



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

Case No. : WA/22/2023

The Arunachal Pradesh State Government Pensioners Association and Anr,
A Society registered under Societies Registration Act, 1860 having its registered
Office at High Court Road, D Sector, Naharlagun, District Papum Pare, Arunachal
Pradesh, through its Vice President Shri Chukhu Talar, resident of Model Village, PO
and PS Naharlagun, District Papum Pare, Arunachal Pradesh

2: Malo Tagio S/o Late Malo Chatum Village Old Palin PO and PS New Palin District
Kra Dadi Arunachal Pradesh and Joint Secretary Arunachal Pradesh State Government
Pensioners Association

Age:

Occupation :

VERSUS

THE STATE OF AP and Anr. Through the Commissioner/Secretary, Department of
Finance, Govt. of Arunachal Pradesh, Itanagar

2: the Chief Secretary to the Govt. of Arunachal Pradesh Itanagar District Papum Pare
Arunachal Pradesh

Age: 0

Occupation :

Advocate for the Petitioner : H K Das, Kamal Saxena

Advocate for the Respondent : GA (AP)

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 31.01.2024

Date of Judgment & order : 02.02.2024

JUDGMENT AND ORDER(CAV)

(S.K. Medhi, J)

The instant intra court appeal is preferred against a judgment dated 26.06.2023, passed by the learned Single Judge in WP(C)373/2021 by which, the writ petition filed by the appellants as writ petitioners was dismissed.

2. The appellant/writ petitioner no. 1 is the Arunachal Pradesh State Government Pensioners Association whereas the appellant/writ petitioner no. 2 is one of its office bearers. The cause of action espoused is for the pensioners of the State Government who have retired prior to the year 2016.

3. As per the case projected, in the year 2014, the Government of India had appointed 7th Central Pay Commission (7th CPC), with specified terms of reference. Accordingly, the 7th Pay Commission has submitted its report on 19.11.2015. Thereafter, the Govt. of India, after due consideration has accepted the report of the Commission, vide Resolution F.No.38/37/2016-P & PW (A) dated 04.08.2016. On the same day the Government of India has issued one Office Memorandum F.No.38/37/2016-P & PW (A) (ii) for implementation of the decision of the Government on revision of pension

of pre-2016 pensioners/family pensioners in terms of the Formulation II, as contained in Item 11 of the Govt. of India Resolution F.No.38/37/2016-P&PW(A) dated 04.08.2016. Thereafter, on 12.05.2017, the Govt. of India, Department of Pension and Pensioners Welfare, had issued another Office Memorandum, dated 12.05.2017, giving effect of re-fixation of pension of pre 01.01.2016 pensioners/family pensioners based on Formulation I of Item 11 as recommended by the 7th CPC. The Government of India, Ministry of Finance, Department of Expenditure, had issued another Office Memorandum on 14.07.2017, revising the fixed medical allowance from Rs.500/- to Rs.1000/- payable w.e.f. 01.07.2017. The Government of Arunachal Pradesh also, instead of appointing a Pay Commission, used to implement the report of the Central Pay Commissions, so constituted by the Government of India. Thereafter, on 16.01.2017, the Stated Government also adopted the Office Memorandum F.No.38/37/2016-P&PW(A)(ii), dated 04.08.2016 and issued one Office Memorandum No.DAP/PEN/27/2016, dated 16.01.2017, and the same was published in the Arunachal Pradesh Gazette, and extended the benefit of revision of pension of pre-01.01.2016 retirees in terms of the Formulation II as contained in Item 11 of the Government of India Resolution dated 04.08.2016. But, the Government of Arunachal Pradesh has not extended the benefits of re-fixation of pension of pre 01.01.2016 pensioners/family pensioners based on Formulation I of Item 11 as recommended by the 7th CPC, in the similar line with the Notification, dated 12.05.2017, issued by the Govt. of India. It is contended that apart from this the State Government has also not paid the arrears of revised fixed medial allowances to the pre-01.01.2016 retirees for the period from 01.07.2017 to 01.04.2018, @ Rs.1000/, even though policy decision on the same was announced by the Finance Minister of the State in his budget speech on

the floor of the House on 12.03.2018. However, the Govt. of Arunachal Pradesh by issuing one Office Memorandum, dated 05.10.2015, the pensioners/family pensioners of Arunachal Pradesh Government were paid fixed medical allowance @ Rs.500/- per month, retrospectively w.e.f. 01.12.2014. The petitioners had filed several representations to the State Government functionaries for implementation of but, they received no response from the Government. Being aggrieved, the petitioners had filed the concerned writ petition. The respondent had resisted the claim by filing affidavit-in-opposition which was also responded by the writ petitioners by filing rejoinder-affidavit.

4. The Hon'ble Single Judge after consideration of the respective pleadings had formulated 2 (two) issues which are as follows:

(i) Whether the recommendation made by the 7th CPC is binding on the Government of Arunachal Pradesh and whether it creates any legally enforceable right to the petitioner to get the same implemented?

(ii) Whether the Court can interfere with the policy decision of the Government in respect of implementation or non implementation of recommendation of Pay Commission and issue a mandamus?

5. As regards the first issue, the learned Single Judge had held that the recommendation of the 7th CPC cannot be held to be binding on the State Government and therefore, no legally enforceable rights would accrue upon the petitioners for its implementation. With regard to the second issue pertaining to policy decision, the learned Single Judge, after discussion of the relevant case laws had arrived at a finding that the scope of interference by a Court with a policy decision of the Government is absolutely limited and unless such policy is *ex facie* illegal, unreasonable

or in violation of a statute, interference would not be called for.

6. With regard to the resolution dated 04.08.2016, this Court has noted that the acceptance by the Central Government of the recommendation of the 7th Central Pay Commission was only for the Central Government Civil Employees including the employees of the Union Territory and members of All India Services. Therefore, without a specific resolution by the State Government to adopt such recommendation, those will not be automatically applicable to any State Government.

7. Questioning the correctness of the aforesaid judgment, the instant appeal has been preferred.

8. We have heard Mr. H. K. Das, learned counsel for the appellants as well as Shri R. H. Nabam, learned Additional Advocate General for the State respondents. The materials placed before us, including the records of the writ petition have been duly examined.

9. Mr. Das, the learned counsel for the appellants has submitted that the 2 (two) issues formulated by the learned Single Judge were actually not the matter of dispute as according to him there was no challenge to any policy. He further submits that the first issue formulated was not even relevant because as per him, the recommendation of the 7th CPC was already accepted in toto by the State Government.

10. Elaborating his submission, Mr. Das, the learned counsel has drawn the attention of this Court to the communications/orders relating to the recommendations of the Central Government. He submits that a resolution was adopted on 04.08.2016 by the Central Government, whereby, the recommendations of the 7th CPC was decided to be accepted on

pensionary benefits to the Central Government Civil Employees. The said acceptance was to be effective from 01.01.2016.

11. He submits that as per the Annexure to the said resolution, under serial no. 11, revision of pension of pre-7th CPC retirees have been given. As per the same, personnel who have retired before 01.01.2006 would be given benefit under 2 (two) formulations giving certain details which are to be worked out. The pensioners were required to be given an option for choosing one of the said two formulations. The acceptance of the recommendation on that subject by the Central Government however was with a rider that it would be subject to feasibility of the implementation. As regards the second formulation, it was however resolved that the same be implemented immediately and the first formulation would be applicable if its implementation is found feasible after examination by a newly constituted committee.

12. The said resolution was communicated vide an Office Memorandum of the same date i.e. 04.08.2016. The learned counsel has thereafter referred to an OM dated 16.01.2017 of the State Government. It is submitted that by the said OM, the Government of Arunachal Pradesh had accorded approval to the OM dated 04.08.2016 of the Central Government on the subject of implementation of the recommendation of the 7th CPC for revision of pension of pre-2016 pensioners. It is submitted that on 12.05.2017, the Central Government had issued another OM, whereby the recommendation of the committee constituted under Serial no. 11 has been accepted. The learned counsel accordingly submits that since the recommendation of the 7th CPC which was accepted and circulated by the Central Government by way of Office Memorandum dated 04.08.2016 was

subsequently accepted in toto by the State Government vide OM dated 16.01.2017, it becomes obligatory on the part of the State Government to implement the entire recommendations and accordingly, give benefits to the appellants.

13. In support of his submission Mr. Das, the learned counsel for the appellants has relied upon the case of ***All Manipur Pensioners Association vs. State of Manipur & Ors.***, reported in ***(2020) 14 SCC 625***, the relevant part of which is extracted hereinbelow:

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre1996 and another who retired post1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

8.1 In the present case, the classification in question has no

reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cutoff date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.2 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre1996 or post1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cutoff date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cutoff date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision."

14. *Per contra*, Mr. Nabam, learned Additional Advocate General, at the outset has submitted that the scope of interference in an intra Court appeal is limited and unless the view taken by the learned Single Judge is patently illegal or adverse, such interference is not to be done in a routine manner. The learned State counsel submits that the entire premises of the arguments made on behalf of the appellants are fallacious.

15. By drawing the attention of this Court to the OM of the State

Government dated 16.01.2017, the State counsel submits that reference is only made to the Central Government OM dated 04.08.2016 and therefore, the acceptance of the recommendation would only confine to the OM dated 04.08.2016. He submits that the OM of the Central Government which the appellants are relying upon is dated 12.05.2017 which is subsequent to the OM of the State Government. He submits that unless there is a specific order conveying the decision of the State Government to adopt certain recommendation/policy pertaining to the Central Government, the same would not have universal/automatic application. In this context, he submits that the contention made on behalf of the appellants that the recommendations/office memoranda of the Central Government have been accepted by the State Government "in toto" is not based on any materials on record. The learned State counsel submits that the present claim is only pertaining to the OM of the Central Government dated 12.05.2017, which has not been adopted by the State Government and so far as the adoption of the earlier OM dated 04.08.2016 is concerned, the same has been implemented. He also submits that adoption of a policy having fiscal implications is directly related to the financial health of the State. However, in view of the financial crunch, the State could not adopt the subsequent Office Memorandum of the Central Government dated 12.05.2017.

16. Rejoining his submission, Mr. Das, the learned counsel for the appellants has contended that acceptance of the Office Memorandum dated 04.08.2016 would automatically amount to acceptance of the subsequent OM dated 12.05.2017, which is a continuity of the earlier OM. He accordingly submits that the defence taken on behalf of the State is not legally tenable.

17. The rival submissions made have been duly considered and the materials on record have been carefully perused.

18. The main thrust of the argument made on behalf of the appellants is that the recommendations of the 7th CPC which were adopted and circulated by the Central Government were also consequently adopted by the State Government and therefore the petitioners cannot be deprived of the benefits. The learned counsel has taken us to the details of the recommendation of the 7th CPC from the communication relating to its adoption and the consequent Office Memorandum dated 04.08.2016. There is no manner of doubt that under Serial No. 11, the Central Government had constituted another committee to work out the implementation of the Pay commission against the first formulation. However, the said observations were with a caveat that the feasibility of the implementation would be one of the issues. In other words, so far as the first formulation was concerned, there was no decision *per se* to accept the same as its implementation was dependent on the report of a committee which was to be constituted. This Court has also noted that the recommendation of the Central Pay Commission, as the name itself indicates, was for the benefits of the Central Government Civil Employees, including the employees of the Union Territories and those members of the All India Services. There is also no manner of doubt that such resolution would not automatically be applicable to State Government under the federal structure of governance. The adoption of the Office Memorandum dated 04.08.2016 of the Central Government was done by the State Government of Arunachal Pradesh vide Office Memorandum dated 16.01.2017. It is only after such adoption that the subsequent Office Memorandum of the Central Government was notified on 12.05.2017. As

per the appellants, the said office memorandum dated 12.05.2017 should be held to be a continuity of the earlier Office Memorandum dated 04.08.2016. However, we are of the opinion that since the Office Memorandum of the Central Government pertains only to those employees, who comes under the CPC, in absence of a specific decision/order, adopting such Office Memorandum of the Central Government, the same cannot be held to be automatically applicable to the State Government. On perusal of the records, we have not found any materials to show that the Office Memorandum dated 12.05.2017 of the Central Government has been accepted by the State Government unlike the earlier Office Memorandum dated 04.08.2016 of the Central Government.

19. Shri Nabam, the learned Additional Advocate General has also emphatically submitted that there was no adoption of the Office Memorandum dated 12.05.2017 by the State Government.

20. Shri Das the learned counsel for the appellants had tried to develop a case of discrimination of the retirees of pre-2016 and those after-2016 and in this connection, the case of ***All Manipur Pensioners Association*** (supra) has been cited. We have gone through the said case. In that case, while adopting the CCS (Pension) Rules by State Government of Manipur, a cut-off date was chosen to give the benefit of revised pension with effect from 01.01.1996. Under that context, the Hon'ble Supreme Court had held that there was no intelligible differentia between the two classes and therefore such differentiation would amount to discrimination and therefore was interfered with. However, in the instant case, the facts are totally different and it is not a case of creating two classes but giving benefit to a certain class of pensioners in accordance with the

recommendation of the 7th CPC, a part of which has been adopted by the State.

21. We also find force in the submission made on behalf of the State that the scope of interference in an intra court appeal is limited and we find that the learned Single Judge had painstakingly gone to the facts of the case and submission of the parties and had assigned cogent reasons to justify the judgement. It is trite law that only because another view is possible, the view of the learned Single Judge which is a plausible view is not to be altered.

22. We have also noticed that the learned Single Judge has made the following observation.

“...21. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, dismissal of this writ petition will not stand in the way of implementing/giving effect of the Formulation (i) of the 7th CPC in Item 11 to the petitioners and also giving the retrospective effect of the medical allowances, with w.e.f. 01.07.2017, as prayed for by the petitioners.”

23. Therefore, we are of the opinion that the discretion is still left to the State Government for adopting the later part of the recommendation if found feasible, which of course would depend on the financial health and other conditions.

24. In view of the discussion, we are of the view that judgement and order dated 26.06.2023, passed by the learned Single Bench in WP(C)373/2021 does not require any interference and accordingly the appeal is dismissed.

JUDGE

JUDGE

Comparing Assistant