

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 167 of 2019

Date of Decision: 19.03.2020

The Shillong Municipal Employees Association	Vs.	State of Meghalaya & Ors.
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Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. A.S.Siddiqui, Adv.
For the Respondent(s)	:	Mr. B. Bhattarcharjee, AAG with Ms. I. Lyngwa, GA. for R 1. Mr. K. Barua, Adv. for R 2.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. The petitioner is the registered association of the employees of the Shillong Municipality and affiliated to the Indian National Trade Union Congress, New Delhi.
2. It is the case of the petitioner that for each municipality, a body of Commissioners designated as the Municipal Board having authority over the municipality has to be established under Section 10 of the Assam Municipal Act, 1956.
3. However, in Meghalaya no Municipal Board was constituted as provided under Section 10 of the said Assam Municipal Act since the State of Meghalaya was carved out of the State of Assam.

4. The petitioner has also averred that Article 243 R of the Constitution of India provides that all seats in the Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area; such constituencies are to be known as Wards.

5. In this regard, a writ petition being Civil Rule No. 66(SH) 1998 praying for a direction to the State Government to hold Municipal election was preferred before the Hon'ble Gauhati High Court and vide judgment and order dated 15.09.1998, the High Court has directed for holding the election to the Shillong Municipality.

6. The said judgment and order was challenged before the Hon'ble Supreme Court, whereby the Hon'ble Supreme Court vide order dated 10.12.1999 passed in Civil Appeal No. 41 of 1999 has upheld the judgment of the Gauhati High Court and directed that Municipal elections should be held within six months.

7. However, the said Municipal election was not held and PIL No. 2 of 2016 was filed before this High Court which was disposed of vide order dated 11.04.2017 with an observation that efforts must be made to carry out all necessary process of holding Municipal election.

8. Despite the order of this High Court, the Municipal election was not held which led to the filing of another PIL No. 2 of 2018 with the same prayer i.e., for direction to conduct Municipal election. This PIL was dismissed and till date no Municipal election was held resulting in the State Government remaining at the helm of affairs of the Shillong Municipality.

9. It is also the case of the petitioner that in the absence of an elected Board, all the powers and functions of the Shillong Municipality are being exercised under section 299 of the Municipal Act by the State Government, and all its properties, i.e., its assets and liabilities as well as its employees are, during the supersession of the Board, the liability of the State Government.

10. That since the advent of the State of Meghalaya, the Shillong Municipality has been facing immense problems affecting the interest of the employees of the Municipality who were, at times, deprived of their regular salary and other benefits which they were entitled to in accordance with law.

11. Being victims of discrimination, the employees filed representation through their predecessor-in-interest, i.e., the All Assam Civic Bodies Workers Federation before the Government of Assam and the Government referred the matter to the Industrial Tribunal Guwahati for adjudication.

12. However, during the pendency of the dispute, the parties arrived at an amicable settlement for which the Industrial Tribunal vide order dated 21.07.1971 recorded its finding making the Award in terms of the settlement and has annexed the Memorandum of Settlement marked 'X' in the body of the said Award.

13. In view of the Award mentioned above, the pay scale of the Municipal employees has been brought at par with the Government employees and accordingly, the employees of the Shillong Municipality were brought within the purview of the recommendation of the Meghalaya Pay Commissions constituted in the year 1977, 1987, 1997 and 2007.

14. The petitioner has also stated that the State Government was hesitant to implement the recommendation of the 4th Pay Commission to the Municipal employees which compelled them to approach this Court by filing a writ petition being WP(C) No 394 of 2014 and this Court vide judgment and order dated 02.09.2015 directed the respondent No 1 to pay the arrear salary with effect from 2007 to 2010 as recommended by the 4th Meghalaya Pay Commission.

15. The Government of Meghalaya vide Resolution No F (PR)-15/2015/17 dated 25.07.2016 had constituted the 5th Meghalaya Pay Commission. Thereafter, the Commission summoned the Service Associations/Individuals/Groups of Individuals/Administrative Departments/Head of Departments/District Officers who had submitted their

Memorandum and replied to the questionnaire issued by the Commission. The process of interview of various groups, one of which is the petitioner Association was conducted by the Commission on 30th March 2017 which was attended by the President and General Secretary who have presented the suggestions and views before the Commission and submitted written reply to the questionnaire to the Commission.

16. The State of Meghalaya has however, refused to extend the recommendations in the report of the 5th Pay Commission of the State of Meghalaya to the petitioner Association which compelled them to approach the Principal Secretary, which was refused leading them to meet the Minister Incharge Urban Affairs and on their discussion, the Minister promised to call them shortly but till date the said meeting never took place.

17. The deprivation of the benefits of the recommendation of the 5th Pay Commission to the petitioner Association is a violation of Article 14 and 21 of the Constitution of India for which this Court was approached under Article 226 for adequate relief.

18. Mr. A.S. Siddiqui, learned counsel for the petitioner in his submission before the Court has submitted that by virtue of the Award dated 21.07.1971, in which the tri-party agreement was made part thereof by the Industrial Tribunal, therefore the Municipal employees are now governed by the Service Rules applicable to the employees of the State Government and in this context, the 1st, 2nd, 3rd and 4th Meghalaya Pay Commission Recommendations were accepted and applied to the Municipal employees.

19. Mention was also made to the refusal of the State Government to grant the benefit of the 4th Pay Commission to the Municipal employees who were compelled to approach this Court for appropriate relief and this Court vide order dated 02.09.2015 issued a direction to the authorities to clear the Arrears salary w.e.f 2007 to 2010 as recommended by the 4th Meghalaya Pay Commission within 3(three) months.

20. Referring to the affidavit-in-opposition filed by the respondent No. 2, i.e. Shillong Municipal Board, Mr. Siddiqui has submitted that the respondent No. 2 has not disputed the fact that the benefit of the 1st, 2nd, 3rd and 4th Meghalaya Pay Commission were granted to the petitioner. The only contention of the respondent No. 2 is about the fund crunch and not on the ground of eligibility of the Municipal employees.

21. No specific reason has been urged by the State respondent or the Municipal Board as to how and why the Municipal employees should be deprived of the recommendation of the 5th Meghalaya Pay Commission.

22. Mr. Siddiqui has also produced the copy of the notification vide Memo No. UAM.74/98/3-A dated Shillong the 20th November 1998 wherein, the Principal Secretary, Govt. of Meghalaya, Urban Affairs Department has notified that the Governor of Meghalaya is pleased to extend the benefit of revised pay scale of 3rd Meghalaya Pay Commission (ROP) Rules 1997 to the employees of 6(six) Municipal Boards with effect from 01.01.1996.

23. In view of the above, Mr. Siddiqui has submitted that this petition may be allowed and the respondent No.1/State of Meghalaya be directed to provide the benefits of the recommendation of the 5th Meghalaya Pay Commission to the members of the petitioner Association.

24. On the other hand, the stand of the State respondent as evinced by Mr. B. Bhattacharjee, learned AAG assisted by Ms. I. Lyngwa, learned GA is that, the Municipal employees are invested with functions which are civic in nature which is absolutely different from the duties and functions performed by the State Government or any officer of the Government and no foundation has been laid down in the writ petition to project the similarities and functions and duties discharged by the Municipal employees and Government employees, hence the pay scale of a Municipal employee cannot be brought at par with that of a Government employee.

25. Another argument raised by the State respondent is that Section 299 of the Meghalaya Municipal Act, 1973 makes it amply clear that during the period of supersession, all the powers and duties which may be exercised and performed by the Board under the Act shall during the period of supersession be exercised by such person or persons as the State Government may direct, and all the property vested in the Board during the period of supersession vest in the Government. This is a provision only with regard to smooth functioning and discharge of duties of Municipality during the period of supersession and does not convert it into a State Government Institution or Department.

26. The Section also does not stipulate that the Municipal employees becomes the liability of the State Government during the said period of supersession of the Municipal Board.

27. Yet another submission made by the State respondent is that there is no notification issued by the State authority providing that service conditions and benefits of the Government employee would *mutatis mutandis* apply to a Municipal employee. In this regard, the case of ***State of Maharashtra v. R.N. Gangwani & Ors: (2002) 10 SCC 319*** was referred to by the State respondent.

28. In a similar strain, the learned AAG has further submitted that the 5th Meghalaya Pay Commission was constituted in order to examine the existing structure of emoluments and conditions of service of different categories of Government employees. Though the petitioner Association had submitted their memorandum and they were summoned for an interview/hearing on 30.03.2017 with the 5th Meghalaya Pay Commission, their participation does not automatically afford them the right to coverage under the 5th Meghalaya Pay Commission.

29. This being the case, under the terms of reference, the 5th Meghalaya Pay Commission had given their recommendation for revision of pay scales, etc. of eligible category of employees of which the petitioner Association

was not included and as such, the benefit of the 5th Meghalaya Pay Commission was not provided to the employees of the Municipal Board.

30. Referring to the judgment and order of this Court dated 02.09.2015 relied upon by the petitioner, the State respondent has submitted that in the said judgment, the State respondent was directed to release the pending two months' salary and to clear the arrears of the employees of the Municipal Corporation. However, the said judgment does not stipulate that the petitioner Association should come under the purview of the Meghalaya Pay Commission.

31. As far as disbursement of salary and allowances to the employees of the Municipal Corporation are concerned, the State respondent has submitted that the same is disbursed by the Municipal Corporation itself but the Government would however provide grant-in-aid from time to time when the need arose.

32. The submission of the State respondent is that the petitioner Association has no legal or fundamental rights to enforce and as such, this petition is liable to be dismissed.

33. The stand taken by the respondent No. 2/C.E.O, Shillong Municipal Board through its learned counsel, Mr. K. Barua is that it is a fact that the last election to the Board was held in 1966-67 whose term ended in 1972, after which no more elections were held but members of the Board have been nominated by the State Government from time to time. The last nominated Board was dissolved in the year 1988.

34. Echoing a similar stand to that of the State respondent, this respondent has submitted that as per the term of reference of the 5th Meghalaya Pay Commission, the recommendation was for revision of pay scale etc. of eligible category of employees, wherein, the members of the petitioner Association were not included.

35. This being the case, the members of the petitioner Association did not fall within the scope of terms of reference of the last 4th pay Commission, but subsequently on the basis of representation and several requests from the Board and by the petitioner Association to the Government, the benefit of revised pay scale on the basis of the recommendation of the last 4th Meghalaya Pay Commission were extended to the members of the petitioner Association for which the Government has to provide additional fund by way of special grant-in-aid, since the resource of the Shillong Municipal Board does not suffice to cover the burden of revised pay scales.

36. In effect, with the existing annual revenue income of the Board of approximately ₹ 14.33 crores vis-à-vis the salary expenditure of ₹ 11.60 crores and non-salary expenses of ₹ 4.82 crores, a deficit of more than ₹ 2 crores annually will remain, and if revise pay which will be about ₹ 3 crores more than the existing salary amount in a year, as per recommendation of the 5th Meghalaya Pay Commission if implemented, the deficit would increase from ₹ 2 crores to ₹ 5 crores in a year for which the Board will never be able to bear if the government does not come to its rescue, submits the respondent No. 2.

37. On consideration of the submissions and contentions made by the learned counsels for the parties, the relevant question to be determined is whether the employees of the Municipal Board as far as the service conditions including salary and allowances are concerned are at par with the regular Government employees of the State.

38. The contention of the learned counsel for the petitioner is that the Shillong Municipal Board was superseded under Section 298 of the Assam Municipal Act, 1956 by the then Assam Government and continues till date and since no election to the Shillong Municipal Board has taken place till date, therefore, it has been under the control of the State respondent, since then.

39. Another point raised by the learned counsel for the petitioner is that in terms of the Award of the Industrial Tribunal dated 06.07.1971, under the heading of 'Charter of Demands', one of the demand made is that the pay scale as per latest revision to the Government employees should be granted to the different category of workers and another demand was that all the rules applicable to the Government employees should be introduced in respect of the service conditions of the Civic Bodies Workers' Federation.

40. The Award of the learned Industrial Tribunal dated 16.07.1971 has in effect decided that as far as the conditions of service of the Civic Bodies Workers' Federation with regard to their salary and other allowances, the same has been accepted that it is at par with those of the Government employees in terms of the Memorandum of Settlement arrived at by the parties. The tri-party agreement also included a representative of the State Government in the person of the Under Secretary to the Government of Assam, Labour Department.

41. It may be mentioned that in the charter of demands, which was reflected in the said Award dated 21.07.1971 the demand being No. 1 (a) is that the pay scale as per the latest revision to the Government employees should be granted to the different category of workers and the list of category of workers was enumerated thereto from serial number (i) to (xv).

42. Again in the Award which included the said settlement between the parties marked 'X' the minutes of the joint meeting of the Shillong Municipal Employees Association represented by the All Assam Civic Bodies Workers Federation and the Shillong Municipal Board held on 16th July, 1971 would revealed that one of the decision arrived at is that:

- (1) The charter of demands placed by the A.A.C.B.W.F. were accepted except (A) medical benefits to the employees and (B) Additional Ad-hoc Dearness Allowance of Rs. 20 (Rupees twenty) granted by the State Government to the Government employees.

43. It is not the case of the respondents that the Award of the learned Industrial Tribunal dated 21.07.1971 was challenged before a competent Court and the same has been overruled. Therefore, it stands to reason that the said Award is still in vogue till date.

44. In the case cited by the State respondents i.e. ***State of Maharashtra v. R.N. Gangwani & Ors (supra)*** the question that had come up before the Hon'ble Apex Court is with regard to the sanction of pay scale to a Municipal employee which would not exceed the pay scale and allowances prescribed by the Maharashtra Civil Services (Revision of Pay) Rules, 1978. In the context of the case, the Hon'ble Apex Court has also observed that the resolution of a Municipal council granting any pay to an employee of the Municipality on the assumption that the holder of the post in question discharged similar duties as a corresponding post in the Government service will be subject to the approval of the competent authority under the Maharashtra Municipalities Act.

45. However, in the case in hand, the parity of employment benefits between an employee of the Municipality and the State Government has been settled by the said Award of the Industrial Tribunal and in this regard, in the very same judgment at paragraph 5 of the ***R.N. Gangwani*** case, the Hon'ble Apex Court has in effect upheld the Award of an Industrial Tribunal on the same not being properly challenged before the higher Courts.

46. On this ground alone, this Court is of the opinion that the petitioner has made out a case that their services should be considered at par with those of the Government employees and as such, if the 5th Meghalaya Pay Commission has recommended revision of pay and other allowances to the Government employees, not including the petitioner Association within the same Reference has caused injustice to the petitioner Association which action can then be questioned by this writ Court.

47. Another aspect of the matter is that according to the Notification No. UAM.74/98/3, issued by the Principal Secretary to the Government of

Meghalaya, Urban Affairs Department, the Governor was pleased to extend the benefit of revised pay scale of the 3rd Meghalaya Pay Commission (ROP) Rules 1997 to the employees of the six Municipal Boards (including Shillong Municipal Board) with effect from 01.01.1996. If this has been the case, then without any plausible explanation, there appears to be no reason as to why the benefit of the 5th Meghalaya Pay Commission should not be extended to the employees of the Shillong Municipality, the petitioner Association.

48. Simply stated, the stand of the State respondent is that since the 5th Meghalaya Pay Commission has not included the petitioner Association in its reference, therefore, the petitioner Association has no legal right to entitlement of the same.

49. The stand of the respondent Shillong Municipality is exactly the same as that of the State respondent inasmuch as, the prayer of the petitioner Association cannot be considered as there was no reference made by the 5th Meghalaya Pay Commission to include the petitioner Association within its ambit and further that there is a fund crunch to the tune of 5 Crores if the demands of the petitioner Association is allowed, the respondent/Shillong Municipality does not have sufficient fund except the State Government extend grant-in-aid in this regard.

50. Again, on consideration of the above, this Court is of the considered opinion that the argument of the State respondent as well as of the respondent/Shillong Municipality does not stand the test of factual and legal scrutiny.

51. In view of the Award, dated 21.07.1971 of the Industrial Tribunal, this Court holds that the petitioner Association is at par with the Government employees as far as pay and allowances etc. are concerned and should therefore be included in the terms of reference of the 5th Meghalaya Pay Commission as in a similar case was done vide Notification No. UAM.74/98/3, necessary notification shall be issued in this regard.

52. The respondent/Shillong Municipality is hereby directed to take immediate steps to bring the petitioner Association within the ambit of the recommendation of the 5th Meghalaya Pay Commission and also to ensure availability of fund even if the State Government is required to be approached for grant-in-aid in this respect.

53. To the extent indicated above, this writ petition is hereby disposed of.
No cost.

Judge

Meghalaya
19.03.2020
"D. Nary, PS"

