Serial No. 1
Supp. List 2

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 281 of 2017 with
WP(C). No. 360 of 2017

Date of hearing: 24.10.2018
Date of Judgment :01.11.2018

Meghalaya College Teachers Association Vs State of Meghalaya & Ors.

with

Meghalaya College Teachers Association Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Hon'ble Mr. Justice S.R.Sen, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. B.K.Sharma, Sr. Adv. with
Mr. R.Mazumdar, Adv.

For the Respondent(s) : Mr. A.Kumar, AG with
Mr. H.Abraham, GA for R 1&2
Ms. P.Bhattacharjee, Adv. for R 3
Mrs. P.D.Bujarbarua, Adv. for R 4-18
Dr. N.Mozika, CGC for R 19 & 20

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

ii) Whether approved for publication in press: Yes/No

S.R.Sen, 'J'

1. Both these two writ petitions, WP(C). No. 281/2017 and WP(C). No. 360/2017 are taken up together as they are similar in nature and will be disposed of by this common judgment.

2. Heard learned counsels for the parties at length.

The brief facts of the petitioner's case in WP(C). No. 281 of 2017 is that:

> *"The present writ petition has been preferred under Article 226 of the Constitution of India praying for an appropriate writ or any other appropriate order or direction to respondent State authorities to ensure the implementation of the provisions of the Contributory Provident Fund Scheme (CPF Scheme) as adopted by the State of Meghalaya for the employees of Deficit Grants in Aid Colleges and for further implementation of the provisions Employees Provident Fund and Miscellaneous Provisions Act, 1952 and any and all other schemes framed under the provisions of the Act with regard to the respondent no. 4 to 18 till the provisions of the CPF Scheme are implemented in totality, so as to enable the college teachers of Deficit Grant-in-Aid Colleges in the State of Meghalaya to reap the benefits of the aforesaid beneficial legislations and for further directions for implementation of a post retirement Social Security Scheme. It is stated that in WA 14/2001 arising out of order dated 6-7-2001 passed in WP(C) 139 (SH)/2001, this Hon'ble Court, by order dated 7-12-2005 held that it is an admitted position that college teachers of Deficit Grant-in-Aid colleges are entitled to pension on their superannuation. The prayer of the writ petitioners therein to impose the liability of pension on the State of Meghalaya was rejected on the ground that the petitioners or for that matter employees of Deficit Grant-in-Aid colleges are not employee of the State of Meghalaya.*
>
> *The petitioner no 1 (Association) had filed WP(C) 54/2017 before this Hon'ble Court praying for directions for implementation of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and the said writ petition was withdrawn with liberty to file afresh in view of the assertions and averments brought on record by the respondents therein.*
>
> *It is an admitted position of the respondents that the provisions of the Contributory Provident Scheme have been applied more in violation than in compliance, inasmuch as, there is no consolidated pool for the provident fund, accounts are being maintained in individual Saving Banks Accounts. It is also a matter of record that the process for introducing a formidable post retirement Social Security Scheme has been underway since the last more than 11 years, without such scheme being formalized. Even contribution of*

Rs. 1 Crore made in this regard has remained unutilized till date. Due to the unlawful acts of the respondents, the Teachers of Deficit Grants in Aid Colleges of State of Meghalaya have been denied the benefits of not only the Employees Provident Fund and Miscellaneous Provisions Act, 1952, they are also deprived of the benefits of the Contributory Provident Fund Scheme professed to be adopted by the State of Meghalaya and on their superannuation, there is no social security scheme to protect their right to a dignified life. WP(C) no 254/2017 filed on similar grounds was withdrawn with liberty to file afresh after correction of few inadvertent errors in the same.

Hence, this writ petition."

The brief facts of the petitioner's case in WP(C). No. 360 of 2017 is that:

"The present writ petition has been preferred under Article 226 of the Constitution of India praying for an appropriate writ or any other appropriate order or direction to respondent State authorities to ensure in respect of employees of the Ad hoc grant in aid colleges in the State the implementation of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and any and all other schemes framed under the provisions of the Act, so as to enable the college teachers of ad hoc Grant-in-Aid Colleges in the State of Meghalaya to reap the benefits of the aforesaid beneficial legislations and for further directions for implementation of a post retirement Social Security Scheme. Further grievances have been raised against the total absence of service rules with regard to the employment and service prospects of the teacher serving in Ad hoc Grants in aid colleges.

Due to the unlawful acts of the respondents, the Teachers of ad hoc Grants in Aid Colleges of State of Meghalaya have been denied the benefits of not only the provisions of the Employees Provident Fund And Miscellaneous Provisions Act, 1952, they are also deprived of the benefits of any pension scheme and on their superannuation, there is no social security scheme to protect their right to a dignified life. Hence, this writ petition."

3. Heard Mr. B.K.Sharma, learned Sr. counsel assisted by Mr. R.Mazumdar, learned counsel on behalf of the petitioner who submits that the

Contributory Provident Fund for the college teachers of deficit/adhoc/aided colleges were not maintained in a Schedule Bank and is simply kept in a Savings Bank account where the interest is much more less than the Schedule Bank and until that is corrected by the respondents, the teachers are bound to suffer. Learned Sr. counsel also argued that the Fifth Pay Commission recommendation was issued on 2010 but the Notification dated 13-04-2018 at Annexure-1 of the additional affidavit of the respondent No. 2 which states that the recommendation will come into effect from 01-04-2018, hence learned Sr. counsel submits that if it is from 01-04-2018, what benefits will be given to those teachers who have joined prior to 2018 as well as the teachers who have joined prior to 01-04-2010.

Learned Sr. counsel for the petitioners argued that denial of pension to the deficit/adhoc/aided college teachers serving in the State of Meghalaya is nothing but discrimination. He also contended that the government teachers are getting their pension and other benefits after their retirement but in the case of deficit/adhoc/aided college teachers, they are not getting anything except the Contributory Provident Fund (CPF). It is an admitted fact by the government that the teachers in deficit colleges are giving the same service, rather some teachers in the deficit colleges are giving better service than the government teachers. The deficit/adhoc/aided teachers as well as the government college teachers are also assigned with other duties from time to time though government has taken the stand that the method of appointment is different in case of government college teachers and deficit/adhoc/aided college teachers as the deficit college teachers are appointed by the Managing Committee, but this fact is not correct.

Learned Sr. counsel also further contended that government is giving pension and other benefits to the MLAs and MPs who are serving only for five years, whereas teachers who serve for the society for many years are deprived of their legitimate right to get pension so that they can survive comfortably even after their retirement. He also further contended that the Fifth Pay Commission recommendation was prepared by the learned Members appointed by the Govt. of Meghalaya, therefore, the recommendation of the Fifth Pay Commission needs to be followed in letter and spirit and prayed for necessary direction.

4. In contra, Mr. A.Kumar, learned Advocate General, Govt. of Meghalaya appeared on behalf of the respondents-State and submits that the teachers of deficit/adhoc/aided colleges have no right to file this instant writ petition to claim equality and the same benefits as enjoyed by the government college teachers. Learned Advocate General also submits that it is the policy decision of the government and as such, Court should not interfere. He further contended that there is no challenge about the policy decision of the government. Learned Advocate General in support to his submission relied on:

(i) (1977) 1 SCC 486.

(ii) M.P.Rural Agriculture Extension Officers Associations Vs. State of M.P. (2004) 4 SCC 646 Para 26.

(iii) Networking of Rivers; in re (2004) 11 SCC 360 Para 8.

(iv) (2017) 4 SCC 449 Para 60 to 63 and 81.

(v) (2005) 6 SCC 754.

(vi) The Division Bench judgment passed by the Gauhati High Court dated 07-12-2005 passed in Writ Appeal No. 14 of 2001.

5. Also heard Mrs. P.D.Bujarbarua, learned counsel for the respondents No. 4-18 who submits that in deficit/adhoc/aided colleges, government is giving cent per cent funding to manage the salary etc and out of the fees collected, 60% goes to the government and 40% is retained by the college for salary of contractual teachers and other staffs. Learned counsel also argued that though government has issued a letter No. CE/GA/NPS/6/2016/50, dated 30th March, 2016 which is not clear to the college authorities wherein they have enclosed a Draft Cabinet Memorandum for implementation of New Defined Contribution Pension Scheme for teaching and non teaching staffs of Deficit Colleges in the State.

6. Ms. P.Bhattacharjee, learned counsel for the respondent No. 3 (Regional Provident Fund Commissioner II) submits that the respondent No. 3 has no role to play as the matter involved is about Contributory Provident Fund and not Employees Provident Fund.

7. Dr. N.Mozika, learned CGC for the respondents No. 19 & 20 submits that he has no submission.

8. In reply to the submission advanced by the learned Advocate General, learned Sr. counsel for the petitioner further clarified that the judgment relied by the government passed by the Division Bench of the Gauhati High Court is rather in favour of the petitioner as stated in paragraph 21 wherein it is directed that the government should take a conscious decision, but till now no conscious decision has been taken by the government. Learned Sr. counsel further contended that in deficit colleges the funding is cent per cent, in adhoc aided colleges it is 75% and teachers are not getting anything; no Contributory Provident Fund, no promotion except increment. Therefore, the respondent No.

3 i.e. the Regional Provident Fund Commissioner-II cannot wash their hands, they will also be liable to take necessary decision.

Learned Sr. counsel for the petitioner also further submitted that the Saving Bank accounts maybe with the Schedule Bank but there is no proper agreement with the government that the account is to be maintained for pension or other benefits of the teachers. So, government needs to correct it immediately with retrospective effect. In support of his submission, learned Sr. counsel also relied on:

(i) The Assam Non-Government (Deficit) College Central Pension and Provident Fund Act, 1997.

(ii) D.S. Nakara & Ors. Vrs Union of India (1983) 1 SCC 305.

9. After hearing the submissions forwarded by the learned counsels for the parties as referred above, the vital question that arose before us is whether the government can do inequality among the deficit/adhoc/aided college teachers and the government school and college teachers.

10. Now, let us look back to the recommendation made by the Fifth Pay Commission. It appears that the Govt. of Meghalaya constituted the Fifth Pay Commission on 1st August, 2016 with the following members:

Chairman –

Shri Peter James Bazeley, IAS (Retired),
Former Chief Secretary, Government of Meghalaya.

Members –

Shri Uttam K. Sangma, IAS (Retired)
Former Secretary, Ministry of DONER, Government of India.

Shri Lambha Roy, IAS (Retired)
Former Commissioner & Secretary, Planning Department, Government
of Meghalaya.

Smti Rebecca V. Suchiang, IAS
Principal Secretary, Finance Department, Government of Meghalaya.

Officers –

Shri Sanjay Goyal, IAS, Secretary, FMPC

Shri D.B. Gurung, MFS (Retired), OSD, FMPC

Shri Mariawan Lyngdoh, Deputy Secretary, FMPC

11. On perusal of the recommendation of the Fifth Pay Commission, the Govt. of Meghalaya recommended under the caption of "Social Security for Teachers and Non-Teaching Staff of Deficit System of Grants-in- Aid/Aided Educational Institutions" and the same is reproduced herein below:

> ***"Social Security for Teachers and Non-Teaching Staff of Deficit System of Grants-in-Aid/Aided Educational Institutions***
>
> *11.18.1 The Commission has received Memoranda and representations from various Associations of Aided educational institutions, i.e., Higher Secondary Schools, Secondary Schools, Upper Primary Schools and Lower Primary Schools including the Meghalaya College Teachers' Association that there is no Government Scheme on social security other than the Contributory Provident Fund at 8 percent of basic pay and Death-cum-Retirement Gratuity, subject to the maximum of ₹7.00 lakh.*
>
> *11.18.2 During hearings of the aforesaid Aided Schools and College Employees' Associations, submissions have been made that they are left with little or no means for minimum livelihood after retirement from their services and are reduced to dire pecuniary conditions. The Commission underscores the fact that in the States visited by the Commission, the benefits of pension including family pension were fully extended by the State Governments to the teachers/staff of all the Deficit/Aided Schools and Colleges. This Commission is of the firm view that it is incumbent upon the State Government to appreciate the invaluable social contribution and educational*

services rendered by Deficit/Aided Educational Institutions.

Analysis, consideration and recommendation:

(1) The Commission, therefore, recommends that the scheme of Pension and other retirement benefits in line with serving Government employees be considered and allowed as per the terms and conditions which may be specified for the purpose to all pre – 01.04.2010 teachers/employees of Deficit/Aided Educational Institutions and the benefits under the New Defined Contribution Pension Scheme (NPS) for post – 01.04.2010 teachers/employees of Deficit/Aided Education Institutions.

(2) The teachers and non-teaching staff under the Deficit/Aided Schools and Colleges be brought under the fold of New Defined Contribution Pension Scheme (NPS) from such date as may be decided by the Government.

(3) The pre-01-01-2016 retired teachers and the non-teaching employees of Deficit/Aided Schools and Colleges be considered for the grant of a fixed ad hoc amount as Superannuation Relief at the rates as below:-

(a) Retired Teachers of Deficit/Aided Colleges.	***Rs. 10,000/- p.m.***
(b) Retired Teachers and non-teaching staff of Deficit/Aided Schools and Non-Teaching Staff of Deficit/ Aided Colleges.	***Rs. 5,000/- p.m.***

11.18.3 ***The grant of the Superannuation Relief shall be subject to the following:***

(i) That each case shall be subject to audit certification/ authentication by the Director of Local Fund Audit, Government of Meghalaya who shall examine and check the basic service records (Service Books) and other relevant records and documents including the order of retirement issued by the Competent Authority.

(ii) The extension of benefits under the Social Security Scheme as above to the retired Teachers/Non-Teaching Staff of Deficit/Aided Schools and Colleges shall be subject to the condition that whatever amount of deposits on account of Management's contribution to the Contributory Provident Fund Account and the interest thereon of

the concerned Teachers/Staff should accrue/be refunded to the State Government exchequer.

(iii) The Social Security Scheme, as above, is personal to the retired employee and shall not be admissible to their family/next of kin once the beneficiary expires."

12. At the outset, it is to be made clear that our Constitution does not allow any discrimination in similar situated cases and also made the provision of equal pay for equal work.

The Judgments, Acts and Rules relied are herein below:

1. *Secretary Mahatma Gandhi Mission & Anr. Vrs. Bhartiya Kamgar Sena & Ors. (2017) 4 SCC 449.*
2. *Union of India Vrs. Dineshan K.K (2008) 1 SCC 586.*
3. *Randhir Singh Vrs. Union of India & Ors (1982) 1 SCC 618.*
4. *State of Punjab & Ors. Vrs. Senior Vocational Staff Masters Association & Ors. (2017) 9 SCC 379.*
5. *Purshottam Lal & Ors. Vrs. Union of India & Anr. (1973) 1 SCC 651.*
6. *D.S. Nakara and Others Vrs. Union of India reported in (1983) 1 SCC 305.*
7. *Dolly Borpujari Vs. State of Assam (2010) 2 GLT 147.*
8. *State of Haryana and Others Vs. Rajpal Sharma and Others reported in (1996) 5 SCC 273.*
9. *Chandigarh Administration and Others Vs. Rajni Vali (MRS) and Others (2000) 2 SCC 42.*
10. *Union of India Vs. R.Sethumadhavan and another reported in AIR 2018 SCC 1891.*
11. *The Assam Deficit College Employees (Pension) Rules, 1998.*
12. *The Assam Non-Government (Deficit) College Central Pension and Provident Fund Act, 1997.*
13. *The Assam Non-Government School and College Employees Centralised Provident Fund Scheme Act, 1969.*
14. *The Contributory Provident Fund Rules (India), 1962.*

13. The Hon'ble Apex Court in the case of ***Secretary Mahatma Gandhi Mission & Anr. Vrs. Bhartiya Kamgar Sena & Ors. (2017) 4 SCC 449*** *in Clause 'B' observed that Education and Universities - Employment and Service Matters re Educational Institutions - Non-Academic Staff/Other Staff/Workmen – Power of State to regulate service conditions of non-teaching staff in unaided affiliated colleges – Pay –Revision – Classification for - Non-Teaching Staff of aided and unaided Colleges affiliated to Universities treated differently – Held, discriminatory.*

In Clause 'C' it observed that the Constitution of India- Art. 14 – Classification- Discrimination-Remedial measure by Court instead of invalidating impugned law – Court by positive remedial action should eliminate factors which create discriminatory classification, instead of necessarily invalidating legislation or subordinate legislation as a whole, more so where object sought to be achieved is implementation of directive principles.

The Hon'ble Supreme Court in para 83, 86, 87, 88, 89, 97 and 98 of the said judgment observed that:

> *"**83**. The doctrine of equality has many a facet. Law laid down by this Court on the interpretation of Article 14 in the last 70 years illuminated some of them. In a series of judgments commencing from **E.P.Royappa v. State of T.N. [(1974) 4 SCC 3: 1974 SCC (L&S) 165],** the orientation of this Court in dealing with Article 14 has been dynamic. Mathew, J. in his dissenting judgment in **Bennett Coleman & Co. V. Union of India [(1972) 2 SCC 788, pp. 844-45, paras 161-162]** very precisely identified the question, which this Court should address while interpreting Article 14 : (SCC p.844, para 162)."*
>
> *"162. The crucial question today, as regards Article 14, is whether the command implicit in it constitutes merely a ban on the creation of inequalities by the State, or, a command, as well, to eliminate inequalities existing without any contribution thereto by State action. The answer to this question has already been given in the United States under the equal protection clause in the two cases referred to, in certain areas. The US Supreme Court, in effect, has began to require the State to adopt a standard which takes into account the differing economic and social conditions of its citizens, whenever these differences stand in the way of equal access to the exercise of their basic rights. It has been said that justice is the effort of man to mitigate the inequality of men. The whole drive of the directive principles of the*

Constitution is toward this goal and it is in consonance with the new concept of equality. The only norm which the Constitution furnishes for distribution of the material resources of the community is the elastic norm of the common good [see Article 39 (b)]. I do not think I can say that the principle adopted for the distribution [of newsprint] is not for the common good."

*Para **86** sub-para 65 reads as follows:*

"65. That is the end of the journey. With the expanding horizons of socio- economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exts. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down. ... Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs."

***"87**. When Mathew, J. declared that Article 14 interdicts the State from creating inequalities, he was stressing the obvious. Further, he articulated the remedial measures the State has been enjoined to take recourse to: eliminate the existing inequalities through positive-affirmative action, rather than passive neutrality."*

***"88**. What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with*

such a situation, where the inequalities are created either by the legislation or executive action? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in ***Nakara's case [D.S.Nakara v. Union of India, (1983) 1 SCC 305: 1983 SCC (L&S) 145]*** *this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in Nakara's case*[42] *that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law."*

*" **89**. Though this Court is not bound by the law declared by the municipal courts of other countries, this court in the last 70 years always examined with due regard decisions of the American Supreme Court on questions of constitutional law. In a comparable situation, American courts did exercise jurisdiction by granting appropriate injunctive orders compelling the State to comply with the constitutional mandate by ignoring the legislative command and extending the benefit provided under a legislation to a certain class of people who were expressly excluded from receiving that benefit provided by the legislation. (See Plyler v. Deo*[43, 44]*)"*

***"97**. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales."*

***"98**. In the result, the appeals being devoid of merit are dismissed with no order as to costs."*

14. On perusal of the observation made by the Hon'ble Apex Court, it is clear that Article 14 of the Indian Constitution is a constitutional mandate and that needs to be adhered in letter and spirit. Therefore, we are unable to accept the submission advanced by the learned Advocate General that pensionary benefits and other benefits should be given only to the government college teachers and staff and not to government deficit/adhoc/aided college teachers and staff. We

must remember that both in government colleges and non-government colleges, teachers are giving equal service and it will not be wrong to say that, rather in private colleges the standard of education is much more better as the teachers in the private colleges take their duties much more seriously. Therefore, they should get equal protection with the government college teachers.

15. Hon'ble Supreme Court in the case of **Union of India Vrs. Dineshan K.K (2008) 1 SCC 586 para 12** observed that:

> ***"12.*** *The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of the State policy in Article 39(d) of the Constitution. In Randhir Singh v. Union of India a Bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in D.S. Nakara v. Union of India [4]. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed status of a fundamental right."*

16. Hon'ble Supreme Court in the case of ***Randhir Singh Vrs. Union of India & Ors (1982) 1 SCC 618*** in para 8 has also taken a similar view. Para 8 & 9 of the judgment is reproduced herein below for ready reference:

> *"**8**. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court*

have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'To each according to his need', it must atleast mean 'equal pay for equal work'. "The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law, e.g, Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The preamble of the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting

> *one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle 'Equal pay for Equal work' is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer."*
>
> *"**9**. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the 'powers, functions and privileges of a police officer', their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the Courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the Writ Petition and direct the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force atleast on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from 1st January, 1973, the date from which the recommendations of the Pay Commission were given effect".*

17. Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vrs. Senior Vocational Staff Masters Association & Ors. (2017) 9 SCC 379** was pleased to observe in para 26. The same is reproduced herein below:

> *"**26**. The principle of equality is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39-A, 43*

> *and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice – social, economic and political, by inter alia, minimising monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of the 4th Pay Commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eye of the law if no reasonable justification is offered for the same."*

18. Hon'ble Supreme Court in **Purshottam Lal & Ors. Vrs. Union of India & Anr. (1973) 1 SCC 651** in para 15 has observed that:-

> *"**15.** Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned."*

19. In the present writ petitions i.e. WP(C). No. 281/2017 and WP(C). No.360/2017, it appears to us that the Government of Meghalaya has adopted the Assam Non-Government School and College Employees Centralised

Provident Fund Scheme Act, 1969 vide order (No. 1), 1974 and published in the Gazette of Meghalaya vide Notification No. LL.133/72/38, dated 18th January, 1974 and effective from the 21st day of January, 1974. The same Act is enclosed as annexure-3 with the additional affidavit filed by the petitioner. Rule 4 of the said Act, 1969 makes a provision for Centralised Provident Fund Scheme. The same is reproduced herein below:

> *"**4**. Centralised Provident Fund Scheme – (1) The State Government may, by notification in the official Gazette, frame a scheme to be called "The Assam Non-Government School and College Employees Centralised Provident Fund Scheme" to be administered by a "Board of Trustees" to be constituted by the Government under the Scheme.*
> *(2) A scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Schedule."*

20. The said Act also made certain rules on how to maintain the Centralised Provident Fund Scheme, but it appears to us that the Government of Meghalaya though adopted the Assam Non-Government School and College Employees Centralised Provident Fund Scheme Act, 1969 but did not follow the same in letter and spirit which is unwarranted and unacceptable and goes against the social security of the teachers and violation of Article 14 and 16 of the Constitution of India as well as Article 39 (d) of the Directive Principles of State Policy. It is also apparent that by mere opening of a Savings Bank account cannot be considered as a CPF scheme until and unless there is a proper agreement between the Bank, Government and College authorities. It is also further clear that Savings Bank account interest is always less which amounts to befooling the teachers in the name of CPF scheme and in our view, such stultification with the teachers security is not only against the principle of equality but also an offence.

21. It is an admitted fact that the deficit colleges are of two types; one called deficit grant in aid where the entire salary of the incumbent is sanctioned and borne by the government and another called adhoc grant in aid where 75% salary is sanctioned and borne by the government and 25% by the colleges.

22. From the submission of Mrs. P.D.Bujarbarua, learned counsel for the respondents No. 4-18, it appears that deficit college teachers get cent per cent salary from the government and the fees collected from the students; 60% is paid to the government and 40% is retained by the colleges for appointment of contractual teachers and staffs. She also submits that in adhoc colleges, 75% of the salary is sanctioned and borne by the government and 25% by the colleges.

It is also a fact that the Assam Non-Government School and College Employees Centralised Provident Fund Scheme Act, 1969 which was adopted by the Government of Meghalaya effecting from 21-01-1974 and the said Act provides for Centralised Provident Fund at Section 3, Centralised Provident Fund Scheme and Board of Trustees for the fund is at Section 4 and the Responsibility on the State and the Employer for collection of the contribution is under Section 7. The said rule provides that fund is to be maintained in a Schedule Bank which has entered into an agreement with the government to deal with the Provident Fund.

23. The Public Provident Fund Act, 1968 provided for a Public Provident Fund Scheme which introduced a scheme in the Post Offices. By an amendment, association of person who are not entitled to maintain PPF accounts in Post Offices which means that only individual PPF accounts were permitted. It also appears to us that though the Government of Meghalaya

adopted the provision of Rule, 1960 and Act of 1969 from the Government of Assam, however, they did not follow the mandate of law, did not create any Board of Trustees, did not create any Centralised Provident Fund Scheme and did not maintain any fund in any Schedule Bank. Rather joint accounts in Public Provident Fund in Post Offices in the name of the Principal of the Institutions and teachers were opened and contribution which were less than the mandate percentage were deposited in such Public Provident Fund accounts. It is also an admitted fact that when Public Provident Fund accounts were debarred in Post Offices, deposits in those Public Provident Fund accounts were transferred to joint Savings Bank accounts of Nationalised Bank and not Schedule Banks and contribution began to be deposited there, thus instead of reaping benefit of Centralised Contributory Provident Fund, teachers in Meghalaya were left with the benefits of Savings Bank accounts which is totally illegal and unjustifiable and against the Acts and Rules referred above.

It is also noticed that the Division Bench judgment of the then Gauhati High Court passed in WA. No. 14 of 2001, dated 07-12-2005 at para 21 observed as follows:

> *"**21**. However, before parting with the records, considering the submissions made before us, we expect that the State of Meghalaya shall take a conscious decision in the matter considering the service conditions and other relevant factors governing the teachers' services in deficit colleges in Meghalaya."*

From the observation, the Division Bench had made it clear that Government is to consider the service condition and other relevant factors governing the teachers' services in the deficit colleges in the State of Meghalaya but unfortunately, government has not adhered to the same till date. Government should take note that when the judiciary passes any order to consider or to take

conscious decisions, it is mandatory for the government to comply with the same. In our view government is liable for contempt, however, we are not on that point as no contempt petition has been filed before us.

24. The case of ***D.S. Nakara and Others Vrs. Union of India reported in (1983) 1 SCC page 305*** was discussed in WP(C). No. 380/2013 as quoted above. However, para 12, 13, 14 and 15 of the said judgment is reproduced herein below for ready reference:

> "***12***. *After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill, 1978*[3] *restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: (SCC pp.424-25, para 72)*
>
> > *"3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.*
> >
> > *4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.*

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

***"13**. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi's case[1] in the earliest stages of evolution of the Constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N[4], it was held that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p.38, para 85).*

> *From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."*

***"14**. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi Case[1] as under at SCR p.728: (SCC p.342, para 94).*

> *That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current cliche-can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; be you ever so high, the law is above you.*[1]
>
> *Affirming and explaining this view, the Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi*[5] *held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India v. Nargesh Meerza*[6] *the Court formulated propositions emerging from analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis."*
>
> ***"15**. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."*

25. We are also of the conscious view that the submission forwarded by learned Advocate General, Govt. of Meghalaya is purely irrelevant and beyond law. We cannot understand how he submits that teachers of deficit/aided/adhoc colleges have no right to file the instant writ petition and to claim the equality as

per the benefit enjoyed by the government college teachers. Learned Advocate General should know the Principle of Doctrine of Equality is applicable to each

and every citizen of the country and that is their constitutional right. It is also not correct that the Court cannot interfere if the policy of the government is against the concept of the Constitution of India and goes against the Principle of Equality. As such, we find his submission is irrelevant and unacceptable.

The learned Advocate General relied on ***M.P.Rural Agriculture Extension Officers Associations Vs. State of M.P. reported in (2004) 4 SCC 646 para 26.*** In our conscious view this case is not applicable as the Hon'ble Supreme Court has observed that two different scales of pay may be provided in the same cadre on the basis of educational qualification i.e, graduates and non-graduates, but in the instant case the teachers are equally qualified and giving equal service. Hon'ble Supreme Court has no where said that equal pay for equal work should not be followed.

Rather we are of the view that the deficit/aided/adhoc teachers are giving better service than some of the government school and college teachers. Therefore, since we find that both government school and college teachers as well as deficit/adhoc/aided are equally qualified and giving equal service, they are entitled for equal pay, pension and other benefits, otherwise it will go against the concept of Article 14 and 16 of the Constitution of India and Article 39(d) of the Directive Principles of State Policy.

The learned Advocate General also relied on ***Secretary, Mahatma Gandhi Mission and another Vs. Bhartiya Kamgar Sena and others (2017) 4 SCC 449 Para 60 to 63 and 81***. On careful reading of the said judgment, we find that it is not applicable in this case.

Another judgment relied by the learned Advocate General in the case of ***State of Punjab and others Vs. Amar Nath Goyal and others (2005) 6 SCC 754*** is also not applicable. In this case as we reiterate that when pension is given to the MLAs from retrospective effect and when there are so many political appointees, government cannot take the plea of financial constraint.

The other two judgments relied by the learned Advocate General in the case of ***Networking of Rivers:in RE (2004) 11 SCC 360 para 8*** as well as ***Mani Subrat Jain and others Vs. State of Haryana and others (1977) 1 SCC 486*** are totally inapplicable in the present writ petitions.

26. It is true that the government has a right to have their own policy but no policy should be contradictory to the principle/concept of the Constitution of India. In this case, if pension is extended only to teachers of government college keeping aside the teachers of government deficit/adhoc/ aided colleges is nothing but arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India and the Directive Principles of State Policy. Article 13 of the Constitution of India made it clear that laws inconsistent with or in derogation of the fundamental rights shall be null and void. The question that remains is whether it should be prospective or retrospective. As submitted by the learned Sr. counsel that the MLAs are getting pension from retrospective effect, then I put the question to the government; Why not the teachers?

We must remember that teachers are the backbone of the society and it is through their contribution, dedication and hard work which has moulded us to become what we are today; be it a Judge, a Minister, a Lawyer, a Doctor or an IAS Officer etc., and that, we can never forget. Though government has got the power to make a policy but such policy should not go against the common

people's interest. We all know that the retired teachers and employees of the government deficit/adhoc/aided colleges suffer due to non-availability of the pension and live a very uncomfortable inhumane life, some even die due to starvation and cannot get proper treatment due to financial constraints.

From the above discussions, we come to the conclusion that Govt. of Meghalaya must think seriously about the upliftment and security of the government deficit /adhoc/aided college teachers and they cannot just justify that the appointment methods are different between the government college teachers and government deficit /adhoc/aided college teachers. It is not at all acceptable and not sustainable in the eye of law because both the classes of teachers are giving equal service to the society. We are unable to accept the recommendation of the Fifth Pay Commission at para 3 where the retired teachers of deficit/adhoc/aided colleges were recommended only Rs. 10,000/- and Rs. 5000/- which is too meagre in comparison with the present price index and did not serve any purpose at all. The amount shown above for the teachers of deficit/adhoc/aided colleges and staff also goes against the principle of doctrine of equality and social security. Government should remember that teachers should not be considered as beggars, they are one of the most respected citizens of the country and the backbone of the society. It is also known to all of us that in different parts of the world, teachers are respected and well paid.

27. Now after careful reading of the judgments discussed above of the Hon'ble Apex Court, the Hon'ble Gauhati High Court, the High Court of Meghalaya as well as the Acts and Rules, we would further like to discuss certain judgments which are reproduced herein below:

28. The Division Bench of the Hon'ble Gauhati High Court in the case of ***Dolly Borpujari Vs. State of Assam (2010) 2 GLT 147*** at para 16 and 18

observed that absence of Rule or defective Rule pension cannot be denied. Para 16 and 18 of the said judgment are reproduced herein below for ready reference:

> *"**16**. The history and the philosophy behind the grant of pension is discussed by the Supreme Court in D.S Nakara & Ors. Vs. Union of India reported in (1983) 1 SCC 305. At para 19 the Supreme Court posed the following questions:-*
>
> *"19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose,..... We need seek answer to these and incidental questions so as to render just justice between parties to this petition."*
>
> *The Supreme Court relying upon Deokinandan Prasad Vs. State of Bihar reported in (1971) 2 SCC 330 declared at para 20 as follows:-*
>
> *"20. The antequated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad Vs. State of Bihar & Ors. (1) wherein this court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab & Anr. Vs. Iqbal Singh".*
>
> *It went on to analyse the purpose and the object underlying the payment of retirement pension by the*

government to its employees. After tracing out the history of the various kinds of pension payable in this

country at para 28 the Supreme Court held:-

"28. Pension to civil employees of the Government and the defence personnel as administered in India appears to be a compensation for service rendered in the past. However, as held in Douge Vs. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from underserved want."

Finally at para 31 the Supreme Court summed up as follows:-

"31. From the discussion three things emerge:- (i)That pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalized pension scheme. Its payment is dependent upon an additional condition of impeccable behavior even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."

> ***18***. *In the present case the entire defence of the State is that the appellant is not governed by any Rules framed by the State under Article 309 and her service was purely contractual. The State also argued that the post which was occupied by the appellant (for a long 14½ years) was a temporary post and therefore, appointment of the appellant was not in a vacancy which is substantive in nature and, therefore, the appellant is not entitled to the benefits of pension. We are of the opinion that the entire exercise of the State is an exercise in semantics. If the stand of the State is that the service of the appellant is an not governed by any statutory Rule framed under Article 309 and purely contractual it is not understood as to how the appellant could be said to have retired on attaining the age of superannuation. Admittedly no contract stipulating the age of superannuation is placed before the Court. On the other hand, the appellant was made to retire on reaching the age of superannuation prescribed for all other employees of the State of Assam whose services are otherwise regulated by Rules framed under Article 309. If the service of the appellant is purely contractual, to our mind, the only known mode of putting an end to the service is either by efflux of time stipulated by the contract or by termination of the contract by an appropriate procedure. We are also not convinced with the submission that the employment of the appellant is purely temporary in view of the fact that the appellant was employed for long period of 14½ years and since the retirement of the appellant, another person is appointed to the same post which was held by the appellant. Obviously the work and the need to employ somebody to do the work continues. The employment remains "contractual" only because the State was either lazy not to framed appropriate Rules under Article 309 or mischievously omitted to frame statutory Rules governing the service of the appellant. In either case it would be an arbitrary omission on the part of the State to discharge a constitutional obligation flowing from Article 41 of the Constitution."*

29. The Hon'ble Supreme Court in the case of ***State of Haryana and***

Others Vs. Rajpal Sharma and Others reported in (1996) 5 SCC page 273 in para 6 observed that:

> "***6.*** *In the impugned judgment the High Court has merely stated that the petition is allowed in the same terms as in CWP No. 876 of 1988. CWP No. 876 of 1988 was disposed of with the direction that the State would determine the benefits available to the teachers in the light of the judgment of the Supreme Court including the grant of increments as has been granted to their counterparts working in the government schools. The positive direction in* ***Haryana State Adhyapak Sangh v. State of Haryana***[3] *to the effect that as from 1-4-1990 the teachers employed in aided schools shall be paid the same salary and dearness allowance as is paid to teachers employed in government schools, leaves no room for doubt about the grant of the said benefit to the respondents herein who are the teachers in privately managed aided schools in Ambala District in the State of Haryana."*

30. The Hon'ble Supreme Court in the case of ***Chandigarh Administration and Others Vs. Rajni Vali (MRS) and Others (2000) 2 SCC 42*** para 6, 7, 8, 9 and 10 observed that:

> "**6**. *The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statues and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution. Keeping in mind these and other relevant facts this Court in a*

number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions. To notice a few such decisions on the point, we may refer to the case of Haryana State Adhyapak Sangh v. State of Haryana[1] in which this Court issued a direction that the State Government will also take up with the management of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of government schools for the period following that to which the thirty-five installments relate, so that a claim for payment may be evolved after having regard to the different allowances claimed by the petitioners. In the case of Haryana State Adhyapak Sangh v. State of Haryana[2] a Bench of three learned Judges of this Court clarifying the judgment in Haryana State Adhyapak Sangh v. State of Haryana[1] issued a direction, inter alia, that the parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in government schools shall be maintained and with that end in future the pay scales of teachers employed in government schools be revised and brought on at par with the aided schools and dearness allowance payable to the teachers employed in government schools with effect from 1-1-1986.

***7**. In the case of State of Maharashtra v. Manubhai Pragaji Vashi[3] this Court held that the decision of the government of Maharashtra not to extend the grant-in-aid scheme to private law colleges was discriminatory and this Court directed the State of Maharashtra to extend the grant-in-aid scheme to all recognized private law colleges on the same criteria as such grants are given to other faculties, namely, Arts, Science, Commerce, Engineering and Medicine from the academic year 1995.*

***8**. In the case of State of Haryana v. Ram Chander[4] this Court considered the case of the language teachers in the Haryana Government Vocational Education Institute, who taught Hindi and English to 11th and 12th standard students in the Institute, that they should be given parity in pay scale with the teachers who taught 11th and 12th standard students in*

higher secondary schools who were designated Lecturers. This Court upheld the judgment of the High Court granting parity of scale of pay to the aggrieved teachers on the finding, inter alia, that whether the teachers teaching Hindi and English languages to 11th and 12th standard students in a technical institution or in a higher secondary school makes no difference in the nature of duties and functions performed by these two sets of papers (sic teachers) when they teach the same syllabus of Hindi and English to 11th and 12th standard students who appear at the same type of examination and wrote the same papers as were written by 11th and 12th standard students who are taught Hindi and English in higher secondary schools.

***9**. Tested on the touchstone of the principles laid down in the aforementioned decisions, the position is manifest that there is no justification for denying the claim of the respondents for parity of pay scale and to accept the contention of the appellants will amount to confirming the discriminatory treatment against the respondents. Therefore, the High court rightly rejected the case of the appellants. The directions issued in the impugned judgment to pay Respondents 1 to 12 the same salary as is being paid to their counterparts in the privately managed Government-aided schools in Chandigarh in the circumstances is unassailable.*

***10**. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of Respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected. It is, however, clarified that the proportion in which the additional burden will be shared by the Chandigarh Administration and the Management of the School will be in accordance with*

the grant-in-aid scheme applicable to the School from time to time. The judgment of the High court that the sharing of the financial burden will be in the ratio of 95% to 5% is modified accordingly."

31. Hon'ble Supreme Court in the case of ***Union of India Vs. R.Sethumadhavan and another reported in AIR 2018 SCC 1891*** was pleased to observe in para 2, 3 and 14 which is reproduced herein below for ready reference:

*"**2**. More than 140 years ago, it was said by the Privy Council:*

"These proceedings certainly illustrate what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree."[1]

A somewhat similar fate seems to await government servants – on getting retired, they have to struggle for the due pension. This is a classic case of a railway employee who retired as a Train Examiner on 31st March, 1991 and his pension woes are being decided after 27 years and unfortunately not in his favour.

***3**. We recommend to the Department of Personnel and Training of the Government of India to try and make life after retirement easier for a Government servant by having appropriate legislation enacted by Parliament or applicable Pension rules rather than a khichdi of Instructions, Office Memoranda, Clarifications, Corrigenda and so on and so forth.*

***14**. While dealing with this question, this Court held in paragraphs 17 and 27 of the Report as follows:*

"17. The main thrust of the submissions of learned counsel for the appellants is that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the recommendations of the fifth Pay commission were

accepted to the extent of policy resolution dated 30-9-1997. The aforesaid Policy Resolution was further clarified by issuing instructions in OM dated 17-12-1998, which were clarified by another executive instructions in OM dated 11-5-2001. It is well-settled

principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate government. It is also well-settled principle of law that a policy decision of the government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of estopple. In the present case, the recommendations of the Fifth Pay Commission were accepted by a Policy Resolution dated 30-9-1997 that the ceiling on the amount of pension will be 50% of the highest pay in the government. The pension of all pre-1-1-1996 retirees including pre-1986 retirees shall be consolidated as on 1-1-1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent OM Dated 17-12-1998 clarified the Policy Resolution dated 30-9-1997 by executive instructions in OM dated 17-12-1998 and further clarified in the form of OM dated 11-5-2001 clarifying the contents of Policy Resolution of the government dated 30-9-1997. They are both complementary to each other. Both clarify the Government Policy Resolution dated 30-9-1997. The appellants are not aggrieved by the executive instructions in OM dated 17-12-1998. In our view, therefore, the contention of the appellant that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998, thereby creating two classes of pensioners is absolutely ill-founded and untenable.

27. For the reasons aforestated, the view taken by the Madras High Court that the clarificatory executive instructions in OM dated 11-5-2001 are an integral part of the OM dated 17-12-1998 clarifying the policy resolution of the government dated 30-9-1997 and do not override the original OM dated 17-12-1998 is correct law and it is , accordingly, affirmed. The view

taken by the Delhi High court that OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside."

From the said judgment of the Hon'ble Supreme Court, it is understood and clear that government can review/alter/modify the policy decision by executive instructions. Policy decision also can be reconsidered as and when necessary for the benefit of the common people and the country. Therefore, we are of the conscious view that policy decision of the government cannot attain the finality if it is contrary to the fundamental rights of the people as ensured by the Constitution of India. If it contradicts the fundamental rights of a person or persons, the policy decision of the government can be challenged and strike down at any point of time. Further, we are of the conscious view that government should take a conscious decision taking into consideration Article 14, 16 and 39(d) of the Directive Principles of State Policy of the Constitution of India.

32. In WP(C). No. 281 of 2017, the teachers of the petitioner's association who are serving in deficit grant-in-aid colleges are aggrieved that the norms relating to maintenance of "CPF" is not followed correctly either by the Government of Meghalaya or by the Colleges concerned thus leading to heavy loss of financial benefits to the teachers. Further the teachers are aggrieved that there is no post retirement social benefit scheme for teachers, though all similarly placed teachers in government colleges have post retirement benefits in the form of pension etc. The Hon'ble Court had recognised the entitlement of pension requiring the government to take a conscious decision in this regard in earlier litigation.

33. "However, before parting with the record and considering the submission made before us, we expect that the State of Meghalaya shall take a conscious decision in the matter considering the service condition and other factors governing the teachers in deficit colleges in Meghalaya as per the Division Bench judgment of the Gauhati High Court dated 07-12-2005 passed in WA. No. 14 of 2001."

The respondents-government has placed reliance in the Division Bench judgment of the Gauhati High Court dated 07-12-2005 passed in WA. No. 14 of 2001, to negate the claim of the petitioners for pension claiming that as per the judgment, teachers of grant-in-aid colleges are not entitled to pension. The reliance is not applicable in the present case since the Hon'ble High Court in the said judgment has specifically held that teachers of deficit colleges would not be entitled to the pension under the Employees Pension Scheme, 1995. It cannot lose sight that the Hon'ble High Court had specifically held that teachers should be entitled to pension and that was by way of Contributory Pension Fund Scheme. It is also to be remembered that the Rules and Orders of the Education Department, the Provident Fund Act and Rules referred above have fastened liability on the government to contribute to funds and to maintain such funds as laid down in the provisions of law. The fact remains that with the passage of time, the government has brought in different pension plans where the liability of pension is not wholly fastened on the government and rather quantification depends on the contribution made by the employer and the employee. Most importantly, now the government vide Notification No. EDN. 188/2012/24, dated 13-04-2018 during the pendency of the writ petitions has taken a conscious decision to implement the New Defined Contributory Pension Scheme for teaching and non-teaching staffs of deficit colleges by converting

the CPF contribution with effect from 01-04-2018. This decision contradicts the earlier stand that teachers are not entitled to pension.

34. With reference to the Contributory Pension Scheme, it may be noted that Contributory Pension Plans are funded primarily by the employer or the participant with the employer matching contribution to certain account this is what the Contributory Provident Fund Scheme (adopted by the State of Meghalaya) sought to be achieved by creating the Centralised Provident Fund to be maintained with "**Schedule Bank**". The amount of contribution by a participant in accounts of such funds would be utilised for making pension available to the teachers. Unfortunately, the State has miserably failed when it did not maintain such Centralised Provident Fund and what the teachers of deficit colleges get on their retirement is a meagre saving maintained in Savings Bank account.

35. Thus, the entitlement of the teachers of deficit colleges to pension has found favour with the government with the instant Notification dated 13-04-2018 and the respondents now cannot be allowed to assert that teachers of deficit colleges are not entitled to pension as held in WA. No. 14 of 2001, teacher in deficit colleges are entitled to pension and the government was required to take a conscious decision in this regard. Apparently, the entitlement has been accepted by introducing Notification No. EDN. 188/2012/24, dated 13th April, 2018 would relive that scheme of payment of pension is dependent on converting the CPF contribution. Thus, unless the errors, mistakes and fallacies pointed out earlier are corrected first by the State, the implementation of Notification dated 13-04-2018 would yield no result or the desired result. In the absence of Centralised Provident Fund there is no contribution in Contributory Provident Fund accounts in Schedule Bank which are proposed to

be now converted to contribution towards New Defined Contributory Pension Scheme. Even if the account in Savings Bank are assumed to be contribution towards contribution fund, the erroneous maintenance in Savings Bank account results in meagre savings which would not serve any purpose. The Notification dated 13-04-2018 has been set aside by this Court vide judgment dated 11-10-2018 passed in WP(C). No. 380/2013.

36. A further fallacy that would require consideration of the Court is that the New Defined Contributory Pension Scheme (NDCPS) (which is sought to be implemented now to teachers of deficit colleges was introduced in the State of Meghalaya by Office Memorandum No. FEMP(C)/7/2007/Pt.II/66, dated 24th March, 2010 and the same was given effect from 01-04-2010 and this scheme was applicable to new entrants to State Government joining service on or after 01-04-2010. The New Defined Contributory Pension Scheme, 2010 which is sought to be implemented by Notification dated 13-04-2018 is effective only for new entrants after 01-04-2018. No provision had been made for those teachers who are still serving and joined service prior to the said date and for those who had retired either during the pendency of the writ petition or retired earlier. Further, no reasons have been assigned for implementing the Scheme from 01-04-2018, whereas it was implemented for those similarly situated cases from 01-04-2010.

37. WP(C). No. 360/2017 stated that teachers serving in adhoc grant-in-aid and aided colleges who are similarly situated have been denied the benefits of not only the provisions of the Contributory Provident Fund or Employees Provident Fund and the benefits of Fourth Pay Commission was given with effect from 01-03-2012 instead of 01-01-2007. The prayers are that since the teachers of adhoc grant-in-aid and aided colleges are not being given

benefit of Contributory Provident Fund therefore the provision of Employees Provident Fund and Miscellaneous Contribution Act, 1954 may be implemented, which not only provide for Provident Fund but also provides for Employees Pension Scheme, 1995. Further, prayers are also to formulate Service Rules with Career Advancement Scheme and grant of benefits of the Fourth Pay Commission along with consequential benefits.

38. The catena of judgments of the Hon'ble Supreme Court discussed above as well as the case of Dolly Borpujari Vs. State of Assam (2010) 2 GLT 147 para 16 and 18, we reiterate again and again that equal pay for equal work is mandatory and government cannot shut their eyes on the miserable life condition of the teachers due to non-availability of proper/adequate pension and other benefits. We always see very often teachers sitting on Dharna and claiming their rights for adequate salary, pension and other benefits, but no one has the time to think for those depressed and oppressed class of teachers which is really unfortunate and is a shame for all of us.

Since Government of Meghalaya has adopted most of the Acts and Rules of the Assam Government, we do not see any difficulty or harm to adopt the Assam Deficit College Employees (Pension) Rules, 1998, the Assam Non-Government (Deficit) College Central Pension and Provident Fund Act, 1997, the Assam Non-Government School and College Employees Centralised Provident Fund Scheme Act, 1969 and the Contributory Provident Fund Rules (India), 1962. So, they are directed to adopt the above mentioned Acts and Rules immediately.

39. After hearing the submissions advanced by the learned counsels as referred above and on perusal of the judgments of the Hon'ble Supreme Court

discussed above, the judgment dated 07-12-2005 passed in WA. No. 14 of 2001 by the Hon'ble Division Bench of the Gauhati High Court, the Acts and Rules as referred above as well as the Fifth Pay Commission recommendation, we are of the considered view that there is no place in our Constitution for discrimination and inequality. Considering the miserable service conditions of the teachers, we direct the respondents to comply with the following directions:

(1) For correction of Contributory Provident Fund immediately with retrospective effect as per the Contributory Provident Fund Rules (India), 1962 and the Assam Deficit College Employees (Pension) Rules, 1998.

(2) Teachers who joined service on or after 01-04-2010 can be given the benefits of the New Defined Contributory Pension Scheme with effect from 01-04-2010 instead of 01-04-2018.

(3) Teachers who retired/joined prior to 01-04-2010 as well as those who are still serving and also those who retire after 2010 till 2018 and in future, the benefits of the Assam Non-Government (Deficit) College Central Pension and Provident Fund Act, 1997 and the Assam Deficit College Employees (Pension) Rules, 1998 shall be given with retrospective effect.

(4) Government to frame rules for all pensioner benefits including family pension for retired teachers and those who have expired as per the above mentioned Assam Acts & Rules.

(5) Government to also take immediate care to clear the monthly salary of the teachers who are not getting their salary for months together.

(6) Government to make rules that none of the teachers should lose even a single paise of the benefits and that should be applicable to all teachers those who have joined/retired from the time of statehood.

(7) Government should pay the contribution which they are supposed to pay from the time of inception of statehood to the teachers serving, retired or expired.

Government is also further directed to ensure that during and after service, all the teachers should live a decent and comfortable life with their kith and kin and no teacher or their family should suffer financial constraint which leads to starvation or non-availability of treatment. Government should adhere strictly in letter and spirit the principle of Doctrine of Equality, Article 14, 16 and 39(d) of the Directive Principles of State Policy of the Constitution of India i.e., equal pay for equal work.

We further make it clear that government should not take the plea of financial constraint to follow the directions above. The management of fund is totally upon the respondents-government for which teacher class should not suffer.

(8) It is also directed that no tax should be deducted on the contribution made by the teachers. Government is directed to issue instructions to all colleges in that regard and if any tax is deducted at the time of contribution of the Provident Fund, that is to be refunded to the teachers immediately.

(9) In case the government fails to correct the Contributory Provident Fund and other directions as directed above, they will have to pay pension to government deficit/adhoc/aided college teachers and staff as per pension rule applicable to government college teachers and staff.

The above directions are to be complied in letter and spirit within 3(three) months from the date of this judgment. This judgment will be applicable to the entire State of Meghalaya.

40. With these observations and directions, WP(C). No. 281/2017 and WP(C). No. 360/2017 are allowed by this common judgment and stands disposed of.

The Registry is directed to send a copy of the judgment and order today itself to:

(1) His Excellency the Governor of Meghalaya.
(2) Hon'ble Chief Minister of Meghalaya.
(3) Chief Secretary, Govt. of Meghalaya.
(4) Principal Secretary, Education Department, Govt. of Meghalaya.

(S.R.Sen)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
01 .11.2018
"S.Rynjah PS"