

GAHC040010642017



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

**Case No. : WP(C)/59/2017**

SRI BAMAR YINYO  
S/O SRI DAMLA YINYO, RESIDENT OF VILL. BELO, PO YOMCHA, PS  
YOMCHA, DIST WEST SIANG, AP. MOBILE NO. 9485237932

VERSUS

THE STATE OF ARUNACHAL PRADESH, REPRESENTED BY THE CHIEF  
SECRETARY TO THE GOVERNMENT OF ARUNACHAL PRADESH,  
ITANAGAR, PIN-791111.

2:THE COMMISSIONER & SECRETARY

Age: 0

Occupation :

DEPTT. OF FINANCE, GOVTOF ARUNACHAL PRADESH. ITANAGAR, PIN-  
791111.

3:THE COMMISSIONER & SECRETARY

Age: 0

Occupation:

GOVERNMENT OF ARUNACHAL PRADESH, ITANAGAR, PIN-791111.

**Advocate for the Petitioner : B Joseph**

**Advocate for the Respondent : GA (AP)**

**BEFORE  
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**ORDER**

**Date : 12-03-2024**

Heard Mr. U. Deka, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General assisted by Ms. P. Pangu, learned Government Advocate appearing for the State respondents.

2. The petitioner has by way of instituting the present proceedings, raised a grievance with regard to the non-release of allowances, namely, Children Education Allowances and Travelling Allowances to him in pursuance to the implementation of the recommendations of the 6<sup>th</sup> Central Pay Commission (CPC).

3. The records reveal that the petitioner, raising similar grievances had approached this Court by way of instituting WP(C)No.410/(AP)2014. The said writ petition was given a final consideration by this Court vide judgment and order dated 10.09.2015, *inter-alia* directing the State respondents to implement all the recommendation/admissible allowances as provided in the 6<sup>th</sup> Central Pay Commission, as per Government Guidelines, without further delay, preferably, within a period of 3 (three) months from the date of the order. Being aggrieved, the State respondents had assailed the said judgment and order dated 10.09.2015 by way of instituting a writ appeal being WA No. 25/(AP)2015. The Division Bench of this Court vide order dated 21.01.2016 gave a final consideration to the said writ appeal being WA No. 25/(AP)2015, *inter-alia*

interfering with the judgment and order dated 10.09.2015, passed in WP(C)410(AP)2014. However, it was observed that notwithstanding the interreference made with the judgment and order 10.09.2015, the State Government would be at liberty to implement any of the provisions of the 6<sup>th</sup> Central Pay Commission that has not been implemented by keeping in mind the undertaking given by it in para-8 of the affidavit-in-opposition filed in WP(C)No. 410(AP)2014. The relevant portion of the decision of the Division Bench passed in WA No. 25/(AP)2015, dated 21.01.2016, is extracted hereinbelow:

*“...The State Government in their affidavit-in-opposition have stated in Para-8 is as follows:*

***"8..... That with regard to the statement made in Para-11 of the writ petition, the deponent states that though most of the allowances of 6th Central Pay commission have already been implemented for State Govt. employees by the State government, the Children Education Allowances and Transport Allowances etc could not be implemented in the State so far, due to acute financial constraints of state Govt. and the same would be implemented in a phased manner as and when the financial health of the state improves for with the State Govt. is striving hard. The Transport Allowances and Children Education Allowances of 6th CPC are subject to certain inherent terms and conditions and therefore are not uniformly admissible to all Govt. employees and cannot be claimed as a matter of right. However, that the State govt. is also providing passage at concessional rates for state Govt. employees through its State Transport Services Buses in some locations. Likewise, the State Govt. is also providing stipend and book grants etc to all APST students including the wards of State Govt. employees".***

*The learned Single Judge after hearing the parties has observed that as there is no Pay Commission in the State of Arunachal Pradesh, the State Government by issuing office memorandum dated 05.01.2008 has adopted the revised pay scale structure of the CCS Revised Pay Rules, 2008 and decided to make it applicable to the employees under the Government of Arunachal Pradesh as per their entitlement and*

*admissibility vide Office Memorandum No.FIN/E-II/22/2008 dated 05.01.2008.*

*Learned Single Judge has also cited in Para-24 of the impugned judgment & order as follows:*

***"24.....Apparently, there is no dispute that all provisions, as has prayed by the petitioner, has been incorporated in the 6 Central pay Commission (CPC) and there is also no obstacle clause that same will be considered, at certain intervening period. The reply of the respondent authority clearly indicates that only because of fund constraint, they could not implement all those recommendations. In view of the pretext that India is a Welfare country and all schemes has been provided for the welfare of all sections of the society and the scheme of Children Education Allowances, Hostel Subsidy, Uniform Allowance, Transport Allowance, etc., certainly aim at giving big relief as well as to uplift the socio-economic condition and for full all- round development of the people of India. While the State of Arunachal Pradesh has accepted the recommendations of the said 6th Central Pay Commission (CPC), then they, on their own, cannot deny to provide the lawful privilege of the citizens. The State authority is under an obligation to address the grievances of the employees and denial of the same, will tantamount to violation of right to livelihood as enshrined in the constitution of India. The above mentioned scheme being a welfare-oriented one, should be implemented by the State authority in letter and spirit. The submission of the respondents that they will implement such recommendations whenever is available is a not a proper response while the recommendations was made in the year 2008 and now its 2015. The State Government is to produce the required funds by their own initiation and lethargy and inaction on the part of the State Respondents may be a matter of serious concern if not properly adhered to".***

*The writ petition was subsequently allowed by directing the State respondents to implement all recommendations/admissible allowances as provided in the 6th Central Pay Commission (CPC, in short).*

*MS. G. Deka, learned senior Government Advocate submits that as per the Office Memorandum dated 05.01.2008 the 6th Central Pay Commission, (CPC, in short) has not been adopted in toto in the State of*

*Arunachal Pradesh. This is clearly reflected in para-4 of the Office Memorandum dated 05.01.2008 which states "Status-quo/existing position will continue in respect of other allowances".*

*Without going further into the merit of the case, we would like to rely upon the judgment of the Supreme Court in the Case of **State of West Bengal vs. Subhas Kumar Chatterjee & Ors reported in 2010-11, SCC 694** which is to the effect that:*

*"14..... This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. [See: Union of India V. Arun Jyoti Kundul and State of (2007) 7 SCC 472 Haryana & Anr. V. Haryana Civil Secretariat Personal Staff Assn.2]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post."*

*In the case or **M. P. Rural Agriculture Extension Officers Association Vs. State of M. P. & Anr.**, reported in 2004 4 SCC 646, the Supreme Court has held as follows:-*

*"13.....Pay Commission are constituted for evaluating the duties and functions of the employees and the nature thereof vis-a-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy decision may or may not accept its recommendations".*

*In view of the above decisions of the Supreme Court and as the*

*matter of implementation of the recommendation of the Central Pay Commission (CPC, in short) is quite settled, the State Government is at liberty to apply the pay recommendation as per their financial capacity and as per law. It need not apply the recommendation of the 6th CPC in toto. As such, we are of the opinion that the learned single Judge was not correct in giving the direction in the WP(C)410(AP)2014 to apply the recommendations of the 6th CPC in toto.*

*In that view of the matter, the judgment and order dated 10.09.2015 passed in WP(C)410(AP)2014 is hereby set aside."*

4. The liberty as granted to the State Government vide the order dated 21.01.2016 in WA No. 25(AP)2015, having not been implemented, the petitioner has again instituted the present proceeding praying for the same reliefs.

5. The respondents have filed an affidavit in the matter and therein, have contended that the allowances as claimed by the petitioner could not be implemented in the State on account of the financial restraints as being faced by the Government. However, to the maximum extent possible, the recommendations of the Central Pay Commission were implemented with the available funds and resources of the State. The financial health of the State Government not having improved, the decision on implementation of the various allowances including the allowances as claimed by the petitioner in the present proceedings could not be arrived at. It has also been indicated in the affidavit that on adoption of the 6<sup>th</sup> Central Pay Commission, the allowances as notified by the State Government for its employees was implemented. The implementation of the recommendations of the 6<sup>th</sup> Central Pay Commission, accordingly, is contended to be understood to the extent the same was adopted and implemented in the State by the Government.

6. On a specific query as made by this Court as to whether the State Government had issued any Office Memorandum adopting the allowances including the Trasport Allowance and the Children Education Allowance, as recommended by the 6<sup>th</sup> Central Pay Commission for implementation for its employees, the learned counsel for the petitioner has not been able to place on record any such Office Memorandum.

7. In view of the said position and also the matter having been heard and concluded by the decision of the Division Bench of this Court vide the order dated 21.01.2016, in WA No. 26/2015, this Court in the similar issue would not be, in absence of any new materials being placed before it, in a position to take a different view in the matter. Accordingly, the writ petition is disposed of by reiterating the following observation of the Division Bench in WA No. 25(AP)/2015:

*”Notwithstanding the above, the State Government is at liberty to implement any of the provisions of the 6th Central Pay Commission (CPC, in short) that has not been implemented by keeping in mind the undertaking given by it in para-8 of the affidavit-in-opposition submitted by the respondents 1, 3 & 4 noted above.”*

**JUDGE**

**Comparing Assistant**