

GAHC020001162023



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

Case No. : WP(C)/43/2023

SHRI. RAMADAS P.S AND ANR
AGED ABOUT 73 YEARS, S/O LATE P.N.S.PILLAI, R/O DAS BHAWAN,
P.O. KAVIYOOR, TALUK THIRUVALLA, DISTRICT -
PATHANAMTHITTA, KERELA - 689582

2: SHRI. SURENDRAN P.S

AGED ABOUT 76 YEARS
S/O LATE P.N.S. PILLAI

PRESENT R/O SURYA BHAWAN
P.O. ANJILITHANAM KAVIYOOR
TALUK THIRUVALLA

DISTRICT - PATHANAMTHITTA
KERELA - 68958

VERSUS

TH STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND

DEPARTMENT OF SCHOOL EDUCATION

NAGALAND
KOHIMA

3:THE PRINCIPAL DIRECTOR

DIRECTORATE OF SCHOOL EDUCATION

NAGALAND
KOHIM

Advocate for the Petitioner : A. ZHO

Advocate for the Respondent : GOVT ADV NL

Date of hearing and judgment : **07.06.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

The jurisdiction under Article 226 of the Constitution has been invoked by 2 (two) petitioners challenging the Office Memorandum (OM) dated 08.04.2008, and more particularly Clause 6 of the said OM, and further have sought for a direction upon the State respondents to extend the benefit of financial upgradation under the Assured Career Progression Scheme to the petitioners in accordance to the OM dated 28.02.2002.

2. The case of the petitioners herein, in short, is that both the petitioners were initially appointed Teachers in Maths and Science respectively on contract basis for a period of 3 (three) years in the year 1981 by the Director of School Education. After serving for 3 (three) years, by a common order, the services of the petitioners along with 59 (fifty-nine) others were regularized w.e.f. 01.04.1985. In the year 1999, the Central Government came up with a policy to introduce the Assured Career Progression Scheme for employees to give financial upliftment to Group-B, Group-C and Group-D on

completion of 12 (twelve) years and 24 (twenty-four) years of service in the case of stagnation on account of promotion. The State of Nagaland followed suit by issuing an OM dated 28.02.2002, whereby benefits were granted to Group-B and Group-C employees a financial upgradation on completion of 12 (twelve) and 24 (twenty-four) years on regular service. It is the case of the petitioners that Group-A was excluded in the OM dated 28.02.2002.

3. The further case of the petitioners as can be discerned from the submission made by the learned counsel for the petitioners, Mr. A. Zho, is that the Government of Nagaland, in the year 2008 realized that they had committed a mistake and as such, had issued the OM dated 08.04.2008, whereby the benefit of financial upgradation on completion of 12 (twelve) years and 24 (twenty-four) years of regular service were also extended to Graduate Teachers. The learned counsel for the petitioners further submits that in Clause 6 of the said OM the benefit has been given only prospectively and in the meantime, in the year 2005 and 2007 both the petitioners retired. It is under such circumstances the instant writ petition is filed challenging Clause 6 of the OM dated 08.04.2008, and seeking further directions that they also be granted the benefit in terms with the said OM w.e.f. 2002. It is also seen that on an earlier occasion, a writ petition was filed in the year 2020 which was, however, withdrawn with a liberty to file afresh *vide* an Order dated 10.03.2003.

4. On the other hand, Ms. V. Suokhrie, learned Additional A.G. of the State of Nagaland, submits that the petitioners herein having retired even prior to the issuance of the OM dated 08.04.2008 cannot

challenge the said OM. She additionally submits that Graduate Teachers were not a part of Group–A, Group–B, Group–C or Group–D employees. They were kept separate taking into account that the Graduate Teachers were getting a higher salary. The learned Additional A.G. further submitted that it was only for the first time on 08.04.2008 the Government of Nagaland had extended the benefit of the Assured Career Progression Scheme to Graduate Teachers and in the meantime, as the petitioners have already retired, they could not now be allowed not only to challenge the said OM or be entitled to the benefits which were not a part of their service conditions or the Government policy during the time they were in service. She further submits that the petitioners neither challenged the OM dated 28.02.2002, wherein Graduate Teachers have been specifically excluded, nor have challenged the OM dated 08.04.2008 till in the year 2023, when the instant writ petition had been filed. She, therefore, submits that on the ground of delay and laches the petitioners are not entitled to any relief.

5. I have heard the learned counsel appearing on behalf of the petitioners as well as the learned Additional A.G., Nagaland, appearing on behalf of the respondents and have given due and anxious consideration to their respective submissions.

6. It is an admitted fact that the petitioners herein have retired in the year 2005 and 2007. It is also clear from the materials on record as well as the submissions that the petitioners did not at any point of time challenge the OM dated 28.02.2002, whereby Graduate Teachers have been excluded from the benefit of the Assured Career

Progression Scheme. The OM dated 08.04.2008 came into existence thereby granting benefits to Graduate Teachers for financial upgradation in terms with the Assured Career Progression Scheme. It was categorically mentioned in Clause 6 that the said OM dated 08.04.2008 was to be prospective in operation. There is no challenge to the said OM till the year 2023 when the instant writ petition was filed and under such circumstances, almost 15 (fifteen) years have passed by. This Court, therefore, is of the opinion that the instant writ petition, therefore, suffers from delay and laches.

7. On merits also, this Court duly takes note of the OM dated 28.02.2002 as well as the OM dated 08.04.2008. It would be seen that these OMs are policies adopted by the Government for the purpose of removing stagnation due to lack of adequate promotional avenues. Nothing has been shown that the Graduate Teachers fell within the purview of Group-A, Group-B, Group-C or Group-D of the OM dated 28.02.2002. Under such circumstances, it would be seen that the State of Nagaland have only extended the benefit of the OM dated 28.02.2002 to Group-B and Group-C employees and not to Group-A and Group-D employees. It is further seen that by the OM dated 08.04.2008 the State of Nagaland have also extended the benefit of the Assured Career Progression Scheme to Graduate Teachers under the Department of School Education. Taking into account that this is a policy decision on the basis of which the respondent authorities have issued the OM, thereby granting the benefits, the said OM dated 08.04.2008 cannot be made retrospective by this Court, more so, at the instance of the petitioners who have

retired even before the OM dated 08.04.2008 had come into the picture. Therefore, on merits also, the petitioners herein are not entitled to the reliefs so sought for. Accordingly, this Court finds no merit in the writ petition for which the instant writ petition stands dismissed.

8. With the above observations and discussions, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant