

THE HIGH COURT OF MEGHALAYA

WP(C)No.66/2013

1. Meghalaya Sub-Ordinate Agriculture/Horticulture Technical Employees Service Association (MESAHTESA) represented by its Secretary Shri. Monesh N. Sangma, resident of Ladthlaboh, Jowai, West Jaintia Hills District.

2. Shri. Manphrang Nongkseh,
Son of (L) E. Lapang,
Resident of Syngku Village,
Ri Bhoi District, Meghalaya.

3. Shri. Jolsing Rani,
Son of (L) K. Syrlliang,
Resident of Lumdiengjri,
Shillong, Meghalaya.

4. Shri. Phestar Well Nongrum,
Son of L. S. Mawlong,
Resident of Lower Mawprem,
Shillong, Meghalaya.

5. Shri. M.K. Lynser,
Son of (L) Drak Malniang,
Resident of Laitumkrah,
Shillong, Meghalaya.

6. Shri. Prairis Shangdiar,
Son of I. Snaitang,
Resident of Jowai,
East Jaintia Hills District,
Meghalaya.

:::: Petitioner

-Vs-

1. The State of Meghalaya, represented by the
Commissioner & Secretary to the Govt. of Meghalaya,
Agriculture Department, Shillong.

2. The Secretary to the Govt. of Meghalaya,
Finance Department, Shillong.

3. The Director, Agriculture Department,
Govt. of Meghalaya, Shillong.

4. The Director,
Horticulture Department,
Govt. of Meghalaya, Shillong. :::: Respondents

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Petitioners : Mr. P Nongbri, Adv
For the Respondents : Mr. KP Bhattacharjee, GA
Date of hearing : **16.10.2014**
Date of Judgment & Order : **16.10.2014**

JUDGMENT AND ORDER (ORAL)

Heard Mr. P Nongbri, learned counsel for the petitioners and
Mr. KP Bhattacharjee, learned GA appearing for the State respondents.

2. The relief sought for in the present writ petition are (i) a direction to the State respondents to extend the benefits of Assured Career Progression Scheme (for short 'ACPS') to the members of the petitioner No.1-association on completion of 12 years and 24 years of service and (ii) a direction to the State respondents to remove the anomalies in pay scale of the members of the petitioner No.1-association.

3. At the very outset of hearing, the Court is making an observation that this Court has no expertise to decide and fix the pay scale of the Govt. employees; and the Govt. is the competent authority to decide the anomaly in the pay scale of the members of the petitioner No.1-association. However, at the very outset, it is made clear that the State respondents are duty bound to decide the representations filed by the members of the petitioner No.1-association praying for removing the anomalies in the pay scale of the members of the petitioner No.1-association.

4. The petitioner No.1 is an association formed by the employees of the Govt. of Meghalaya serving as SAS-III (Agricultural Demonstrators) and SAS-II (Assistant Agricultural Inspectors) under the Department of

Agriculture, Govt. of Meghalaya. It is stated that the petitioner No. 2 was temporarily appointed as SAS-III cadre vide order under Memo. AGRI (E)/DIR-165/81-82/54 dated 19.3.1982 and subsequently confirmed to the cadre of SAS II vide order under Memo. No. AGRI (E)/DIR-914 (A)/93-94/346 dated 1.12.1993 and is presently serving in the said post for more than 30 years. The petitioner No. 3 was temporarily appointed as SAS-III cadre vide order under Memo. AGRI (E)/DIR-165/83/Pt/157 dated 24.3.1984 and subsequently confirmed to the cadre of SAS II vide order under Memo. No. AGRI (E)/DIR-914 (A)/93-94/346 dated 1.12.1993 and is presently serving in the said post for more than 28 years. The petitioner No. 4 was temporarily appointed as SAS-III cadre vide order under Memo. AGRI (E)/DIR-165/84-85/118 dated 31.5.1985 and subsequently confirmed to the cadre of SAS II vide order under Memo. No. AGRI (E)/DIR-914 (A)/93-94/346 dated 1.12.1993 and is presently serving in the said post for more than 27 years. The petitioner No. 5 was temporarily appointed as SAS-III cadre vide order under Memo. AGRI (E)/DIR-229/93-94/20 dated 23.9.1993 and subsequently confirmed vide order under Memo. No. AGRI (E)/DIR-914(A)/PT/2003/185 dated 29.4.2004 and is presently serving in the said post for more than 19 years. The petitioner No. 6 was temporarily appointed as SAS-III cadre vide order under Memo. AGRI (E)/DIR-229/88/246 dated 6.1.1989 and subsequently confirmed vide order under Memo. No. AGRI (E)/DIR-914(A)/PT/93-94/346 dated 24.4.1995 and is presently serving in the said post for more than 23 years.

5. At present the Agriculture Demonstrators (SAS-III) are placed in pay scale of Rs.3100-70-3250-EB-80-4160-90-5060/-. It is also stated that there are no service rules in respect of SAS-II and SAS-III employees. The petitioners No.2-6 and also the other members of the petitioner No.1-association are stagnating at the stage of first entry in service and inspite of

serving a number of years at the initial entry point, they are not getting any further promotions. It is also stated that their counter parts in other departments like Forest Department and Soil and Conservation Department, Govt. of Meghalaya are promoted to the higher posts. In Para 4 of the writ petition, the petitioners pleaded that the minimum educational qualification for appointment as SAS-III is matriculation, and on selection, two years training course imparted by the department. A comparison with similarly situated employees in other departments would reveal that in the forest department, where also the minimum qualification for appointment as Forester (pay scale 3100-70-3520-EB-80-4160-90-5060) is matriculation, with a 11 months training course, the next promotion is as Forest Demonstrator (pay scale 3725-4625-EB-100-5065-110-6165) after 7 years of continuous service. The next promotional post for them is Forest Ranger (5300-150-6200-EB-160-7480-170-9180). Similarly in Soil Conservation department, where also the eligibility for appointment as Soil Conservation Demonstrator Jr. (pay scale 3170-70-3520-EB-80-4160-90-5060) is matriculation with 11 months training course, the first promotional avenue for them is to the grade of Soil Conservation Demonstrator Sr. (pay scale 3725-4625-EB-100-5065-110-6165) and the second promotional avenue is to the grade of Soil Conservation Ranger (pay scale 5300-150-6200-EB-160-7480-170-9180). Further, it is stated herein that the technical employees (Tractor/Power Tiller and Bulldogger Operator) serving in the same department (Agriculture Department) whose minimum qualification are non matriculate without any technical training are placed in the pay scale of Rs. 3100-70-3520-EB-80-4060-90-5060 and after 7 years of service are placed at a pay scale of 5300-150-6200-EB-160-7480-170-9180 higher than Assistant Inspectors. Whereas the petitioners having much higher qualifications are also placed in the same pay scale of Rs. 3100-70-3520-EB-80-4160-90-5060.

	Forest Deptt	Soil Conserv. Deptt	Agriculture Deptt
Second promotional Post	Forest Ranger 5300-150-6200-EB-160-7480-170-9180	Soil Conservation Ranger 5300-150-6200-EB-160-7480-170-9180	-NIL-
First promotional Post	Forest Demonstrator Sr. 3725-4625-EB-100-5065-110-6165	Soil Conservation Demonstrator Sr. 3725-4625-EB-100-5065-110-6165	Assistant Agri. Inspectors 3725-4625-EB-100-5065-110-6160
Initial Appointment	Forester (3100-70-3520-EB-80-4160-90-5060)	Soil Conservation Demonstrator Jr. 3170-70-3520-EB-80-4160-90-5060	SAS-III (Agricultural Demonstrator) 3100-70-3520-EB-80-4160-90-5060

6. The members of the petitioner No.1-association were working as SAS-III having a scope of only one promotion (promotion to SAS-II) in the entire service career. The Govt. of Meghalaya vide OM No. F(PR)-76/2009/54 dated 22.02.2010, prepared the Assured Career Progression Scheme for the employees, who had been stagnated in the same posts for more than 12 years. Copy of the said Office Memorandum dated 22.02.2010 i.e. the Assured Career Progression Scheme is available at Annexure-15 to the writ petition. Under that Office Memorandum dated 22.02.2010, the ACPS for the State Govt. employees and benefits there-under, shall be available to all the posts in Group 'B', 'C' and 'D' and also to all the posts belonging to Group 'A' whether isolated or not. It is the case of the petitioners that SAS-III are Group 'C' posts. The conditions for grant of financial up-gradation under the ACPS are reproduced hereunder:-

**" CONDITIONS FOR GRANT OF FINANCIAL UPGRADATION UNDER THE
ASSURED CAREER PROGRESSION SCHEME (ACPS)**

1. *There shall be two financial up-gradations under the Scheme, counted from the direct entry of a government employee into regular service on completion of 12 and 24 years service respectively. The first financial up-gradation shall be allowed in the next higher scale of pay after an employee has completed 12 years regular service in a scale of pay and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation. If the first financial up-gradation gets postponed due to the reason that an employee is found unfit or due to departmental proceedings, etc. it shall have consequential effect and the second up-gradation will get deferred accordingly.*
2. *The placement shall be in the hierarchy of the Standard Scales of pay as given in Part-A of the First Schedule of the Meghalaya Services (Revision of Pay) Rules. 2009 and shall be available up-to the scale of pay of 26700-800-33100-1000-42100.*
3. *Counting regular service for the purpose of the ACP Scheme shall commence from the date of joining of a post in direct entry grade on a regular basis either on the direct recruitment basis or on absorption/re-employment basis. Service rendered on an ad-hoc/Regulation 3(f)/ contract basis before regular appointment or pre-appointment training /probation shall not be taken into reckoning. However, past continuous service in another Department of the Government of Meghalaya in a post carry identical scale of pay prior to regular appointment through proper channel in a new Department, without break shall also be counted towards qualifying regular service for the purpose of the Scheme only (and not for regular promotions).*
4. **Regular service** *in a post shall include all periods spent on deputation/foreign service, officiating in a higher post, study leave and all other kinds of leave, duly sanctioned by the competent authority.*
5. **Past service** *rendered by an employee in another State Government/ Statutory body/Autonomous body/Public Sector organization before appointment in any Department of the Government of Meghalaya shall not be counted towards regular service.*
6. *The benefits of the Scheme shall also apply to work-charged employees if their service conditions are comparable with the employees of regular establishment.*
7. *Two financial up-gradations under the Scheme in the entire career of a government employee shall be counted against regular promotions availed from the grade in which an employee was appointed as a direct recruit. If the first financial up-gradation under the Scheme is followed by regular promotion, the second financial up-gradation shall not be admissible to the employee concerned but this shall not debar him from further regular promotion(s) when vacancy in the higher grade(s) arises. If an employee has already got one regular promotion, he shall qualify for the second financial*

up-gradation only on completion of 12 years of regular service in that same post and same scale of pay from the date of such promotion. In case two prior promotions on regular basis have already been received by an employee, no benefit under the Scheme shall be available to him.

- 8 The benefit of fixation of pay available at the time of regular promotion shall also be allowed at the time of financial up-gradation under the Scheme. Therefore, the pay of an employee on financial up-gradation shall be fixed under the provisions of F.R. 23 (i) of the Meghalaya Fundamental Rules & Subsidiary Rules, 1984 and the next increment shall be admissible only after completion of twelve months' service from the date of placement in the higher scale of pay under the Scheme. The aforesaid financial benefit of pay fixation allowed under the Scheme shall be final and there shall be no further fixation of pay at the time of regular promotion of the employee in the hierarchy of his cadre if it is in the identical scale of pay already available under the Scheme. However, at the time of actual promotion if it happens to be in a post/ grade carrying higher scale of pay than what is drawn by the employee under the Scheme, the benefit of F.R. 23 (i) may be allowed.*
- 9 Grant of higher scale of pay under the Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently.*
- 10 If the first financial up-gradation under the ACP Scheme is deferred and not allowed after 12 years due to the reason of the employee being unfit or due to departmental proceedings, etc. it shall have consequential effect on the second financial up-gradation which shall also get deferred to the extent of delay in grant of first financial up-gradation.*
- 11 On grant of financial up-gradation under the Scheme there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as loans and advances, allotment of government accommodation, provident fund contribution and withdrawals, travel expenses, etc. may be permitted.*
- 12 The financial up-gradation shall be on non-functional basis and subject to fitness. In the matter of disciplinary/penalty proceedings, grant of the benefit under the Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the Discipline & Appeal Rules of the State Government.*
- 13 If, at the time of implementation of the Scheme, an employee has completed 24 years of regular service in the same post/ cadre without a promotion, he shall be entitled directly to the second financial up-gradation.*
- 14 If a regular promotion has been offered but was refused by an employee before becoming entitled to a financial up-gradation, no*

financial up-gradation shall be allowed to him as such employee has not been stagnated due to lack of opportunities. If, however, financial up-gradation has been allowed due to stagnation and the employee subsequently refuses to accept the promotion, it shall not be a ground to withdraw the financial up-gradation allowed to him. Such employee shall not, however, be eligible to be considered for the second financial up-gradation till he agrees to be considered for promotion again and the second up-gradation under the Scheme shall be deferred to the extent of the period of debarment due to the refusal.

15 Employees on deputation/foreign service need not revert to the parent department for availing the benefit of the financial up-gradation under the ACP Scheme. When they qualify for the financial up-gradation they may be allowed to exercise a fresh option to draw pay either in the scale of pay of the post held by them on deputation/foreign service or the scale of pay available to them through financial up-gradation under the ACP Scheme, whichever is beneficial.

16 Pay drawn in the time scale of pay allowed under the ACP Scheme shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.

17 The existing time-bound schemes of promotion, such as those of the drivers and the typists cadres, may continue to be operational for the categories of employees concerned if it is decided by the administrative authorities to retain such schemes, after necessary consultation, or they may switch over to the ACP Scheme. However, such schemes shall not be allowed to run concurrently with the ACP Scheme.

Sd/-

*Under Secretary to the Government of Meghalaya,
Finance (Pay Revision) Department."*

7. The petitioners had filed several representations i.e. representation No.1 dated 01.08.2006; representation No.2 dated 02.07.2017; representation No.3 dated 19.05.2009; representation No.4 dated 05.11.2009; representation No.5 dated 20.11.2009 and; representation No.6 dated 24.11.2009 to the State respondents requesting for removal of the anomalies and discrepancies regarding the fixation of the pay scale in connection with the posts of SAS-II and SAS-III employees in the Department of Agriculture. But the concerned authority had not considered

and disposed of the said representations. The said representations are available at Annexures-9, 10, 11, 12, 14 and 14 respectively to the writ petition.

8. The respondent No.2 i.e. the Secretary to the Govt. of Meghalaya, Finance Department, Shillong had filed affidavit-in-opposition wherein, it is stated that the recommendation of the Pay Commission, as accepted by the Govt., relating to stagnation in service does not relate to provision of “two promotions” as claimed by the petitioners but it relates to grant of “two financial up-gradation” to an employee who has completed 12 years regular service in the same post without promotion and 24 years regular service with only one promotion as provided under the Scheme known as “the Assured Career Progression Scheme (ACPS)” effective from 22.02.2010. All the administrative Departments/Heads of Departments, as appointing authorities, have been empowered to implement the Scheme departmentally.

9. The respondent No.3 i.e. the Director of Agriculture, Meghalaya, Shillong also filed affidavit-in-opposition wherein, the respondent submitted that around 45 numbers of applications have been received by the Department till the date of filing the affidavit-in-opposition and of those 45 numbers 14 numbers had been officially approved for ACPS eligibility. The residual applications as of now is under active progress and their legitimate demand if found justifiable will be finalized sooner than later. The monetary benefits derived from the ACPS will go a long way to enhance their prevailing scale of pay and thus turnout to be more than what the petitioners had bargained for as the Meghalaya 4th Pay Commission has given considerable empathy to the genuine grievances of the Govt. employees like SASs of Agricultural Department who suffer from service stagnation.

10. On conjoint reading of the affidavits-in-opposition filed by the respondent No.2 and respondent No.3, it is clear that the State respondents are admitting that the members of the petitioner No.1-association, who are working in the Group 'C' are entitled to enjoy the financial benefits under the said ACPS vide Office Memorandum dated 22.02.2010. Mr. P Nongbri, learned counsel for the petitioners frankly submits that the some of the members of the petitioner No.1-association had already enjoyed the benefits under the ACPS but many members of the petitioner No.1-association are not getting the financial benefits under the said ACPS. Mr. KP Bhattacharjee, learned GA appearing for the State respondents submits that the State respondents will also take up steps for extending the financial benefits under the said ACPS to the members of the petitioner No.1-association. It is clear under the said ACPS that there shall be two financial up-gradation counted from the direct entry of a Govt. employee into regular service on completion of 12 years and 24 years service respectively. The first financial up-gradation shall be allowed after an employee has completed 12 years regular service in a scale of pay and the second up-gradation after 12 years of regular service from the date of first financial up-gradation. If the first financial up-gradation gets postponed due to the reason that an employee is found unfit or due to departmental proceedings, etc., it shall have consequential effect and the second up-gradation will get deferred accordingly. The learned counsel appearing for the parties are not disputing that the members of the petitioner No.1-association, who had fulfilled the said conditions for grant of financial up-gradation will be entitled to receive the financial benefits under the said ACPS.

11. In the above factual backdrop, this writ petition is disposed of by directing the writ petitioners to submit the members of the petitioner No.1-

association, who had fulfilled the conditions for grant of financial up-gradation but yet to receive or enjoy the financial benefits under the ACPS to the respondent No.3 i.e. the Director of Agriculture, Meghalaya by filing a representation within a period of six weeks from today and the respondent No.3 on receipt of the said representation, shall extend the financial benefits to the members of the petitioner No.1-association, who had fulfilled the conditions for enjoyment of the financial benefits within three months from the date of receipt of the said representation. Further, regarding the pay anomalies of the SAS-II and SAS-III mentioned by the petitioners in the present writ petition, the petitioners shall file a exhaustive representation to the respondent No.2 and the respondent No.2 on receipt of the representation shall decide the question of pay anomalies for the SAS-II and SAS-III raised by the petitioners by passing a reasoned order within a period of three months from the date of receipt of the representation.

12. With the above observations and directions, this writ petition is allowed.

JUDGE

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