



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

Case No. : WP(C)/304/2020

BENUDHAR NAYAK and 7 ORS
PROFESSOR, DEPARTMENT OF HUMANITIES AND SOCIAL SCIENCES,
NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND
TECHNOLOGY, (NERIST), (DEEMED TO BE UNIVERSITY), RESIDENT OF
NERIST CAMPUS, NIRJULI, PAPUM PARE DISTRICT, AP.

2: RAM KRISHNA MEHTA

Age:

Occupation :

PROFESSOR DEPARTMENT OF ENGINEERING NORTH EASTERN
REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST)
(DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI
PAPUM PARE DISTRICT AP.

3: RENENDRA PRASAD

Age:

Occupation :

ASSOCIATE PROFESSOR DEPARTMENT OF HUMANITIES AND SOCIAL
SCIENCE NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE
AND TECHNOLOGY (NERIST) (DEEMED TO BE UNIVERSITY) RESIDENT
OF NERIST CAMPUS NIRJULI PAPUM PARE DISTRICT AP.

4: SUKUMAR BAISHYA

Age:

Occupation :

PROFESSOR DEPARTMENT OF CIVIL ENGINEERING NORTH EASTERN
REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST)
(DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI
PAPUM PARE DISTRICT AP.

5: HARENDRA PRASAD SINGH

Age:

Occupation :

PROFESSOR DEPARTMENT OF CIVIL ENGINEERING NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) (DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI PAPUM PARE DISTRICT AP.

6: S.K. BHAGAT

Age:

Occupation :

PROFESSOR DEPARTMENT OF ELECTRICAL ENGINEERING NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) (DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI PAPUM PARE DISTRICT AP.

7: AKHILESH KUMAR GUPTA

Age:

Occupation :

PROFESSOR DEPARTMENT OF CHEMISTRY NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) (DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI PAPUM PARE DISTRICT AP.

8: SACHINDRA MAHTO

Age:

Occupation :

PROFESSOR MECHANICAL ENGINEERING NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) (DEEMED TO BE UNIVERSITY) RESIDENT OF NERIST CAMPUS NIRJULI PAPUM PARE DISTRICT AP

VERSUS

THE UNION OF INDIA REPRESENTED BY THE SECRETARY TO THE MINISTRY OF THE HUMAN RESOURCES AND DEVELOPMENT (MHRD), GOVT. OF INDIA, NEW DELHI.

2:THE CHAIRMAN

Age: 0

Occupation :

BOARD OF MANAGEMENT NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) NIRJULI PAPUM PARE DISTRICT AP.

3:THE DIRECTOR

Age: 0

Occupation :

NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND TECHNOLOGY (NERIST) NIRJULI PAPUM PARE DISTRICT AP.

4:THE REGISTRAR

Age: 0

Occupation :

NORTH EASTERN REGIONAL INSTITUTIONAL OF SCIENCE AND
TECHNOLOGY (NERIST) NIRJULI PAPUM PARE DISTRICT AP

Advocate for the Petitioner : Mr. Dicky Panging

Advocate for the Respondent : Mr. Ajin Apang, Sr. Adv.

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 29-07-2024

Heard Mr. D. Panging, learned counsel for the petitioners and Mr. A. Apang, learned senior counsel/standing counsel for the respondents.

2. By filing this writ petition, the petitioners, eight in numbers, who are working as Professor and Associate Professor serving in the North East Regional Institute of Science & Technology (NERIST for short) praying for a direction to the respondent authorities to implement the order dated 09.05.2013, for upgradation of financial benefits, issued by the Registrar, NERIST whereby, it is provided that for those faculty members, who have fulfilled the prescribed criteria for promotion under CAS prior to 01.07.2004 and are promoted under the scheme at a later date due to delay operation of CAS, the financial benefits would be granted from the date of eligibility in each case.

3. Earlier, the petitioners have filed a writ petition being WP(C) No. 91 AP of 2014 praying for implementation of the above order. The writ petition was disposed of by this Court on 27.04.2016 which are quoted herein below:

“.....By producing a copy of the order dated 12-01-2016, issued by the

Registrar of the NERIST, Mr. Apang, submits that a decision has already been taken in the Board Meeting whereby approval has been accorded for implementation of the office orders dated 9th May, 6th/11th September, 2013 regarding up-gradation of faculty members for placement under CAS from the eligible date on individual basis and sanction of financial benefits as applicable to them from the due date prior to 1st July, 2004 and also for granting of notional benefits for all others in their future promotion/placement without financial benefits along with normal increments due for July, 2014 and July, 2015.

It is submitted by the learned senior counsel for NERIST that the said decision has not yet been implemented in the case of the petitioners due to the pendency of the writ proceedings.

Mr. Apang, learned Standing Counsel for NERIST submits that the writ petition may be disposed of with a direction that the aforementioned decision will also be implemented in case of the writ petitioners herein.

It is not in dispute that if the decision as reflected in the order dated 12-01-2016 is implemented in case of the writ petitioners, their grievance expressed in the writ petition would stand redressed. However, the apprehension of the learned senior counsel for the petitioners is that the notification does not lay down any definite time frame for implementation of the scheme. As such, the learned senior counsel prays for appropriate direction from this Court fixing a time frame in the matter.

In view of the above and taking note of the submission of the learned senior counsels appearing for the parties, I am of the considered opinion that nothing survives for adjudication in the writ petition.

It is, however, made clear that the decision reflected in the order dated 12-01-2016, would be implemented in case of the writ petitioners as early as possible, preferably within a period of 3 months from the date of receipt of a certified copy of this order."

4. On bare perusal of the above order, passed by this Court, it transpires that the NERIST authorities have clearly stated that the decision has been taken on 12.01.2016, however, the same was not implemented in the case of the petitioners due to pendency of the writ petition (supra). The learned standing counsel for the NERIST had submitted that the writ petition be disposed of with a direction for implementation of the decision dated 12.01.2016, so that the authorities could implement the said order in case of the writ petitioners. The only apprehension expressed by the learned standing counsel was that the notification does not lay down any definite time frame for implementation of the said decision. Therefore, a direction was sought from this Court for fixing a time frame for its implementation in case of the petitioners. Having considered the submissions, this Court has made it clear that the decision reflected in the order dated 12.01.2016 be implemented in the case of the writ petitioners as early as possible, preferably within a period of 3 (three) months from the date of receipt of a certified copy of the order.

5. It is stated at the Bar that the order dated 27.04.2016 has not been put to challenged by the authorities and in fact, could not have, as the order was passed on the submissions and the admission on the part of the respondent authorities, that the decision reflected in the order dated 12.01.2016 would be implemented in the case of the petitioners.

6. It is noticed that even after passing of said order by this Court, the respondent authorities have taken a contrary view by issuing the order dated 10.01.2017, which is impugned in the present proceedings, to all the petitioners, contrary to the decision taken on 12.01.2016.

7. Having taken note of the fact that despite agreed to implement the order dated 12.01.2016 the respondent authorities have passed the impugned orders

dated 10.01.2017, contrary to the said decision reflected in the order dated 12.01.2016 and the order of this Court, dated 27.04.2016, this Court has taken a serious note of such action on the part of the respondent authorities. Accordingly, on various dates of proceedings of the present writ petition, this Court had made an observation to place on record the instructions as to whether the order of this Court, dated 27.04.2016, has been duly complied with. Thereafter, on the prayer of the learned standing counsel for the NERIST, finally, it was fixed on 23.07.2024.

8. On 23.07.2024, Mr. Apang, learned standing counsel for the NERIST has placed a communication before this Court issued by the Registrar-in-Charge, NERIST, dated 22.07.2024, indicating compliance of the direction of this Court in the earlier round of litigation. On perusal of the said communication, this Court expressed its dissatisfaction as the instruction indicates that the Board of Management has taken a resolution to the effect that the matter is under sub-judice in the Hon'ble High Court and the matter is listed for hearing on 19.06.2024, and therefore, the final judgment of the Court will be sent to Ministry of Education, Government of India for further guidance and action. Taking note of such casual approach by the respondent authorities, this Court has directed the Registrar of the NERIST to appear before this Court. Accordingly, Dr. M. K. Camder, the Registrar, NERIST is present today.

9. On the pointed query to the learned standing counsel as well as the Registrar, NERIST, both have made an attempt to justify their action to the effect that since the matter involves with financial implication, the NERIST has no power to take a final decision. They have submitted that though the authorities have considered the matter as per the procedure of the applicable rules, due to certain calculations, though the order, dated 12.01.2016, has

substantially been implemented with, there arose certain differences to different officials or officers including the petitioners in their entitlement.

10. Mr. D. Panging, learned counsel for the petitioners, while referring to the impugned orders, passed by the respondent authorities in respect of the petitioners, dated 10.01.2017, has submitted that the order clearly reflects total contradiction stand to the decision reflected in order dated 12.01.2016 and the assurance given by the respondent authorities to implement the said order.

11. I have considered the submissions of the learned counsel appearing for the parties as well as perused the materials available on record.

12. On consideration of the impugned orders, decision reflected in the order dated 12.01.2016 and the order, dated 27.04.2016, passed by this Court, it transpires that, as noted above, the respondent authorities through their learned standing counsel/senior advocate had assured this Court in the earlier round of writ proceedings for implementation of the order dated 12.01.2016, without any reservation thereof. On accepting the submissions, this Court has clearly directed the respondent authorities to implement the decision as reflected in the order dated 12.01.2016 in case of the writ petitioners, within a period of three months from the receipt of the certified copy of the order.

13. There is no dispute, as reflected from the action as well as the submissions and the documents, that despite such assurance by the learned senior counsel representing the NERIST, the authorities have failed to implement the decision reflected in the order dated 12.01.2016 and comply with the direction of this Court, as on date.

14. Having faced with the above situation that the authorities have failed to implement the decision reflected in the order, dated 12.01.2016 in its letter and

spirit and also has failed to comply with the order of this Court, dated 27.04.2016, the learned senior counsel representing the NERIST as well as the Registrar, NERIST have assured to implement the same in case of the petitioners.

15. Having considered above and taking the lenient view, I am of the considered view that interest of justice would be served if the present writ petition is disposed of by directing the respondent authorities i.e. the NERIST and the Ministry of Education, Government of India to implement the decision as reflected in the order, dated 12.01.2016, in case of the writ petitioners in compliance with the order dated 27.04.2016, passed by this Court in WP(C) No. 91 (AP) of 2014.

16. Accordingly, it is directed the respondent authorities i.e. the NERIST and the Ministry of Education, Government of India to implement the decision reflected in the order, dated 12.01.2016, within a period of 2 (two) months from today. In the result, impugned orders, dated 10.01.2017, passed by the Registrar, NERIST in respect of the writ petitioners are hereby set aside and quashed.

17. It is made clear that the instant order is passed on its own peculiar facts of the matter. Thus, same shall not be treated as precedent.

18. Appearance of Dr. M. K. Camder, the Registrar, NERIST is dispensed with.

19. Writ petition stands disposed of, accordingly.

JUDGE

Comparing Assistant