

THE HIGH COURT OF MEGHALAYA

Writ Appeal No. 37 of 2014 IN WP(C) No.258/2011

1. The State of Meghalaya, represented by the Secretary to the Govt. of Meghalaya, Education Department, Shillong.
2. The Director of School Education & Literacy, Govt. of Meghalaya, Shillong.
3. The Additional Director of School Education & Literacy, West Garo Hills, Govt. of Meghalaya, Tura.
4. The Inspector of Schools, West Garo Hills, Govt. of Meghalaya, Tura.

∴ Appellants

-Vs-

1. Shri Deba Prasad Saha,
United Mukdangra Secondary
School, West Garo Hills,
Meghalaya.
2. Shri. Nripendra Ch. Dutta,,
New Model Secondary School,
West Garo Hills, Meghalaya.
3. Shri. Mrinal Samajdar,
Purakhasia Secondary School,
West Garo Hills, Meghalaya.
- 3 A. Shri. Kamal Kishore Pandey,
Shyam Nagar Hr. Secondary School,
West Garo Hills, Meghalaya.
4. Shri. Bishnupada Bhowmick,
Bolchugre Secondary School,
West Garo Hills, Meghalaya.
5. Shri. Bhaskar Kumar Roy,
Union Wagesi Secondary School,

East Garo Hills, Meghalaya.

6. Shri. Janak Chandra Barman,
Kalcheng Para Secondary School,
West Garo Hills, Meghalaya.
7. Shri. Dipak Kr. Basak,
Mendima Secondary School,
East Garo Hills, Meghalaya.
8. Shri. Pran Ranjan Sarkar,
Burny Hills Secondary School,
West Garo Hills, Meghalaya.
9. Shri. Mrinal Kanti Roy,
St. Mary's Hr. Sec. School,
West Garo Hills, Meghalaya.
10. Shri. Uttam Kr. Paul,
Sangknigiri Secondary School,
South Garo Hills, Meghalaya.
11. Shri.Mridul Kumar Das,
Bangsiapal Secondary School,
East Garo Hills, Meghalaya.
12. Shri.Surajit Saha,
Kasabanagar Secondary School,
West Garo Hills, Meghalaya.
13. Shri. Suvas Chandra Chowdhury,
Nivedita Girls' Secondary School,
West Garo Hills, Meghalaya.
14. Shri. Dipak Kumar Saha,
Patijora Secondary School,
West Garo Hills, Meghalaya.
15. Shri. Sanjay Datta,
Machangpani Secondary School,
West Garo Hills, Meghalaya.
16. Shri.Hamidul Rahaman,
Ashugre Secondary School,
South Garo Hills, Meghalaya.
17. Shri. Sudhamoy Das,
Akonggiri Secondary School,
West Garo Hills, Meghalaya.
18. Shri. Ran Vijay Singh,
Thakimagri Secondary School,
West Garo Hills, Meghalaya.
19. Shri. Chittaranjan Saha,

Dimapara Sec. School,
South Garo Hills, Meghalaya.

20. Shri. Pradip Pandit,
Dalugoan Sec. School,
West Garo Hills, Meghalaya.

21. Shri. Bimal Chandra Roy,
Kherapara Sec. School,
West Garo Hills, Meghalaya.

:::: Respondents

BEFORE
**THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE S.R. SEN**

For the Appellants : Mr ND Chullai, Sr. GA,
Mr. R Gurung, Govt. Adv.

For the Respondents : Mr. D Nandi,
Mr. BK Deb Roy, Advocates

Date of hearing : **04.03.2015**

Date of Judgment & Order: **04.03.2015**

JUDGMENT AND ORDER(ORAL)

Chief Justice, Acting

This writ appeal has been filed by the State for quashment of impugned judgment and order dated 22.04.2014, passed by learned single Judge in WP(C)No. 258 of 2011 on the ground that the writ petition is not maintainable; the respondents are serving in private schools which receive ad hoc and lump sum grants from the State Government; the grant is given to the Managing Committees to enable them to appoint good and qualified teachers; pay structures of respondents were decided by their respective institutions; appointments were carried out by their

respective schools Managing Committees and the Director of Public Instruction, Government of Meghalaya gives only formal approval for such appointment; service conditions including pay and allowances of respondents-teachers were not within the control and provisions of the State Government of Meghalaya; role of State Government is limited under Sections 5 and 7 of the Meghalaya School Education Act, 1981; recognition and lump sum grants-in-aid are given only to the recognized private schools having adequate financial provisions for continued and efficient maintenance of institutions, and learned single Judge should not have directed the State Government to take policy decision and held that the respondents are entitled to get basic pay of Science Teachers of the Government Schools etc.

2. Respondents were initially appointed as Science Teachers in different Adhoc Aided grants Schools in the Garo Hills District of State of Meghalaya. The details as provided in the impugned judgment are as under :

	<i>"Name of the petitioner teacher"</i>	<i>Name of School</i>	<i>Date of joining</i>
1	<i>Shri.Kamal Kishor Pandey</i>	<i>Shyam Nagar Higher Secondary School, West Garo Hills</i>	<i>16.10.1988</i>
2	<i>Shri.Nripendra Ch Dutta</i>	<i>New Model Secondary School, West Garo Hills</i>	<i>01.09.1981</i>
3	<i>Shri.Mrinal Samajdar</i>	<i>Purkhasia Secondary School, West Garo Hills</i>	<i>07.05.1983</i>
4	<i>Shri Deba Prasad Saha</i>	<i>Mukdangra Secondary School, West Garo Hills.</i>	<i>14.05.1986</i>
5	<i>Shri Bisnupada Bhowmick</i>	<i>Bol Chugre Secondary School, West Garo Hills.</i>	<i>01.08.1986</i>
6	<i>Shri Bhaskar Kr. Ray</i>	<i>Union Wagesi Secondary School, East Garo Hills.</i>	<i>01.03.1989</i>
7	<i>Shri Janak Ch. Barman</i>	<i>Kalchengpara Secondary School, West Garo Hills.</i>	<i>01.03.1990</i>

8	<i>Shri Dipak Kr. Basak</i>	<i>Mendima Secondary School, East Garo Hills.</i>	<i>03.09.1991</i>
9	<i>Shri Pran Ranjan Sarkar</i>	<i>Burny Hills Secondary School, West Garo Hills.</i>	<i>01.03.1992</i>
10	<i>Shri Mrinal Kanti Roy</i>	<i>St. Mary's H.S School, West Garo Hills.</i>	<i>01.03.1993</i>
11	<i>Shri.Uttam Kr. Paul</i>	<i>Sangknigiri Secondary School, South Garo Hills</i>	<i>01.03.1993</i>
12	<i>Shri.Mridul Kr. Das</i>	<i>Bangsiapal Secondary School, East Garo Hills</i>	<i>01.03.1993</i>
13	<i>Shri. Surajit Saha</i>	<i>Kasabanagar Secondary School, West Garo Hills</i>	<i>19.07.1993</i>
14	<i>Shri.Suvas Ch.Chowdhury</i>	<i>Nivedita Girl's Sec.School, West Garo Hills</i>	<i>07.03.1994</i>
15.	<i>Shri.Dipak Kr. Saha</i>	<i>Patijora Secondary School, West Garo Hills</i>	<i>01.03.1994</i>
16	<i>Shri. Sanjay Dutta</i>	<i>Mechangpani Secondary School, West Garo Hills</i>	<i>01.03.1995</i>
17	<i>Shri.Hamidul Rahman</i>	<i>Ashugre Secondary School, South Garo Hills</i>	<i>01.03.1989</i>
18	<i>Shri.Sudhamoy Das</i>	<i>Akonggiri Secondary School, West Garo Hills</i>	<i>05.07.1979</i>
19	<i>Shri. Ran Vijay Singh</i>	<i>Thakimagri Secondary School, West Garo Hills</i>	<i>01.07.1993</i>
20	<i>Shri.Chittaranjan Saha</i>	<i>Dimapara Sec. School</i>	<i>1990</i>
21	<i>Shri. Pradip Pandit</i>	<i>Dalugoan Sec. School</i>	<i>1991</i>
22	<i>Shri.Bimal Chandra Roy</i>	<i>Kherapara Sec. School</i>	<i>1992"</i>

3. It was contended by the respondents before the writ court that the performance of Science Teachers of Adhoc Aided High Schools where they were working were evaluated by the Government of Meghalaya and that is why they were getting grant-in-aid. When the respondents were appointed initially in 1989-90, their basic pay was fixed at Rs. 525/- per month plus DA plus annual increment from the date of their joining as admissible under the rules framed by the Government of Meghalaya, which was at par with that of Assistant Teachers of Deficit System Schools of

Meghalaya. The pay components of the respondents up to 29.02.1992 consisted of Basic+DA+Annual Increment. Upon recommendation of Meghalaya Pay Commission, their basic pay was enhanced to Rs.1700/- pm plus DA as admissible w.e.f. 01.03.1992 with annual increment @ Rs.50/-. The pay structure on the basis of aforesaid formula was continued up to 28.02.2001. However, the annual increment had been stopped w.e.f. 2000. As per Meghalaya Pay Commission Report, the basic pay of respondents was raised to Rs.5100/- pm plus DA as admissible w.e.f. 01.03.2001 but thereafter no increment was paid. The basic pay minus increment was continued to be paid up to February, 2006 and in the sequence of gradual deduction in the total salary of respondents-teachers suddenly, w.e.f. 01.01.2011, their pay scale was also reduced to Rs.9000/- pm only.

4. It was contended by the respondents before the writ Court that they were entitled to get the same pay scale as being paid to the Science Teachers of Government Aided Schools for the reasons they were performing the same functions and duties. Their academic qualifications were the same or equivalent to their counter part serving in Govt. schools/deficit system schools. The second ground as put across was that the Govt. of Meghalaya, Directorate of School Education & Literacy issued an order dated 23.02.2011, proposing in the budget for 2010-2011 for enhancement of renewal grant to Science teachers in 123 (one hundred twenty three) Adhoc Aided Secondary Schools of West Garo Hills at a lump sum of Rs.9000/- pm per teacher per school w.e.f. 01.01.2011 for a period of two months meaning thereby up to

28.02.2011. It was also a submission on behalf of respondents before the writ Court that the Govt. of Meghalaya having considered the amendment of Article 21 by inserting Clause 21 A, for imparting primary, secondary education in the schools, also sanctioned the posts of Science teachers in the Adhoc Aided Schools for appointment. Thus, obviously the qualifications of the Science teachers for the Adhoc Aided schools were the same as that of Science teachers in the Govt. schools/deficit system schools. It was also made obligatory upon Inspectors of Schools to verify and submit report as to whether the Science teachers of the Adhoc Aided schools are discharging their duties by conducting practical classes as well as other (theory) classes. Thus, the Science teachers in the Adhoc Aided schools are performing exactly the same functions and discharge the same duties as that of their counterpart in the Government Schools.

5. It appears from the records of the case that there are three types of educational institutions in Meghalaya, they are, namely, (i) Govt. schools (ii) deficit schools and (iii) Adhoc Aided schools. Under Section 5 of the Meghalaya School Education Act, 1981, it is mandatory under the provisions of Section 5 of the Act that no institution shall get recognition from the appropriate authority in Government unless it has showed and proved the provision for adequate financial strength for continued and efficient maintenance of the Institution and for payment of salary and allowances to its employees (vide Section 5 (2) (a) of the Act of 1981).

6. The respondents also placed reliance on certain decisions of Hon'ble the Apex Court in support of the contentions

that they were entitled to get the same pay scale as being paid to the Government teachers. The judgments so referred to are as : **(i) K. Krishnamacharyulu & Ors vs. Sri. Venkateswar Hindu College of Engineering & Anr: (1997) 3 SCC 571** and **(ii) Chandigarh Administration & Ors vs. Rajni Vali (Mrs) & Ors: (2000) 2 SCC 42.**

7. In the premises of rival arguments, as the aforesaid, learned single Judge decided the matter by passing the following directions:

“11. Taking into consideration of the rival contentions of both the parties and also on perusal of the writ petition, this Court is of the considered view that the relief sought for in the present writ petition cannot be granted directly by this Court inasmuch as it involves the policy decision of the Govt. Accordingly, this writ petition is disposed of by directing the Govt. of Meghalaya to take a policy decision taking into consideration of the grievances ventilated by the petitioners in the present writ petition and also the principle of equal pay for equal work. However, it is made clear that taking into consideration of the decisions of the Apex Court in a number of cases, the State Govt. may grant as a financial aid at least to the extent of basic pay of the Science teachers of the Govt. schools i.e. Rs.14,100/-pm as on today per teacher of the Adhoc Aided schools or/ to each of the petitioners from the date the Science teachers of the Govt. schools started enjoying the said basic pay scale. This direction is made in the peculiar facts and circumstances of this case after knowing quite well that the Writ Courts normally do not direct the authority to take decision in a particular manner, but this direction shall not be taken as precedent. It is left to the wisdom of the Govt. to take the policy decision indicated above within a reasonable period. But for extending the basic pay of the Science teachers of the Govt. schools to the petitioners, the decision shall be taken within a period of four months from the date of receipt of a certified copy of this judgment and order”

8. Learned senior counsel Mr ND Chullai assailed the judgment on the ground that learned single Judge should not have

directed the State Government to take a policy decision and make payment of amount to the Science teachers as specified in the judgment, namely, Rs. 14,100/- per month. Mr Chullai also reiterated the arguments advanced before the learned single Judge. In the judgment reported in ***K. Krishnamacharyulu & Ors vs. Sri. Venkateswar Hindu College of Engineering & Anr: (1997) 3 SCC 571***, there was a specific instruction issued by Chandigarh administration in favour of the teachers of non-aided/private aided institutions and their claim to seek equal pay for equal work was based on that instruction, whereas in the instant case, the State Government did not issue any specific instruction to that effect. On the other hand, the teachers were appointed by respective Managing Committees of their Schools where they were working; their service conditions as well as age of retirement being 60 (in the case of Govt. teacher only 58) were decided by such Managing Committees; the State Government is paying lump sum grant-in-aid to these institutions, and at the time of grant of recognition to such institutions under Section 5 of the Meghalaya Education Act, 1981, they proved their financial status to run their institutions efficiently. Besides, the process of selection of Government teachers being totally different, the impugned judgment granting equal pay for equal work to respondents-teachers is not sustainable in law.

9. On the other hand, Mr D Nandi, learned counsel for the respondents submitted that the judgment of learned single Judge is based on law propounded and enunciated by Hon'ble the Apex Court that Science Teachers working in private institutions are entitled to claim basic pay at par with their counter part working in

Government institutions. He also relied upon the judgment in **K. Krishnamacharyulu's** case to argue that the State has obligation to provide facilities and opportunity to people to avail right to education. Since the private institutions cater to the needs of educational opportunity, the teachers working in such institutions are also entitled to seek enforcement of orders issued by the Government. It is also a submission of learned counsel for the respondents that initially up to 2001 vide Annexure 7A, namely, order dated 25.07.1990 (Renewal of Grant-in-Aid for Maintenance of Science Teacher during 1989-90); order dated 31.08.1991; and order dated 16.10.1995 etc. they were being paid basic salary plus DA and other allowances as admissible to Government teachers at par, by following the formula of basic pay plus DA plus annual increment. It is also a submission that learned single Judge in providing minimum basic pay to Science Teachers as admissible to such teachers in the Government Schools has only relied upon the Office Memorandum of Government of Meghalaya dated 17.09.2009 (Reference No. F(PR)-53/2009/1.

10. On due consideration of rival submissions, the position as on today appears to be that Adhoc Grant-in-Aid Schools at the time of seeking recognition have to prove that their financial position is sound and that they can run and maintain their institutions efficiently which also included payment of salaries and allowances to teachers. It is also not disputed that the State Government is paying lump sum grant-in-aid to the institutions and not to individual teachers. It also seems that the Science teachers are appointed by Managing Committee of their respective institutions but the final approval is given by the competent

authority in the State Government. The State Government thus exercises control directly or indirectly right from the stage of grant of recognition, to according of approval to the selection of Science Teachers carried out by the Managing Committees of the private institutions; to imparting of education, and also to in providing Grant-in-Aid. Besides, with the amendment of Article 21 of the Constitution, whereby Article 21A has been added, the Government has also sanctioned/enhanced the strength of the Science Teachers in Adhoc Grant-in-Aid Schools and as noticed hereinabove, their performance is also periodically evaluated by the Inspectors of Schools. Thus, the State cannot escape the responsibility by saying that the respondent teachers of the private institutions as well as these institutions themselves are not under the effective control of the State Government. The amount of Rs. 14,100/- per month being the minimum basic pay provided to a Science Teacher in Government schools is based only on the Government order, namely, the Office Memorandum dated 17.09.2009. That apart, coming to the judgment in ***K. Krishnamacharyulu's*** case under reference, though the claim of teachers was founded on executive instructions and Government orders which are conspicuous by absence in the instant case yet the said judgment was rendered way back in 1997, and thereafter, much water has flown in the Ganges and now vide 86th Constitution Amendment Act, 2002 which came into force w.e.f 01.04.2010, the right to education has been introduced by inserting Article 21A in the Constitution. The said Article reads as :

“21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

Under Article 21A, the discretion has been given to the State Government to provide free and compulsory education to all children of the age of 6 to 14 years in such a manner that the State may, by law, determine. Thus, the Meghalaya Education Act is a relevant enactment on the issue. Under Section 5 thereof, every private institution is required to prove its financial status to the satisfaction of competent authority in the State Government for grant of recognition. The State Government is regulating the performance of Science Teachers by way of periodical evaluation thereof by the Inspectors of Schools. The State Government has also sanctioned additional strength of Science Teachers for these institutions. Moreover, keeping in line with the judgment of Hon'ble the Apex Court as referred to and relied upon in the impugned judgment passed by the learned single Judge, the Science Teachers in the Adhoc Grant-in-Aid Schools can also be paid the minimum basic salary of their counter part working in the Government institutions. In that view of the matter, the State Government is under duty to enforce Article 21A of the Constitution, and provide the minimum of basic salary of the Government Science Teachers to the respondents, which appears to have been rightly worked out and calculated by learned single Judge at Rs. 14,100/- per month. Besides, the State Government would also be within its right to enforce Article 21A in the manner as it thinks fit by bringing appropriate legislations. It does not appear that after coming into force of Article 21A, the State

Government has enacted any law, and framed any rules/regulations to regulate the manner of enforcement of Article 21A of the Constitution. Moreover, the State Government alone can grant recognition to such institutions and that too only upon being fully satisfied that their financial is sound enough to run the institutions efficiently. Thus, the State Government would be at liberty to protect the interest of teachers, and impress upon the private Grant-in-Aid institutions to bear the financial burden of making payment of the minimum of basic salary to their Science teachers which is being paid to the Science Teachers working in the Government Educational institutions. As the State government is already extending Grant-in-Aid to such institutions, for the rest of the amount, it can direct the institutions to pay directly or after making such payment, it can deduct from the amount of Grant-in-Aid paid to the institutions or alternatively, can realize the amount from other resources of the Managing Committees and/ or of such institutions. Learned single Judge though has directed the State Government to take policy decision but in the end he has also clarified that taking of such policy decision is left to the wisdom and discretion of the Government within the legal parameters. Thus, this direction does not call for any interference. As such, this writ appeal is dismissed with modification of the impugned order to the effect that the State Government can recover the amount if spent in paying the minimum of basic salary to Science teachers over and above the Grant-in-Aid being paid to such institutions from the resources of Managing Committees and/or of the institutions in question. The time frame provided by the learned single Judge, namely, six month is said to have already expired.

Thus, it is extended by another three months from the date of receiving a copy of this order.

JUDGE

CHIEF JUSTICE
ACTING

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