

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.369 of 2023

1. Ningthoujam Loli Singh aged about 68 years S/o (L) N. Brajamani Singh of WahengbamLeikai, Imphal, PO & PS Imphal, Imphal West District, Manipur, Pin-795001.
2. Rajkumar Sanatombi Singh aged about 62 years, S/o Rajkumar Madhusana Singh of SingjameiMayengbamLeikai, P.O & P.S Singjamei, Imphal West, District, Manipur, Pin 795001.
3. Mangkhojang Haokip aged about 50 years, S/o Henkholet Haokip of Leibolkholen P.O & P.S New Keithelmanbi, Manipur, Pin 795120.
4. Md. Akebudin aged about 63 years, S/o Emamudin of Khomidok P.O & P.S Heingang, Imphal East District, Manipur, Pin 795114.
5. GolmeiShankokna aged about 62 years, S/o GolmeiKhuidilung of Noney, P.O & P.S Noney, Tamenglong District, Manipur, Pin 795141.
6. Y. Yaiskul Singh aged about 63 years, S/o (L) Y. Kala Singh of Kakwa Lamdaibung, P.O & P.S.Singjamei, Imphal West District, Manipur, Pin 795008.
7. Laishram Ibemnao Chanu aged about 51 years, S/o Laishram Thoiba Meitei of keishamthongElangbamLeikai, P.O & P.S Imphal, Imphal West District, Manipur, Pin 795001.
8. A. Kala Singh aged about 69 years, S/o (L) A. Thambal Singh of Samurou Awang Leikai Bazar, P.O & P.S Wangoi, Imphal West District, and Manipur Pin 795008.

...Petitioners

– Versus –

1. The Principal Accountant General (A/E), Babupara, Manipur, P.O & P.S Imphal, Imphal West District, Babupara, Pin 795001.
2. The State of Manipur represented by the Principal Secretary (Finance), Old Secretariat, Babupara, Government of Manipur, P.S & P.S Imphal, Pin 795001.
3. The Commissioner of Excise, Lamphelpat, Government of Manipur, Imphal West District, P.O & P.S Lamphel, Pin 795004.

.... Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner	:	Mr. S. Rupachandra, Sr. Adv.; Md. Sahidur Rahman, Advocate
For the Respondents	:	Mr. Shyam Sharma, GA & S. Suresh Adv.
Date of Hearing	:	10.04.2024/16.12.2024
Date of Judgement/Order	:	20.01.2025

J U D G E M E N T & O R D E R
(CAV)

[1] Heard Mr. S. Rupachandra, learned senior counsel for the petitioner, Mr. Shyam Sharma, learned GA for the State respondents and Mr. S. Suresh, learned counsel for respondent No.1.

[2] The petitioners who are presently working and retired employees of the Department of Excise, Government of Manipur have filed the present writ petition praying for issuance of direction thereby directing the respondents, more particularly respondent No.1 to implement the order dated 30.07.2020 issued by respondent No.2 in compliance of the order dated 19.08.2019 passed in WP(C)No.636 of 2019.

[3] It is the case of the petitioner that prior to the year 2006, the petitioners were enjoying a higher scale of pay in their different posts. However, the Revision of Pay 2006 and 2010 have reduced the pay scales of the petitioners. The notification dated 28.12.2006 specifies that the scale enjoyed by the petitioners shall be personal to them till the incumbents ceases to hold the post or till the next revision of pay takes place whichever is earlier. It is stated that the next revision of pay of the petitioners takes place on 05.05.2010 wherein their respective scales are shown as the scales shown by the ROP, 2006. Being aggrieved, some of the petitioners approached the Hon'ble High Court by filing W.P. (C) No.1090 of 2006 etc. and vide order dated 17/12/2008, the Hon'ble Court directed to grant the benefits of ACP I & II to the incumbents therein. Accordingly, in compliance of the Hon'ble Court's Order, the authority extended the benefits of ACP-I & II to the incumbents with effect from 01.07.2005.

[4] It is stated that from the petitioners who retired from service, certain amounts have been deducted from their retirement benefits. Therefore, the present petitioners along with others petitioners approached the Hon'ble Court by way of filing writ petition being WP(C)No.636 of 2019 and the said writ petition was disposed of on 19.08.2019, thereby directing the petitioners to submit a fresh representation and the authority to dispose of the same within a period of 4(four) months. Accordingly, the petitioners submitted their representation on 18.10.2019. However, the authorities have failed to consider and dispose of the said representation and as such the petitioners filed Contempt Case (C) No.67 of 2020. During the pendency of the Contempt Case (C) No.67 of 2020, the authority issued an order on 30.07.2020 thereby granting the benefits as claimed by the petitioners and the Contempt Case (C) No.67 of 2020 was closed on 25.01.2022.

[5] It is further stated that despite existence of the order dated 30.07.2020 and Hon'ble Court's order dated 25.01.2022, the office of the Principal Accountant General (AE) Manipur has not implemented the same and as such the petitioners counsel served a legal notice on 31.01.2022 to this office stating that in case, the said order is not implemented, Criminal Contempt Case shall be filed as instructed by the petitioners. The counsel also sought the consent of Advocated General on 08.03.2022 & 16.05.2022. However, no reply

of the same was given. Again, the petitioners filed Contempt Case (Cril) No.2 of 2022 and the same was dismissed on 13.03.2023 on the sole ground that the consent of the Advocate General was not obtained. Thereafter, the petitioners also submitted a representation on 30.03.2023 thereby requesting the Respondent No.1 to comply with the order dated 30.07.2020. It is pointed out that the office of the respondent Nos. 2 & 3 have no role in the present case as they have already done their part. However, the office of the respondent No.1 is yet to be directed to implement the order dated 30.07.2020. Hence, the writ petitioners have approached this Court by way of filing the present writ petition with the above mentioned prayers.

[6] In a written submission it is submitted by the learned counsel for the petitioner that the grounds praying for a direction from this Hon'ble Court to implement Order dated 30/07/2020 in the present writ petition are :-

(i) Whatsoever the scale pay enjoyed by the petitioners had been protected as personal in compliance of the order dated 30/07/2020 and as such there is no question warranting to discuss ROP, 2006 or M.S (ROP) 2010.

(ii) For the reason that the said Contempt Case (C) No. 67 of 2020 was closed on the basis of the compliance order. Both the compliance order dated 30/07/2020 and order dated 25/01/2022 closing the contempt case attained

finality and cannot be reopened. To support it, the law as rendered by Hon'ble Apex Court as reported in 1963 SUPPP(2) SCR 616,para 5 is reproduced as under:-

" Para 5...Where, therefore, the question is embodied in the Judgment which is followed by a decree finality must naturally attach itself to it in the sense that it is no longer open to question by either party except an appeal, review or revision petition....!.

(iii) Further submitted by the petitioners that order dated 30/07/2020 merged with/ upheld by contempt court on 25/01/2022 and the executive cannot sit over the judicial order. The Hon'ble Apex Court held in Union of India - Vs- K.N. Shankraappa as reported in 2001 (1) SCC 582 in para No.7 as under

"Para 7 ...the executive cannot sit an appeal or review or revise a judicial order..."

(iv) Further, it is the case of the petitioners that the party cannot take different stands in a case. The Respondent No.2 cannot issue the letters dated 05/10/2021 and 10/05/2022 respectively to C.A of Respondent No.1) contrary to the order dated 30/07/2020. In this regard the Hon'ble Supreme Court has rendered in (2018) 10 SCC 707 Suzuki Parasrampuria Suitings Pvt. Ltd -Vs- Official Liquidator of Mahendra Petro Chemical Ltd. in its para No.12 as under

“Para 12 A litigant can take different stand at different times but cannot take contradictory stand in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands..”

(v) It is the case of the petitioners that the compliance order dated 30/07/2020 and Court's order dated 25/01/2022 were never challenged before any forum and have attained finality, if it is not implemented, the provision of amount of pension as 50 percent of the total emolument as enshrined in Rule 49 of CCS pension Rules may be infringed.

(vi) The deducted amounts from the petitioners have been refunded during the pendency of Contempt case No. 67 of 2020 and as such fixing of other scale by applying Rule 3(3) MS (ROP) 2010 does not arise as the pay enjoyed by the petitioners have already been protected as personal and also by judicial orders. In other words, the respondents have no case now to deny the petitioners the pay as contained in the compliance order. Contempt case was closed wherein the respondents are party and it has attained finality.

(vii) The petitioners are not required to challenge the letters dated 05/10/2021 and 10/05/2022 which are issued/written without supersession of compliance order dated 30/07/2020 and order dated 25/01/2022 closing the Contempt case

(C) 67 of 2020 which attained finality. Accordingly, the petitioners only pray for implementation of the compliance order dated 30/07/2020.

[7] The respondent in the written submission submitted that filing of present Writ Petition for seeking implementation of the speaking order dated 30-07-2020 is misconceived in as much as there is nothing remain to implement after allowing to enjoy the financial up-gradation under ACP Scheme vide various orders viz, order dated 8th November 2007, 15th January 2010 ,18th October, 2010, 6th October 2016 and its Corrigendum dated 18th December 2017 by refunding the deducted overpayment amount of pay and allowances due to drawal of higher pay earlier.

[8] Further, it is submitted that in implementation of Manipur Services (Revised Pay) Rules, 2010, the pay fixation of all categories/ posts as prescribed under the Manipur Services (Revised Pay) (2nd Amendment) Rules, 2006 notified by the Finance Department (PIC), Government of Manipur vide Notification No.1/12/2006-FD(PIC) dated 28-12-2006 would be followed (downgraded scale) while fixing pay level in the revised scale under the Manipur Services (Revised Pay) Rules, 2010.

[9] It is also submitted that Pay fixation in the downgraded scale has to be done afresh w.e.f. 01-01-1996 to arrive at the pay level as on 01-01-2006 under the Manipur Services (Revised Pay) Rules, 2010. And, as soon as the

incumbent concerned ceases to hold the post or till the next revision of pay scale takes place, the personal pay scale(s) shall be no more in existence and the emoluments for the purpose of next revision of pay scales, if any, shall be determined with reference to pay to be regulated in the scale of pay specified in Col. (4) against that post in Col.(2).

[10] It is also submitted that the responsibility relating to pension payment and fixation of substantive scale of pay to be calculated/fixed lies with the concerned Department of the State Government. This has been communicated to the petitioners vide letter No.Pen-II/ 1-Excise/ 2020(Pt.) dated 19-04-2023 by way of disposal of the representation dated 30-03-2023.

[11] Respondent No.1 also submitted that If the petitioners have any legal grievance against the fixation of pay in terms of Revision of Pay Rules/ instructions/ clarification/decision/speaking order, it is for them to challenge the Revision of Pay Rules/ instructions/ clarification/ decision/speaking order before the appropriate forum.

[12] The respondent also submitted that for the purpose of pension and other retirement benefits, emolument means the basic pay as defined in FR 9(21)(a) only which does not include Personal Pay. Thus, any claim of pension based on personal pay is against the mandate of the Pension Rules."

[13] State respondents did not file any counter affidavit. However, Mr. Shyam Sharma, learned GA produced a copy of parawise comment received by him from the administrative department and the same disclosed that State respondents were/are not required to do anything after issuing order dated 30/07/2020 and the contempt case was closed accordingly.

[14] Mr. S. Rupachandra, learned senior counsel for the petitioners submits that after the issuance of order dated 30/07/2020 by the State respondents and closure of the contempt case, the stand of the respondent No.1 to the effect that the benefits given to the petitioners by judicial order and compliance order would no longer be effective after new RoP, has no substance. It is pointed out that the respondent No.1 is also a party in all these litigations and without filing appeal or review, the effect of the judicial order cannot be wiped out by plea of new RoP. On the other hand, Mr. S. Suresh, learned counsel for the respondent No.1 has pointed out that the personal pay of the petitioners would no longer survive after the enforcement of new RoP.

[15] This Court is conscious of the fact that the personal pay will no longer be effective upon promotion, retirement or implementation of new pay revision. However, it cannot be ignored of the fact that the order issued by the executive in compliance of judicial order will not be wiped out by any subsequent event, unless the same is modified or revoked in appeal, revision

or review. It may be noted that all the parties herein, including respondent No.1 were parties in the litigation before this Court and the compliance order was as per court's direction. The general rule of personal pay vis-à-vis implementation of new pay revision will not be applicable in the peculiar facts of the present case, as the personal pay protection enjoyed by the petitioners is in compliance of judicial order. Until and unless the judicial protection is removed, normal principle of personal pay will not be applicable.

[16] Since the order dated 30.07.2020 issued by the respondent No.2 in compliance of order dated 19.08.2019 passed in WP(C) No. 636 of 2019 and recorded in closing of the Contempt Case (C) No. 67 of 2020 vide order dated 25.01.2022, this Court does not find any merit in the submission of the respondent No.1 that the relief granted by this Court earlier cannot subsequently be given to the petitioners due to the operation of new RoP. Accordingly, writ petition is allowed.

JUDGE

FR/NFR

John Kom

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