

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

DATED: 11.09.2012

CORAM

HON'BLE MR. JUSTICE PERMOD KOHLI, CHIEF JUSTICE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

W. P. (C) No. 24 of 2012

Mr. K. N. Sharma, Ex-Chairman, Sikkim Public Service Commission, Gangtok Permanent Resident of Tadong Daragoan, P.O. Tadong & P.S. Gangtok, East Sikkim.

.... Petitioner.

- versus -

- State of Sikkim,
 Through the Chief Secretary,
 Government of Sikkim,
 New Secretariat,
 Development Area,
 Gangtok.
- The Secretary,
 Department of Personal A. R. & Training,
 Public Grievances, Career Options,
 Employment Skill Development and
 Chief Minister's Self Employment Scheme,
 Government of Sikkim,
 New Secretariat, Development Area,
 Gangtok.



3. Sikkim Public Service Commission, Through the Secretary, Sikkim Public Service Commission, Below Police Head Ouarter, Gangtok.

..... Respondents.

For Petitioner

Mr. A. K. Upadhyaya, Sr. Advocate with Ms. Binita Chhetri and Ms. Dawa Jangmu Sherpa, Advocates.

For State-respondents :

Mr. J. B. Pradhan, Addl. Advocate

General.

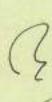
For SPSC-respondent No.3: Mr. J. K. Kharka, Advocate.

JUDGMENT

Kohli Permod, CJ

The petitioner, a former Secretary, Land Revenue Department, Government of Sikkim, came to be appointed as a Member, Sikkim Public Service Commission on his superannuation from the State service vide Notification No.157/GEN/DOP dated 02.11.2007 (Annexure P-1) from the date of assumption of the charge for a period of 6 (six) years or till he attains the age of 62 years, whichever be the earlier.

2. Sikkim Public Service Commission (hereinafter to be referred as Commission) had/has the strength of two





Members and one Chairman as prescribed under the Sikkim Public Service Commission (Member) Regulations, 1983 framed by the Governor of the State under Article 318(a) of the Constitution of India. In the year 2009, the then Chairman of the Commission, namely, Shri Dorji Dadul demitted office on attaining the age of superannuation with effect from 05.01.2009. This left the Commission with the petitioner as its lone member. Consequently, the petitioner had to discharge the duties of both Chairman and Member of the Commission. As no regular Chairman was appointed for considerable period, the petitioner was appointed as Officiating Chairman vide Notification No.244/GEN/DOP dated 06.04.2010 (Annexure P-3) until further orders. Vide Office Order No.4175/G/DOP dated 23.02.2011, salary of the petitioner both as Member and Chairman of the Commission was notified. The petitioner demitted the office as Chairman on 07.03.2011 on completion of his tenure.

3. It seems that the petitioner was not granted various retiral benefits as Member and Chairman of the Commission. Petitioner, accordingly, made certain queries with regard to his entitlements including the admissibility of the Special Duty Allowance (North-East Allowance) through RTI. This forced the petitioner to serve legal notice on 27.02.2012 through his counsel claiming various retiral





4.

benefits including the North-East Allowance. Some benefits were paid to the petitioner before the filing of this petition, whereas some of the benefits were released during the pendency of this petition except the North-East Allowance. Thus the surviving relief in the present petition is only in respect to claim of North-East Allowance.

The Sikkim Public Service Commission is

constitutional body created under Article 315 of the Constitution of India. The appointment and terms of office of members including the Chairman are contemplated under Article 316 of the Constitution. In the case of Public Service Commission for a State, appointment of Chairman and its members is to be made by the Governor of the State. However, conditions of service of members and staff of the Commission are to be regulated by regulations framed under Article 318 of the Constitution of India. The Governor of Sikkim in exercise of power vested in him under Article 318 of Constitution framed the Sikkim Public Service the Commission (Member) Regulations, 1983 as notified vide Notification No. 9(2) Home/82/3557 dated 13.01.1983 (Annexure P-4). Regulation 3 fixes the strength of Members for the State Commission at three comprising of a Chairman and two Members. Regulation 4 prescribes the salary of the Chairman and its Members, whereas Regulations 6 and 7





make provisions for payment of leave encashment. Regulations 8, 9 and 10 entitle a Member of the Commission to Pension, Gratuity and General Provident Fund. Regulation 13 is a residual provision and makes the Rules applicable to the Chief Secretary to the Government of Sikkim and Secretary to the Government of Sikkim applicable to the conditions of service of the Chairman and a Member of the Commission respectively, where no express provision is made under these Regulations. For the purposes of the present petition, Regulation 13 is the only relevant provision, interpretation whereof is called for. The same is reproduced hereunder: -

"13. Matters in which no provision is made.— The conditions of service of Chairman or a Member for which no express provision has been made in these regulations shall be determined by the rules and orders for the time being applicable to the Chief Secretary to the Government of Sikkim and Secretary to the Government of Sikkim, respectively.

Provided that nothing in these amendments shall have effect so as to give a person who is the Chairman or a Member less favourable terms in respect of any matter aforesaid, than those to which he would be entitled as a Chairman or a member, as the case may be, on the date of his appointment as such."

As noticed hereinabove, the only relief requiring determination in the present petition is with regard to payment of the North-East Allowance. This benefit is sought for on the basis of residual provisions contained in Regulation 13 claiming parity with the Chief Secretary of the State. It is





contended by Mr. A. K. Upadhyaya, learned Senior Advocate appearing for the petitioner that North-East Allowance is a special allowance payable in the State of Sikkim to the Chief Secretary of the State and the Chairman of the Commission being equal in status, petitioner by virtue of Regulation 13 is entitled to such allowance for the services rendered by him as the Chairman of the Commission.

denied the claim made on behalf of the petitioner and also disputed and contested his entitlement for the North-East Allowance inter alia contending that the North-East Allowance is payable only to a Member of the All India Service belonging to North-East State cadre and who is posted in the State. To support the plea, reliance is placed upon Office Memorandum dated 10.02.2009 (Annexure R-7) and Office Memorandum dated 29.08.2008 (Annexure R-8). The relevant extracts of these Office Memorandums are re-produced hereunder: -

"F. No.14017/4/2005-AIS(II)
Government of India
Ministry of Personnel, Public Grievance and Pension
Department of Personnel and Training

North Block, New Delhi - 110001 Dated 10th February, 2009

Office Memorandum

Subject: Additional monetary incentive to All India Service officers belonging to the North-East Cadres.

The undersigned is directed to refer to the subject cited above and to say that the question of granting





additional monetary incentive to officers belonging to North-East Cadres of the All India Services has been engaging the attention of the Government for some time. Accordingly, it has now been decided to grant a special allowance to the officers belonging to North-East Cadres of All India Services who are working in the North-Eastern Region. The allowance will be called "Special Allowance for officers belonging to North-East Cadres of All India Services" and will be payable to the officers belonging to North-East Cadres of All India Services while they are actually working in the North-Eastern Region @ 25% of their basis pay in addition to other allowances presently payable to them. These orders will take effect from the date of their issue.

This issues with the concurrence of Department of Expenditure (Ministry of Finance).

> Sd/-(Harjot Kaur) Director (Services)"

"No.11(5)/2008-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 29th August, 2008.

OFFICE MEMORANDUM

Subject: Special (Duty) Allowance for Civilian Employees of the Central Government serving in the North Eastern Region (including Sikkim and Ladakh – Recommendations of Sixth Central Pay Commission.

Special (Duty) Allowance is admissible in North Eastern Region @ 12.5% of the basic pay as prescribed in Para 2(iii) of this Ministry's O.M. No.11(2)/97-E.II(B), dated 22.7.1998 as amended from time to time, to those employees who are posted from outside the region having 'All India Transfer Liability'. In partial modification of O.M. dated 22.7.1998, and O.M. No.11(5)/97-E.II(B), dated 29.5.2002, on recommendations of Sixth Central pay Commission, the President is now pleased to decide that this allowance shall be admissible to the Central government employees @ 12.5% of (the revised Basic Pay + NPA where applicable) irrespective of whether the transfer (including on initial appointment) is from outside the North Eastern Region or from another area of that region. The existing condition that employees should have All India Transfer Liability has also been dispensed with.

Sd/(Madhulika P. Sukul)

Joint Secretary to the Government of India"

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Memoranda's, it is sought to be argued that the benefit of North-East Allowance is available only to a Member of All India Service belonging to any of the North-Eastern State cadre and posted therein. It is submitted that the petitioner prior to his appointment as Member/Chairman of the Sikkim Public Service Commission was not a Member of All India Service as defined under the All India Services Act, 1951 and thus, he is not entitled to such allowance notwithstanding his appointment as Chairman of the Sikkim Public Service Commission.

(2)

The controversy in the present petition hinges upon the interpretation of Regulation 13 of the 1983-Regulations. Indubitably, the regulations framed under Article 318 of the Constitution of India are statutory in nature and are binding upon the parties. It is admitted position of the parties that the petitioner on his superannuation from the State service was appointed as the Member of the Sikkim Public Service Commission and thereafter, served as its Chairman initially without any formal order with effect from 08.01.2009 and thereafter, in Officiating capacity pursuant to the Notification dated 06.04.2010 till he demitted his office as the Chairman



of the Commission on 07.03.2011. The regulations noticed hereinabove provide for payment of salary, leave encashment, gratuity and pension. The regulations do not envisage the payment of special allowance/North-East Allowance obviously for the reason that when the regulations were framed, perhaps this allowance was not payable. However, Regulation 13 clearly provides for equation of the conditions of service of Chairman of the Commission to that of the Chief Secretary of the State in respect to all such matters for which there is no express provision under the regulations. It signifies that if any benefit other than the prescribed under the regulations is available to the Chief Secretary of the State as may be determined by the Rules and Orders for the time being applicable to him, the Chairman of the Commission would be entitled to such a benefit. In other words, any such rule or order granting any service benefit to the Chief Secretary shall mutatis mutandis apply to the Chairman of the Commission as conditions of his service.

9. The contention of Mr. J. B. Pradhan, learned Addl.
Advocate General appearing on behalf of the respondentState is that the North-East Allowance is only payable to the
All India Service members belonging to the State cadre
posted in the State and not to the Chairman of the





Commission is bereft of any logic or legal sanctity. A bare perusal of Regulation 13 wherein unequivocal and unqualified emphasis is on equation of conditions of service of the Chairman with the Chief Secretary of the State in respect to all matters for which the regulations are silent. Proviso to Regulation 13, however, protects the conditions of service of the Chairman or Member on appointment as Chairman/Member if any of the conditions of service under Regulation 13 is less favourable to him. Its natural corollary is that only advantageous conditions of service envisaged under Regulation 13 are applicable to the Chairman/Member. Thus, if any benefit is available to the Chief Secretary under any rule or order, the Chairman shall be entitled to such benefit if not disadvantageous subject to regulations framed under Article 318. It is not in dispute that the Chief Secretary of the State is entitled and is receiving North-East Allowance by virtue of the Office Memoranda's (Annexure R-7 and R-8). This fact is even admitted by Pradhan. Hence in absence of any express provision under the regulations disentitling him, the petitioner is entitled to North-East Allowance under the same rule and order, i.e. Office Memoranda's (Annexure R-7 and R-8) as are applicable to the Chief Secretary by virtue of parity of conditions of service with that of the Chief Secretary of the State. Any





other interpretation would impinge upon and do violence to the provisions of Regulation 13.

10. For the above reasons, this petition is allowed. The respondents are directed to grant North-East Allowance as receivable by the Chief Secretary of the State to the petitioner for the period he has served as a Chairman of the Sikkim Public Service Commission. The benefit be calculated and paid to the petitioner within a period of 3 (three) months, failing which the petitioner shall be entitled to the interest @ 6% till the amount is actually paid.

In the circumstances, no order as to costs.

(Permod Kohli) Chief Justice 11.09.2012

(S.P. Wangdi) Judge 11.09.2012

Approved for Reporting: Yes/No Internet: Yes/No