

(2011) 02 GAU CK 0026

**Gauhati High Court (Itanagar Bench)****Case No:** Writ Petition No. 279 (AP) 2010

Sri. (Dr.) Asham Borang

APPELLANT

Vs

The State of Arunachal Pradesh

RESPONDENT

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**Date of Decision:** Feb. 11, 2011**Acts Referred:**

- Arunachal Pradesh Forest Department Scientist (Group A) Recruitment Rules, 1991 - Rule 8.1
- Constitution of India, 1950 - Article 309

**Hon'ble Judges:** P.K. Musahary, J**Bench:** Single Bench**Advocate:** M. Pertin, T. Leriak, C. Modi, K. Dabi, K. Bagra and O. Binggep, for the Appellant; R.H. Nabam, Sr. Govt. Advocate, for the Respondent**Final Decision:** Dismissed

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**Judgement**

P.K. Musahary

1. Heard Mr. M. Pertin, learned Counsel for the Petitioner. Also heard Mr. R.H. Nabam, learned Senior Government Advocate for all the Respondents.

2. At the very outset, it is submitted by Mr. Nabam, learned Senior Government Advocate that inspite of several correspondences made by his office, he did not receive any instructions from the concerned authorities, particularly, Respondent No. 3 viz. Principal Chief Conservator of Forests and Principal Secretary (Environment and Forests), Government of Arunachal Pradesh, and as a result, no response could be filed in this matter, till date.

3. The facts leading to claim of financial benefits by the writ Petitioner may be stated hereunder for better appreciation.

On recommendation of 5th Code of Civil Procedure, the Government of India notified the Central Civil Service Revised Pay Rules, namely, CCS(Revised Pay) Rules,

1997, w.e.f. 01.01.1996. The Government of Arunachal Pradesh adopted the same in toto w.e.f. 01.01.1996 by issuing O.M. dated 09.10.1997. On further recommendation of the 5th CPC, the existing Flexible Complementing Scheme (hereinafter referred to as CFS, in short) was modified and amended to remove the existing disparities in the operation of the said scheme in various Scientific Departments and Institutes all over the country by issuing the O.M. dated 09.11.1998. In order to give immediate effect to the aforesaid O.M. dated 09.11.1998, an "Umbrella Notification" containing the rules regulating the in situ promotion of Scientists under FCS was framed under the proviso to Article 309 of the Constitution of India on 09.11.1998 giving effect from 09.11.1998 showing the grades and corresponding pay. The Petitioner was initially appointed as Forest Zoologist on 18.03.1988 prior to framing of the Arunachal Pradesh Forest Department Scientist (Group A) Recruitment Rules, 1991, hereinafter referred to as 1991 Rules. The said 1991 Rules provides for induction in service with effect from the date of initial appointment. The post of Forest Zoologist is equivalent to Scientist (SC) in the scale of pay of Rs. 10000-152000/- p.m.. The said post was re-designated as Scientist (SE) in the scale of pay of Rs. 14300-400-18300/-. According to the Petitioner, he has been denied the aforesaid pay scale as recommended under the 5th Code of Civil Procedure. In that regard, he made several representations to the authorities concerned but he failed to receive any positive response. The Petitioner then filed a writ petition being WP(C) 257(AP)2003 and the said petition was disposed of by this Court on 06.06.2005 with a direction to the Respondent authorities to finalize the entire matter and take appropriate decision in terms of Rule 8.1 of the 1991 Rules as well as Flexible Complimenting Scheme within a period of 3(three) months from the date of receipt of a certified copy of the order. The aforesaid order of this Court having not been implemented by the authorities concerned, the Petitioner had to approach this Court again by way of filing WP(C) 175(AP)2008. While the said petition was pending disposal, the Respondent PCCF was called in-person who appeared on 25.11.2008 and apprised this Court that the court's earlier judgment and order dated 06.06.2005 was at the final stage of implementation as the connected file was lying in the Law Department and after getting necessary clearance from the said Department, would take necessary steps, hardly within one week for issuance of notification in regard to Petitioner's induction in service. It was further apprised by the officer that as regards the extension of benefits under the 5th Code of Civil Procedure, it might require about 2 months time for finalization which was also pending before the Law Department. The said writ petition was disposed of on 04.04.2009 directing the Respondents to consider and pass necessary order(s) relating to the claim of the Petitioner for promotion to next higher grade keeping in view the provisions of Recruitment Rules as amended from time to time by taking the date of induction of the Petitioner in service as on 18.03.1988 within a period of one month from the date of the order. Pursuant to the court's order, the Petitioner was allowed the pay scale of Rs. 14300-400-18300/- p.m. (pre-revised) w.e.f. 28.01.2009 vide order dated 29.05.2009

by the Department concerned but the Respondents refused to implement the extension of benefit of 5th CPC w.e.f. 09.11.1998 as was provided by the Central Government as well as State Government by adopting the 5th CPC recommendations in toto w.e.f. 09.11.1998 by providing FCS for Scientists as stated earlier. The Petitioner asserts that he was inducted into service and holding the post of Scientist (SE) in the pay scale of Rs. 14300-18300/- p.m. since 01.07.1997 and as such, he is entitled to get the financial benefits under 5th CPC w.e.f. 09.11.1998.

4. Mr. Pertin, learned Counsel submits that the Respondent authorities instead of considering the case of Petitioner for extending the benefits under 5th Code of Civil Procedure, particularly under the FCS, have enhanced the pay scale of Scientist (SE) from 12000-16500/- p.m. to Rs. 14300-18300/- p.m. w.e.f. 21.08.2009 vide order dated 29.05.2009 without giving him the benefit w.e.f. 09.11.1998.

5. There is no dispute on the adoption of 5th CPC recommendations by issuing appropriate notification by the State Government. The date from which the financial benefits of 5th CPC is to be given i.e. 01.01.1996 is also not in dispute but in respect of benefit to be given to the Scientists of various grades, from the documents placed before this Court particularly O.M. dated 09.11.1998 (Annexure-2 to the writ petition), the Government of India issued necessary instructions/guidelines in respect of FCS for Scientists in various Scientific departments. The aforesaid O.M. contains Annexure-1 to it, providing criteria for identifying the institutions/organizations as Scientific and Technical institutions and also definitions of activities and services of Scientists and Engineers and scientific posts including academic qualifications and also the eligibility criteria for promotion under FCS. According to the said Annexure, the officers who satisfy the minimum residency period linked to their performance as indicated in the table furnished in the said Annexure-2, are required to be screened for promotion on the basis of ACRs.

6. The State Government has not clearly stated as to whether the FCS has formulated for the benefit of Scientists has been adopted immediately after notification was issued by the Central Government on 09.11.1998. It has also not been stated in the writ petition or claimed by the petitioner that the aforesaid FCS was adopted by the State Government immediately after the said notification was issued. The O.M. dated 09.11.1998 by which the FCS was introduced, does not provide or direct State Government that it should be introduced compulsorily by the State Government in toto from the date the said O.M. was issued. It has not been specifically stated in the said notification in any manner. In the case of recommendation of 5th CPC, the State Government, as stated earlier, accepted and adopted the same from the date the notification was issued by the Central Government i.e. w.e.f. 01.01.1996. Acceptance of both recommendation of 5th CPC as well as FCS requires approval of the State Government as a matter of public policy. What is apparent is that no cabinet decision was taken in respect of acceptance and/or adoption of FCS before framing

of ♦Scientists SB-SC, SD, SE and SF(FCS)(Amendment) Recruitment Rules, 2008, hereinafter referred to as 2008 Rules vide notification dated 28.01.2009 issued under Memo No. FOR.423/E9A-2/88/PT-II/I, 825-8. The petitioner has not furnished a copy of the aforesaid 2008 Rules for perusal of this court nor has the State Government produced a copy of the same at the time of hearing. It would, therefore, easily understandable that the State Government accepted the FCS introduced by the Central Government w.e.f. 28.01.2009 only. As found from the averments and prayer in the writ petition, the petitioner claims benefits under the FCS w.e.f. 09.11.1998 i.e. the date on which the Central Government issued the notification introducing the said scheme. Against such claim, the respondents have vide order dated 29.05.2009(Annexure-8) after due consideration, allowed the petitioner to draw the pay scale of Rs. 14300-18300/- p.m.(pre-revised) plus other allowances as admissible under the Rules from time to time w.e.f. 28.01.2009 i.e. the date from which the State Government framed the 2008 Rules and given effect to. There is also no dispute that the State Government framed the aforesaid 2008 Rules and the same was published vide notification dated 28.01.2009. The petitioner has not challenged the constitutional validity of 2008 Rules so as to claim the benefit of FCS w.e.f. 09.11.1998 as introduced by the Central Government. In my considered view, the acceptance and adoption of Central Government scheme by the State Government is a matter of public policy and ad decision was taken by the State Government to adopt the said FCS at a later stage by framing the necessary rules. Accordingly, the State Government has framed the 2008 Rules and such public policy is beyond the scope of judicial review. As stated above, since the petitioner has not challenged the vires of 2008 Rules and the same remained in the Statute book as valid. The writ court would not interfere with the decision of the State Government and the implementation of FCS under the provisions of the said Rules giving effect from 28.01.2009.

7. I do not find any ground to hold that the benefit under the FCS was granted vide order dated 29.05.2009 contrary to the provisions made under 2008 Rules. At the same time, I also do not find any ground to give benefit to the Petitioner under the FCS introduced by the Central Government vide O.M. dated 09.11.1998. In my considered view, the order dated 29.05.2009 (Annexure-5) by which the Petitioner was allowed to enjoy benefit under the FCS w.e.f. 28.01.2009 cannot be faulted and declared reasonable or arbitrary unless it can be shown that the State Government framed any other Rule or notification adopting the FCS of the central Government w.e.f. 09.11.1998 or in between 09.11.1998 and 28.01.2009.

8. The aforesaid discussion and finding leads this Court to hold that the Petitioner is not entitled to get the benefit of FCS under the 2008 Rules w.e.f. 09.11.1998. The Petitioner has failed to establish that a case for interference by this Court with the aforesaid order dated 29.05.2009 and direct the authorities concerned to grant benefit under FCS w.e.f. 09.11.1998 as claimed by him. Accordingly, for want of merit, this writ petition stands dismissed.

9. There shall be no order as to costs.