

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No. 246 of 2022

Date of Decision:06.03.2024

1. Smti Amanda B. Basaiawmoit D/o (L) James P. Suting R/o Lower Nongrim Hills, Shillong, East Khasi Hills District, Meghalaya. 2. Shri Batskhem Myrboh, S/o Shri Khin Lyngdoh R/o Thangsning, East Khasi Hills District, Meghalaya. 3. Shri Kerlihok Lyngdoh Buam S/o Shri Ehbok Rynjah R/o Central Nongrim Hills (House No. c/o-014), East Khasi Hills District, Meghalaya	Vs.	1.State of Meghalaya Represented by Commissioner & Secretary to the Govt. of Meghalaya, Education Department, Shillong. 2.The Principal Secretary to the Govt. of Meghalaya, Education Department, Shillong 3.The Joint Secretary to the Govt. of Meghalaya, Education Department Shillong 4.Director of Higher and Technical Education, State of Meghalaya, Shillong. 5.Joint Director of Higher and Technical Education State of Meghalaya, Shillong. 6.The Director, Directorate of Local Fund Audit, State of Meghalaya, Shillong.
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Coram:

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

Appearance:

For the Petitioner(s) : Mr. Mr. S. Sen, Adv. with
Ms. S. Shallam, Adv.
Mr. S.K. Roy, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, 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 |
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JUDGMENT AND ORDER

1. The petitioners are Teachers in Deficit Colleges with the writ petitioner No. 1, serving as an Associate Professor in Shillong College, and the writ petitioners 2 and 3, as Assistant Professors in Synod College. The writ petitioners have preferred the instant writ petition jointly pleading a common cause of action that, though they have been placed at a higher stage of Academic Grade Pay, they have been denied the increments to which they are entitled to under the law. It has been therefore prayed that the respondents be directed to extend additional increments to the writ petitioners, fix their pay in the appropriate stage and further to grant consequential benefits including arrears.

2. The brief background facts are that the Ministry of Human Resource Development on 31.12.2008, had formulated a Scheme providing for two Pay Bands for Teachers of Universities and Colleges at Rs. 15600-39100 and Rs. 37400-67000 with appropriate Grade Pay and that each Pay Band shall have different stages of Academic Grade Pay providing opportunities to Teachers for Upward movement. The said Scheme at Para-8 thereof, with regard to increment, provided that the pay fixation formula recommended by the Sixth Central Pay Commission as accepted by the Central Government be adopted for teachers and equivalent positions in the Library and Physical Education cadre. The Government of Meghalaya then adopted the aforesaid Scheme dated 31.12.2008, for implementation of the UGC norms by letter dated 23.03.2010. Thereafter, the petitioner No. 1 on 01.08.2011, was placed from Stage 1 to Stage 2 (Rs. 6000 to 7000 AGP) and the writ petitioners Nos. 2 and 3, on 16.04.2013 and 01.06.2014, respectively. The matter it appears rested at that and it was only after the writ petitioners had represented with regard to the pay anomaly arising out of pay fixation of teachers drawing UGC Scale of pay that the issue came alive. The Joint Director Higher Technical Education, then by a communication dated 24.08.2020, pursuant to the

representations filed by the petitioners, requested the government, to extend the promotional increment while promoting the teachers of both Government Colleges, as well as Deficit Grant-in-Aid colleges from one stage to a higher stage as per UGC Regulations, 2010.

3. Mr. S. Sen, learned counsel for the petitioners has submitted that by operation of the Scheme at the relevant point of time, 80% of the liability of the pay of such teachers was to be borne by the Central Government and 20% was borne by the State Government, for the period 01.01.2006 to 31.03.2010, and in pursuance thereof, an amount of over Rs. 45 Crores was released to the State Government. This it is submitted, is substantiated by a communication dated 16.12.2016. He argues that as the UGC Regulations have been adopted, its recommendations are binding on the State respondents as has been held in *Gambhirdhan K. Gadhvi vs. State of Gujarat* reported in **(2022) 5 SCC 179**. In further support of his submissions, the learned counsel has also placed reliance on the case of *Dr. J. Vijayan & Ors. vs. State of Kerala & Ors.* reported in **2022 SCC Online SC 958** and *B. Bharat Kumar & Ors. vs. Osmania University & Ors.* reported in **(2007) 11 SCC 58**. On the question as to the delay in approaching the Court, it is submitted by the learned counsel that none has occurred,

inasmuch as, by letter dated 24.08.2020, the Joint Director of Higher & Technical Education, had acknowledged the entitlement of the writ petitioners for increment on placement on a higher Academic Grade Pay (AGP), and as no action was taken on the letter, the instant writ petition was filed on 2022. It has been lastly argued that the entitlement of increment being a statutory right, the same cannot be barred by lapse of time, and the non-granting of the increment is a continuous wrong.

4. Mr. K.P. Bhattacharjee, learned GA at the outset has submitted that the writ petition suffers from delay and laches, inasmuch as, the petitioners have approached this Court after a delay of 12 years. In this regard the learned counsel has placed reliance on the cases of *Bichitrananda Behera vs. State of Orissa & Ors.* reported in 2023 SCC Online SC 1307 and *C. Jacob vs. Director of Geology and Mining & Anr.* reported in (2008) 10 SCC 115. It is submitted that the writ petitioners have filed the writ petition solely on the basis of the letter of the Joint Director dated 24.08.2020, and no other ground has been made out to explain the delay. It has been strongly argued that the contents of the aforesaid letter, is only an opinion expressed by the person concerned and that the same does not create any legally enforceable right in favour of the petitioners. It has also been

contended that the petitioners by filing the instant case are merely taking a chance, that too, after 2 years since the issuance of the letter dated 24.08.2020, and that in the intervening period, the writ petitioners never raised their grievance at any point of time. The learned counsel submits that whatever rights the petitioners possessed, stand extinguished as on date, due to the laches and also the fact that they have continued accepting their remuneration thereafter, without any protest.

5. On the question of the applicability of the UGC Regulations 2010, and its extent thereof, it has been submitted that the objective of the Regulations is to declare the minimum qualification for appointment of teachers and other Academic staff, and for maintenance of standards in Higher education in the Universities and Colleges, and that the grant of Central assistance for implementing the Scheme was subject to fulfillment of regulations and guidelines. The binding nature of the Regulations he contends, is only to the extent that central financial assistance would be refused, if the said Scheme was not followed in its totality. He submits that in the instant case the Central funds having been released and received without any observations to the contrary by the Central Government and the State having spent

close of 57 Crores, for implementation of the Scheme of Pay Revision for Colleges Teachers, there has been no deprivation as alleged. The learned counsel, has also relied on the affidavit filed by the State and has submitted that for the said period in question i.e. 01.01.2006 to 31.03.2010, the Ministry of HRD, Department of Higher Education had released financial assistance to meet 80% of the additional expenditure and the remaining 20% was borne by the State. This amount, he submits being only for that period the aforesaid funds as sanctioned had already stood utilized and settled much prior to the filing of the writ petition, and the issue of promotional increment stands closed. Further he submits, nowhere have the writ petitioners indicated or quantified the amounts which they claim are due, or declared the amount which was received by them at the relevant point of time. The writ petition being vague and hit by delay and laches, he argues does not deserve any consideration and is liable to be dismissed.

6. Having heard the learned counsel for the parties, in spite of the lengthy submissions that have been advanced, the core question as can be understood, is limited only to the claims of promotional increments, on the petitioners being placed on a higher stage of Academic Grade Pay. This is seen as per the Ministry of Human

Resource Development (Department of Higher Education), Scheme of revision of pay of teachers etc., on the recommendations of the 6th Central Pay Commission dated 31.12.2008, which was adopted by the UGC, in its Regulations of 2010. Undeniably, the petitioners had been placed in the higher stage of AGP i.e. from stage I to stage II (6000-7000), at the relevant point of time, which would have cloaked them with a vested right to the promotional increment, as provided by the scheme and supported by the Central Government to the extent of 80% of additional expenditure involved in the implementation of the scheme for the period from 01.01.2006 to 31.03.2010.

7. As the facts indicate, the Central Government had released an amount of Rs. 45,57,41,316/- (Rupees Forty-Five Crores Fifty-Seven Lakhs Forty-One Thousand Three Hundred and Sixteen) only, which amounted to 80% of the total expenditure, on account of implementation of the scheme in the State. A communication dated 16.12.2016, from the Ministry of Human Resource Development, addressed to the Principal Accounts Officer, MHRD, with regard to the release of financial assistance to meet 80% of additional expenditure for implementation of the revision of pay scale of University and College Teachers in the State of Meghalaya, which has been brought

on record subsequently, testifies to this fact. The central assistance in implementing the scheme, as can be seen from the communication was also subject to the condition that the entire scheme of revision of pay scales, together with the conditions as laid down were to be followed and implemented by the State Government.

8. The entire chapter regarding the implementation of the scheme dated 31.12.2008, which was w.e.f. 01.01.2006 to 31.03.2010, as also the extension of revised UGC scale of pay on the basis of the 6th Pay Commission Recommendation, then came to a close with the release of an amount of Rs. 56,96,76,645/- (Rupees Fifty-Six Crores Ninety-Six Lakhs Seventy-Six Thousand Six Hundred and Forty-Five) only, in total inclusive of 80% central share, and 20% state share, to meet all the stated requirements such as arrears, UGC scale of pay, D.A, placements, increments, etc. Thereafter, as placed by the respondents, with the coming into force of the 7th Central Pay Commission Recommendations, revised UGC scales were then fixed on the basis of the said recommendations, and as per the State respondents, the Government of Meghalaya had released an amount of Rs. 76,98,72,180/- (Rupees Seventy-Six Crores Ninety-Eight Lakhs Seventy-Two Thousand One Hundred and Eighty) only, for which 50%

thereof, being the central share, is yet to be reimbursed to the State. The claim of the petitioners therefore is confined to the window, when the scheme was alive. It is to be noted further that, as per the communication dated 16.12.2016, the MHRD had made the release of central assistance, subject to the scheme of the revision of pay and other conditions to be laid down by the UGC, being implemented. This chapter, with the release of the entire funds being closed, this Court has only to examine, as to whether this closed chapter, in spite of the delay and the events that have transpired thereafter, can be re-opened, or whether, it can be held that the writ petitioners by their conduct, have by their delay and laches in seeking any remedy, waived their rights to any entitlement under the Scheme, which has since lapsed.

9. As observed earlier, the entitlement of the petitioners being confined only to a certain period, the same cannot constitute a continuing right or entitlement, inasmuch as, they are now governed under a new regime of pay revision and admissible scales as per the 7th Central Pay Commission Recommendations. This Court cannot lose sight of the fact that, the writ petitioners have slept over their rights, on their being placed on a higher stage of Academic Grade Pay, and there is nothing on record to show that they had ever agitated for such

entitlement till the year 2020, and thereafter, on the basis of the letter of the Joint Director of Higher and Technical Education, Meghalaya dated 24.08.2020, requesting for consideration, then approached this Court only in the year 2022. The long delay has neither been explained, nor is there any other reason that can be ascribed to excuse or condone the conduct of the petitioners. Furthermore, it is observed, apart from referring to the Pay Fixation Formula of the Central Civil Service (Revised Pay), Rules 2008, for calculation of the additional increments, the writ petitioners have not calculated or given a tangible amount, except to pray for direction for grant of additional increments on the placement on the higher stage of Academic Grade Pay, in the post of Assistant Professor and for fixation of pay at appropriate stage and grant of arrears and consequential benefits. The vague nature of their prayer is also indicative of their uncertainty of the additional increments, the amounts thereof, that they claim to be entitled to. Be that as it may, the main concern being the delay taking into account the fact that, the amounts of pay revision etc., due under the recommendation of the 6th Pay Commission, have since been released, without any objection being raised from the MHRD, as to the correct and full implementation of the scheme dated 31.12.2008, in the

considered view of this Court, therefore any rights that had accrued to the writ petition under the scheme by their conduct itself, has since been extinguished.

10. The Supreme Court in the judgment cited by the counsel for the respondents, namely *Bichitrananda Behera vs. State of Orissa & Ors.* reported in *2023 SCC OnLine SC 1307*, has dealt with the question of delay and laches, and acquiescence, and has also analyzed and quoted extensively other Supreme Court judgments on this aspect, it has been held in Para -21 as follows.

“21. Profitably, we may reproduce relevant passages from certain decisions of this Court:

(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For

example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(Emphasis supplied)

(B) Union of India v N Murugesan, (2022) 2 SCC 25:

"Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.”

11. Acquiescence is writ large in the instant case, coupled with the fact that, the non-grant of the additional increment is not a continuing wrong, with the coming into force of fresh Pay Revision, by way of subsequent recommendations under the 7th Central Pay Commission. Further, as noted earlier with the release of the required amounts by the MHRD, and the chapter having been closed, reconsideration of the claims of the petitioners will necessarily entail an exercise involving the fresh release of amounts under a lapsed scheme on a claim, which should have been brought before the Court, at least 12 years ago. The fault being squarely on the shoulders of the writ petitioners, the reliefs as prayed therefore, in the considered view of this Court, cannot be granted at this late stage.

12. The point raised with regard to UGC Regulations, 2010, being a piece of subordinate legislation and therefore inviolable is

noted, but the law in its application will not apply in the instant case, as it is not a case of violation, inasmuch as, the same has been implemented, albeit the irregularity, that has been highlighted by the writ petitioners belatedly by way of this writ petition. The judgment placed by the petitioner namely *Gambhirdhan K. Gadhvi vs. State of Gujarat (supra)*, will have no application, as it is with regard to qualifications for appointment as Vice Chancellor. The other judgments placed being of limited application, are not discussed.

13. Accordingly, as discussed hereinabove, the writ petitioners case being hit by delay and laches, whatever rights derived from the scheme, are no longer available to them. The writ petition is therefore not entertained, and on this ground alone stands dismissed.

14. No order as to costs.

JUDGE

Meghalaya
06.03.2024
"V. Lyndem PS"