay and increment, but should also include pension, which would mean they be governed by the Meghalaya Civil Services (Pension) Rules, 1983.

4. Mr. V.G.K. Kynta, learned Senior counsel assisted by Mr. H. Wanshong, learned counsel for the petitioners has submitted that the very basic fact that, all the petitioners had entered service before 2010, and had served continuously in their respective posts, will make them eligible to be governed under the Meghalaya Civil Services (Pension) Rules, 1983. The New Defined Contribution Pension Scheme, he submits is applicable to only those new entrants joining State Government service on regular basis against sanctioned post on or after 01.04.2010, whereas, the petitioners though regularized in 19.02.2021, had been in continuous service since the years 2008 and 2009. Reference is made by the learned Senior counsel to a letter dated 20.11.1978 (Annexure-10 to the writ petition), wherein he submits, the counting of the period of officiating appointment or on adhoc appointment towards leave, increment, etc. had been clarified. By this letter he asserts, the State Government as provided under FR 26(a), stipulated that the period of continuous officiating appointment under Regulation 3(f), would also count towards leave, increment, pension, etc. on the appointments having been regularized on the

recommendation of the Meghalaya Public Service Commission, District Selection Committee or any other authority approved on this behalf. The petitioners he contends, having been appointed before the advent of the New Pension Scheme, and their services regularized thereafter, by operation of the directions contained in the letter dated 20.11.1978, there is no question of them being put under the New Pension Scheme. He therefore submits that, clause(iv) in the letter dated 19.02.2021, placing the petitioners under the New Defined Contribution Pension Scheme is contrary to, and militates against the directions contained in the letter dated 20.11.1978.

5. It has also been argued that, the petitioners when they joined service were also made to contribute to the General Provident Fund (GPF), w.e.f. the date of entry into service as per the Rules, but that however, while some are still contributing others have been stopped by the Treasury Officials. On the basis of a letter filed in the rejoinder affidavit dated 27.08.2007, which finds mention in the letter dated 19.02.2021, the learned Senior counsel has strenuously submitted that, the regularization of the petitioners was also made subject to the stipulations contained in this letter dated 27.08.2007, wherein at condition 2 thereof, the period of Regulation 3(f) appointment has also been taken into consideration for the purposes of pension. He therefore

submits that, the facts of the case itself, reveal the right of the petitioners to be governed by the Old Pension Scheme. In support of his case, the learned Senior counsel has cited the following authorities.

- (i) *Ama Tajo & 94 Ors. vs. State of AP passed in WP(C) No. 190 of 2023 (Gauhati High Court)*
- (ii) *Judgment and Order dated 13.09.2019, passed in WP(C) No. 364 of 2017 (Smti. Aplyne Mary Sunn & Ors. vs. State of Meghalaya)*
- (iii) *(2022) SCC Online 508 (P. Ranjitha Raj vs. State of Tamil Nadu & Ors.)*
- (iv) *(2022) SCC Online SC (State of Rajasthan vs. O.P. Gupta)*
- (v) *D.S. Nakara vs. Union of India, (1983) 1 SCC 305:1983 SCC (L&S) 145*
- (vi) *Judgment and Order dated 30.06.2022 passed in WA No. 1573 (State of Tamil Nadu vs. R. Chitradevi)*
- (vii) *(2023) SCC Online SC 527 (Uday Pratap Thakur & Anr. vs. State of Bihar & Ors.)*
- (viii) *(2019) 10 SCC 516 (Prem Singh vs. State of Uttar Pradesh & Ors.)*
- (ix) *(1990) 2 SCC 715 (Direct Recruit Class II Engg. Officers' Assn. vs. State of Maharashtra)*
- (x) *The Hon'ble Gauhati High Court vide judgment and order dated 04.02.2022 passed in WP(C) No. 7369/2021 (Sanjay Kumar & Anr. vs. Union of India & Ors.)*

6. Mr. S. Sengupta, learned Additional Senior GA on behalf of the State respondents in reply, has submitted that, the petitioners had agitated their grievances for regularization only on 18.07.2012, after the New Pension Scheme had come into being. It is not disputed he submits that, it was only after the representation was forwarded to the State respondents on 14.08.2012, and consideration given to the same that the services were regularized on 19.02.2021. He submits that, the New Pension Scheme having come into effect from 01.04.2010, and their prayer for regularization being made thereafter and the same being effected on 19.02.2021, the petitioners will surely be governed by the New Pension Scheme. The learned Additional Senior GA, has referred to clause-3.1 of the Guidelines for implementation of the New Defined Contribution Pension Scheme 2009, and submits that this clause provides that the scheme shall be applicable to all new entrants joining State Government service on regular basis against sanctioned vacant posts on or after 01.04.2010, and that it would also be applicable to all Government employees whose services were/will be regularized on or after 01.04.2010, with the benefit of prospective date. He therefore submits that, as per the Guidelines, the petitioners, being regularized after the New Pension Scheme came into effect, cannot be given the benefit of being included in the Meghalaya Civil Services (Pension)

Rules, 1983. He lastly submits that, the Guidelines being mandatory and the regularization of the petitioners after the commencement of the New Pension Scheme being subject to the same, there is no illegality whatsoever in clause (iv) of the letter dated 19.02.2021, and as such, no interference is called for by this Court.

7. Heard learned counsel for the parties. The claim of the writ petitioners as can be clearly seen from the pleadings, is based solely on the ground that their initial date of appointment, though under Regulation 3(f) was in the years 2008 and 2009, before the commencement of the New Pension Scheme. The writ petitioners have also sought parity with the cases of other persons such as, the petitioners in WP(C) 364 of 2017 etc. (Smti. Aplyne Mary Sunn vs. State of Meghalaya), wherein this Court held that, based on the letter dated 07.08.2007, though the date of regularization was after the implementation of the New Defined Contribution Pension Scheme, the petitioners will be covered by the Old Pension Scheme.

8. At this juncture therefore, it would be expedient to examine the letter of regularization dated 19.02.2021, and its entire purport thereof. It is noted that, in this letter, before the clauses/conditions of regularization including the impugned clause (iv) are contained, wherein it was stipulated that, the New Pension Scheme would be applicable, an

umbrella paragraph had been inserted, which reads as follows **“The Regularization is however subject to the following condition, as stipulated by Personnel & AR (B) Department’s letter No. PER(AR)76/99/Pt.V/297, dated 27th August, 2007”**. It is interesting to note, that in this letter dated 27th August 2007, which dealt with matters relating to adhoc appointment, in the second condition given therein for regularization, it has been provided as follows **“The period of 3(f) appointment/adhoc appointment of each incumbent would be taken into consideration for the purpose of leave, pay, increment, pension, etc., as per existing provision provided under F.R. 28(a)”**. The inclusion of this paragraph in the letter dated 19.02.2021, is clearly at odds with clause (iv) of the letter, inasmuch as, the letter dated 27.08.2007, allows for the period of adhoc appointment to be taken into account for the purpose of pension also.

9. The guidelines for implementation of the New Pension Scheme at clause 3.1, reads as follows **“The scheme shall be applicable to all new entrants joining the State Government service on regular basis against sanctioned vacant posts on or after 1st April, 2010. It shall also be applicable to all Government employees whose services were/will be regularized against regular post on or after 01.04.2010 with the benefit of prospective date.”** No doubt, this guideline has to

be taken into consideration while determining the entitlements of employees based on their date of regularization. However, as noted earlier, the letter dated 19.02.2021, regularizing the services of the petitioners, on the one hand while applying the conditions as contained in the letter dated 27.08.2007, whereby the period of 3(f) appointment was to be taken into consideration for the purposes of pension, in the same letter itself, had inserted the impugned clause (iv), denying the petitioners the benefit allowed by the letter dated 27.08.2007. This contradiction which is present on the face of the record, in the opinion of this Court cannot be reconciled harmoniously, coupled with the fact that the guidelines for implementation of the New Pension Scheme are not statutory in nature.

10. In this view of the matter therefore, the petitioners for the period of 3(f) appointment, having been allowed all other benefits towards reckoning their service with regard to leave, pay and increment, as per FR 28(a), this Court, by giving a liberal interpretation to the letter dated 19.02.2021, sees no reason to deny the petitioners the added benefit of being governed by the Old Pension Scheme of 1983 also. As such, consequently clause (iv) of the impugned letter dated 19.02.2021, which contradicts the benefit allowed by the letter dated 27.08.2007, is hereby set aside, and the respondents are directed to place the petitioners

under the Old Pension Scheme namely the Meghalaya Civil Services (Pension) Rules 1983.

11. In view of the discussions hereinabove, it is not deemed necessary to elaborate on the judgments placed by the learned Senior counsel, which have limited application to the instant case.

12. Accordingly, this writ petition stands allowed and disposed of.

13. No order as to costs.

Judge

Meghalaya
05.04.2024
"D.Thabab-PS"