

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:  
TRIPURA:MIZORAM & ARUNACHAL PRADESH)  
SHILLONG BENCH

W.P.(C) No. 287(SH) of 2010.

Smti Pravabati Choudhury  
w/o Shri Sudhendu Chowdhury  
C/o Shri SK Roy Choudhury  
“Ramghar”  
Holy Ground Road,  
Losimai Lane Laithumkhrah,  
Shillong-11,  
District East Khasi Hills,  
Meghalaya.

: Petitioner

versus

1. The State of Meghalaya  
represented by its Secretary,  
Meghalaya Civil Secretariat Building,  
Shillong.

2. The Secretary to the Govt. of  
Meghalaya, Department of  
Education, Meghalaya Civil Secretariat  
Building, Shillong.

3. Director of Higher & Technical  
Education, Govt. of Meghalaya,  
Additional Secretariat Building  
Shillong (now Bifurcated)

4. Director of School Education &  
Literacy, Camel Back Road,  
Laitumkhrah, Shillong-3 for  
Primary Level to Secondary Level of  
School Education.

5. Inspector of Schools,  
East Khasi Hills,  
Mawkhar, Shillong-2.

6. Accountant General (A&E)  
Meghalaya, Shillong.

: Respondents

**B E F O R E**  
**THE HON'BLE MR JUSTICE T VAIPHEI**

For the petitioner : Mr R Choudhury,  
Mr SD Upadhaya, Advs

For the respondents : Mr H Kharmih, GA

Date of hearing : 08.02.2012

Date of judgment and order : 17.02.2012

**JUDGMENT AND ORDER**

Aggrieved by the refusal of the State-respondents to fix the pensionary benefits of the petitioner on the basis of the last pay drawable by her in the substantive post of Assistant Teacher of the K.J. National Government M.E. School, this writ petition is filed by her for appropriate reliefs.

2. The material facts of the case, as projected by the petitioner, may be noted at the outset. Following her absorption from the National Discipline Scheme of India, she joined K.J. National Government M.E. School, Mawkhar, Shillong on 9-3-1964 as Assistant Teacher. After utilizing her services in various capacities in the Education Department, she was permanently absorbed under the Government of Meghalaya with effect from 1-10-1972 vide the order dated 24-9-1991 issued by the respondent No. 5. In the year 1995, she was transferred to 61, Meghalaya Girls Bn. NCC, Shillong against the post of LDA in the lower pay scale of `1050-1735 plus allowances by giving her last pay protection (in the post of Assistant Teacher) vide the order dated 27-3-1995 issued by the respondent No. 5. At this stage, it may be noted that

she, after rendering 15 years of continuous and satisfactory service in same post of Assistant Teacher on 1-1-1987 with effect from 17-4-1964, she was allowed to draw her pay in the extended scale of pay of ` 1650-2360 with effect from 1-1-1987 as admissible under the Revision of Pay Rules, 1988. In other words, she was given protection of her last drawn pay in the extended pay scale of ` 1650-2360 when she joined the post of LDA 61, Meghalaya Girls Bn. NCC, Shillong on 27-3-1995 or nearabout that date. She was subsequently transferred to the Shillong Public School as UDA in the pay scale of ` 1375-2390/- vide the order dated 3-7-1996 of the erstwhile Director of Public Instructions, Government of Meghalaya. She retired from service on superannuation in the post of UDA in terms of the order dated 3-7-1996 from the Shillong Public School. It may be noted that on her transfer to the post of LDA in the year 1995, she was provisionally allowed by the NCC to draw the last pay of ` 2,110/- drawn by her as Assistant Teacher pending fixation of her pay by the Director of Public Instruction. However, some five years after her retirement, the respondent No. 3 issued the corrigendum dated 8-2-2005 directing that the office memorandum dated 27-3-1995 should be read as “[O]n her own request vide her letter dated 13-3-95” instead of “in the interest of public service” and “with pay fixation as admissible under the rules” instead of “with last pay protection” as appeared therein. The net effect of this corrigendum is that she was not allowed to draw her substantive pay at the rate which she would have drawn as Assistant Teacher from the period 1-4-95 to 30-9-2000. This is how this writ petition came to be filed by her questioning the legality of the corrigendum dated 8-2-2005.

3. The writ petition is opposed by the State-respondents as well as the Deputy Accountant General, who have now filed their respective affidavits-in-opposition. It is the case of the State-respondents that the writ petition is barred by laches inasmuch as the impugned order was passed as early as 8-2-2005. It is also the case of the State-respondents that the petitioner was transferred from the post of Assistant Teacher in the extended scale of pay of `1650-2360/- pm to the lower post of LDA in the NCC Office with the pay scale of `1050-1735/- pm on her own request vide his application dated 13-3-1995 and not in public interest; her pay for the post of Assistant Teacher at the rate of `2,110/- could not be protected as she herself applied for the lower post of LDA and her pay had to be regulated under FR-23(iii) as instructed by the Government vide its letter dated 18-8-2004. Therefore, she has to draw the maximum pay which has been fixed at `4,685/- otherwise she would have to draw as the initial pay the minimum of the time scale which is much less and lower than the one fixed at `1,735/-. According to the State-respondents, the order dated 20-9-2004 was passed due to the fact that the scale of pay of the petitioner in the post of LDA had reached the maximum of `1,735/- at the relevant point of time. It is pointed out by the State-respondents that the Government have taken steps to waive the burden of deduction of ` 76,219/- from the gratuity of the petitioner as the same cannot be linked with pay protection. The Deputy Accountant General in his affidavit points out that the pension of the petitioner was settled as per information furnished by the Directorate of Higher and Technical Education, Meghalaya and the service books and that the pension amounting to `2,590/- w.e.f. 1-10-2000 was fixed based on average emoluments arrived at during the

period of six months preceding her retirement, while the amount of `86,378/- admissible towards Death-cum-Retirement Gratuity was calculated based on her last pay ` 5,235/- drawn by her at the time of her retirement.

4. In her affidavit-in-reply, the petitioner contends that there is no delay in filing the writ petition inasmuch as the claim put forward by her can never be time-barred, and no third party right will also be affected even she succeeds in her writ petition. It is asserted by her that due to communal/ethnic tension at Shillong in the year 1984, she was unable to attend to her duties at K.J. National Government M.E. School located at Jaiaw; the then Deputy Inspector of Schools, Shillong had personally escorted her to the school on 9-4-1984 and directed her to attend his Office at Mawkhar, Shillong until further orders and to draw her pay and allowances from the school. One day, she was called to the Directorate of Public Instructions in which a proposal was made to transfer her to 61 Meghalaya Girls' BN, Shillong in the clerical post of LDA with full pay protection. Accordingly, her service was withdrawn from K.J. National Govt. M.E. School as Assistant Teacher with last pay protection and was placed at LDA at the disposal of 61, Meghalaya Girls' Bn NCC as temporary measure. Her service was again transferred in public interest to the Shillong Public School as Upper Division Assistant (UDA) from where she retired on 30-9-2000 on superannuation. As Assistant Teacher, she was borne on the pay scale of `1650-2360/-, which is even higher than the post of LDA as well as UDA; she was confirmed to the post of Assistant Teacher on 17-6-2004 vide the order at Annexure-IX to the writ petition. The subsequent order confirming her to the post of LDA or UDA is, therefore, of no

consequence. The impugned order, which was passed after ten years thereby taking away the protection of her last pay allowed to her in 1995 is arbitrary and is against the principles of natural justice.

5. Before proceeding further, some undisputed basic facts need to be noted. The first undisputed fact is that before the transfer of the petitioner to the post of LDA in the Office of Meghalaya Girls' Bn NCC, she was holding the post of Assistant Teacher in a substantive capacity at K.J. National Government M.E. School with a pay scale of `1,650-2,360/- whereas the post of LDA to which she had been transferred with effect from 27-3-1995 was carrying a far lesser pay scale of `1,050-1,735/- and that at the time of her retirement in the post of UDA also, the scale of pay of UDA was `1375-2,390/- per month, which was lower than the post of Assistant Teacher. Be that as it may, when she was transferred to the post of LDA, she was given protection of her last pay as she was obviously transferred "[I]n the interest of public service". It may at this stage be apposite to refer to this order of transfer, which is in the following terms:

“ O R D E R

**In the interest of public service Smti P. Choudhury, N.D.S.I., of K.J. National M.E. School is hereby transferred with immediate effect to 61 Meghalaya Girls' Bn. NCC, Shillong on the scale of pay of `1050-25-1175-30-1385-35-1735/- p.m. plus allowances with last pay protection vice Smti S.B. Chyne LDA promoted to the post of UDA.**

**Sd/- L. Roy  
Director of Public Instruction,  
Meghalaya, Shillong.”**

For better appreciation of the controversy, I may also reproduce below the impugned order dated 8-2-2005:

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## C O R R I G E N D U M

**In respect of the Transfer Order of Smti P. Choudhury, N.D.S.I., of K.J. National M.E. School to 61 Meghalaya Girls, Bn. NCC, Shillong issued under this office Memo No. ESTT/APT/12/93/31 dated 27-3-95, please read as follows:**

1. **“On her request vide her letter dated 13-3-95” instead of “in the interest of public service”.**
2. **“With pay fixation as admissible under the rules” instead of “with last pay protection” as appeared therein.**

**Sd/- B. Dhar,  
Director of Higher & Technical Education  
Meghalaya, Shillong.”**

6. A comparative reading of the contents of the two orders extracted above unmistakably conveys the idea that the order granting last pay protection to the petitioner was abruptly taken away some ten years thereafter thereby causing substantial financial loss to her in the form of her pension benefits. The justification put forwarded by the State-respondents is Meghalaya FR 23(iii), which says as follows:

**“(iii) When appointment to the new post is made on his own request under Rule 16(a)(ii) and the maximum pay in the time scale of that post is less than his substantive pay in respect of the old post, he will draw his maximum initial pay. Otherwise he will draw as initial pay the maximum of the time scale.”**

What the foregoing provision says is that if a Government servant is appointed/transferred to a lower post at his own request under FR 16(a)(ii), the maximum of the time-scale of which is less than the pay drawn by him in the higher post held regularly, shall draw that maximum as his initial pay. In the instant case, there is no evidence to show that the transfer of the petitioner from the post of Assistant Teacher to the lower post of LDA had been made on her request. The order dated 27-3-1995 did not say so. On the contrary, this order shows that her transfer had been made in the interest of public service by

giving last pay protection to her. This is also consistent with what she had stated in her application at Annexure-1 to the affidavit-in-opposition filed by the State-respondents wherein she expressly made a prayer to the effect that she be transferred to the N.C.C. Office with due protection of her pay and allowances. Having acted upon the transfer order dated 27-3-1995 with last pay protection, she accepted to join the lower post of LDA. This protection is sought to be withdrawn by the State-respondents some ten long years later by issuing the impugned order. In any case, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned therein and cannot be supplemented by affidavit or otherwise without first giving an opportunity of hearing to affected employee. In my opinion, there are also sufficient materials on record to come to the conclusion that the doctrine of *promissory estoppel* is attracted to this case. The State-respondents cannot resile from their promise of giving last pay protection to the petitioner and deprive her of her right to receive pensionary benefits on the basis of the last pay protection given to her by the transfer order dated 27-3-1995. The State-respondents are not expected to take hyper-technical view of the matter; the power of relaxation is always there under Meghalaya FR 3 to mitigate the hardship caused by the operation of FR 23(iii). It will now be most inequitable to revoke the last pay protection given to the petitioner in terms of the transfer order dated 27-3-1995. Had she known that such protection would not be available, she might not have agreed to forgo the higher pay by joining the post of LDA with lower pay.

7. The next contention of Mr. R. Choudhury, the learned counsel for the petitioner, is that the impugned order is an administrative action having civil consequences, namely, deprivation or reduction of her



pensionary benefits, which cannot be passed without first affording reasonable opportunity of hearing to the petitioner. According to the learned counsel, the impugned order is liable to be quashed for this reason alone. He relies on the decision of the Apex Court in **Bhagwan Shukla v. Union of India and others, (1994) 6 SCC 154** to buttress his contention. Countering the contention of the learned counsel for the petitioner, Mr. H. Kharmih, the learned counsel for the State-respondents, submits that the impugned order is passed in accordance with the provision of Meghalaya FR 23(iii), which does not contemplate the issuing of notice or of hearing the petitioner before issuing the impugned order inasmuch as such right is not incorporated in FR 23(iii). According to the learned State counsel, once an action is taken by the executive authorities under a particular provision of law, which does not contemplate prior notice to the employee, such action cannot be assailed on the ground of violation of principles of natural justice. In my judgment, the principles of natural justice must be observed by the public authorities before taking any administrative action having civil consequences unless the application of such rules are expressly, or by necessary implication, excluded by the statute in question. **Bhagwan Shukla** (*supra*) was a case where reduction of pay of the appellant was ordered on the ground of having been wrongly fixed initially: the Apex Court held that prior opportunity of hearing ought to have been afforded and that the order reduction of pay passed without affording opportunity of hearing to the appellant was violative of principles of natural justice.

8. It is finally contended by the learned counsel for the State that there is inordinate delay in approaching this Court, which itself is a ground for dismissing the writ petition. True, the impugned order was

issued in the year 2005, whereas the writ petition was filed by the petitioner only in 2010. However, it must be noted that the injury complained of by the petitioner is about deprivation of pensionary benefits, which is a continuing injury. Nor is third party's right being affected if the writ petition succeeds. Under the circumstances, there is no inordinate delay on the part of the petitioner in approaching this Court after about five years of issuing the impugned order. The legal position is explained by the Apex Court in **Union of India v. Tarsem Singh, (2008) 8 SCC 648** in the following manner:

*“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the right of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”*

9. For the reasons stated in the foregoing, this writ petition is allowed. The impugned order dated 8-2-2005 is hereby quashed. The State-respondents are, therefore, directed to fix the pension and gratuity of the petitioner on the basis of the last pay drawable by her in the substantive post of Assistant Teacher of K.J. National Government M.E. School with effect from 1-10-2000 when she retired from service

on superannuation and pay the same to her accordingly. The entire exercise of payment shall be carried out by the State-respondents within a period of two months from the date of receipt of this judgment.

JUDGE

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