

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH).**

SHILLONG BENCH

W.P. (C) No. (SH) 194 of 2009

The Ex-MDCs Welfare Association Dakopgre,
PO Araimile, PS Tura, West Garo Hills District,
Meghalaya represented by its Secretary,
Shri Oliver G Momin

::: Petitioners

-Versus-

1. The State of Meghalaya,
Represented by the Commissioner & Secretary,
District Council Affairs, Shillong.
2. The Garo Hills Autonomous District Council,
Represented by its Executive Committee, Tura.

::: Respondents

**BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI**

For the Petitioners : Mr AS Siddique, Adv.
Mr R Kar, Adv.
Mrs S Bhattacharjee

For the Respondents : Mr ND Chullai, Sr GA
Mr S Dey, GHADC

Date of Hearing : 15.12.2010

Date of Judgment : 04.02.2011

JUDGMENT AND ORDER

Aggrieved by the refusal/inaction of the respondent authorities for implementing the provisions of the Garo Hills Autonomous District Council (Members' Pension) Act, 2007, the petitioner-association is filing this writ petition for appropriate relief.

2. The facts are hardly in dispute. The association under the name and style of “ Ex-MDCs Welfare Association”, constituted by the former Members of the Garo Hills Autonomous District Council to promote and protect their welfare, is a society under the Meghalaya Societies Registration Act, 1983 vide the Certificate of Registration dated 09.01.2009, which is annexed at Annexure-I to the writ petition. Admittedly, the Garo Hills Autonomous District Council (“the District Council” for short) is one of the Autonomous District Councils of Meghalaya constituted under the Sixth Schedule to the Constitution of India. On 02.04.2007, the District Council enacted the Garo Hills Autonomous District Council (Members’ Pension) Act, 2007 (“the Act” for short), which received the assent of the Governor of Meghalaya on 11.07.2007 was published in the Gazette of Meghalaya on 02.04.2007. Section 1(b) of the Act provides that the Act shall be deemed to have come into force with effect from the date of publication in the Gazette. Section 4 is crucial for our purpose, which is in the following terms:

“4. Pension payable to Members :- (1) with effect from the commencement of this Act, there shall be paid a pension to every person who served as Member of District Council and whose term of Office is not less than five years whether continuous or not.

Provided that in the event of early holding of elections where any person has served as Member for a period falling short of five years shall always be deemed to have served for a complete period of five years if such period falls short by not more than three months.

(2) In computing the number of years for the purpose of Sub-Section (1), the period during which a person has served as Chief Executive Member, Deputy Chief Executive Member, Executive Member, Chairman or Deputy Chairman of the District Council or as Leader of

Opposition of the District
account.

Council shall also be taken into

3. It is the contention of Mr R Kar, the learned counsel for the petitioners, that a combined reading of Section 1(b) and Section 4(1) of the Act will show that on the commencement of the Act, a vested right has accrued to the Ex-MDCs of the Garo Hills Autonomous District Council to receive pension once their term of Office is not less than five years whether continuous or not and that members of the petitioner-association cannot be denied of such right to pension. Mr S Dey, the learned counsel for the Garo Hills District Council, frankly concedes the right of the Ex-MDCs of the District Council to receive the pension if they are otherwise eligible under the provisions of Section 4(1), but contends that payments cannot be made as yet as the framing of the rules is yet to be completed due to suspension of the District Council, which is now run by the Administrator appointed by the Government of Meghalaya. He assures this Court that the matter will be finalized once the District Council is revived. The stance taken by the State respondents in their affidavit-in-opposition is that the rules framed under Section 7 of the Act are yet to be approved by the District Council and assented to by the Governor and that the same Government returned the draft rules for some correction vide the letter bearing Memo No.DCA/37/2009/12, dated 14.05.2009.

4. Section 4(1) of the Act says that with effect from the commencement of the Act, there shall be paid to every person who served as Member of the District Council and whose term of Office is not less than five years whether continuous or not. It is clear from Section 1(b) of the Act that the Act shall be deemed to have come into force with effect from 02.04.2007 when the Act came to be published in the Gazette of

Meghalaya. In my opinion, a statutory right is conferred upon the Ex-MDCs of the Garo Hills Autonomous District Council to draw pension at the rates stipulated in Section 6 of the Act if they are otherwise eligible to receive the pension. There is no dispute that the Ex-MDCs represented by the petitioners-association are eligible for drawing the pension. Correspondingly, a statutory obligation is cast upon the District Council to pay the pension to the members represented by the petitioner-association. The fact that the rules for implementing the provisions of the Act have not been framed is an entirely different proposition and cannot be a ground for denial of pension altogether. As pointed out by the learned counsel for the District Council, it has been due to supersession of the District Council that the rules could not be completed as yet.

5. The law is now well settled that a writ of mandamus can be issued by a writ court when a legal duty is imposed on the authority in question and the petitioner has a legal right to compel the performance of this duty. The existence of a legal right in the petitioner and corresponding legal duty on the public authorities are conditions precedent for issuing a writ of mandamus. The performance of duty should be imperative and not discretionary. As already found by me earlier, the provision of Section 4(1) of the Act confers a legal right upon the Ex-MDCs of the Garo Hills District Council to receive pension and conversely imposes a legal duty upon the District Council to pay the pension to them on their fulfilling the eligibility laid down therein. On a plain reading of the provisions of the Act, it is obvious that no discretionary power is given to the respondent authorities to deny the pension to the Ex-MDCs if they or any of them are otherwise eligible for the pension. There is, therefore, no doubt that the petitioner-association is entitled to the relief claimed in the writ petition.

6. Resultantly, this writ petition is allowed. Let a writ of mandamus issue directing the respondent authorities to frame the rules for implementing the provisions of the Garo Hills Autonomous District Council (Members' Pension) Act, 2007 within two months from the date of revival of the District Council by the State respondents or otherwise within two months of the constitution of the new District Council, should be any fresh election in the meantime and thence pay the pension to all the eligible Ex-MDCs of the District Council represented by the petitioner-association within three months thereafter. The parties are, however, directed to bear their respective costs.

JUDGE

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