

(2021) 04 MAN CK 0010

In the Manipur High Court

Case No : Writ Petition No. (C) No. 275 Of 2019

Akoijam Chingkheinganbi Devi

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 27-04-2021

Acts Referred:

Citation : (2021) 04 MAN CK 0010

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : L. Anand, S. Rupachandra, oses Pao

Final Decision : Allowed

Judgement

[1] Heard Mr. L. Anand, learned Advocate appearing for the petitioner; Mr. S. Rupachandra, learned Addl. AG for the State respondents and Mr.

Moses Pao, learned Advocate appearing on behalf of Mr. S.Suresh, learned ASG for the Accountant General.

[2] The only prayer made in this writ petition is to direct the respondents to prepare the pension papers and to release the entitled amount of

Rs.6,35,113/- (Rupees six lakhs thirty five thousand one hundred and thirteen) only now lying in the Department of the Directorate of Health Services,

Government of Manipur as family pension arrears in the name of (Late) Y. Promila Devi, Ex-Ward Attendant, who is the adoptive mother of the

petitioner and future entitled amount of family pension to the petitioner till she attains the age of 25 years or till her marriage whichever is earlier.

[3.1] According to the petitioner, her adoptive mother, (late) Y. Promila Devi was appointed on regular basis as the Ward Attendant under the

Directorate of Health Services, Manipur. After having served for more than 22

years, she expired while in service on 11-04-2004 because of which the Medical Directorate issued the order dated 07- 05-2003 terminating her service with effect from 11-04-2003.

[3.2] The petitioner was a minor at the time of her death and accordingly, she requested through her legal guardian, the Director of Health Services,

Manipur for payment of family pension relating to her mother, (Late) Y. Promila Devi. Although all the required pension papers/ documents had been

submitted, the Government of Manipur: Secretariat: Health Department vide the Under Secretary's letter dated 15-06-2011 addressed to the

Director of Health Services, Manipur, rejected the family pension to be granted to the petitioner and accordingly, all the relevant papers/ documents

along with service book were returned to the office of the Director of Health Services, Manipur

[3.3] The petitioner through her legally appointed guardian, submitted a representation dated 28-07-2011 to the respondents for payment of family

pension and terminal benefits etc. but her representation was not considered by the respondents. Being aggrieved by the inaction on the part of the

respondents, the petitioner approached this Court by way of a writ petition being WP(C) No. 642 of 2011 which was disposed of on 17-03-2016

observing that it would be appropriate for her to approach the Civil Court of competent jurisdiction for obtaining succession certificate.

[3.4] In terms of this Court's order dated 17-03-2016, the petitioner approached the Civil Court of competent jurisdiction to obtain succession

certificate by filing Original (Succession) Suit No.13 of 2016 before the Court of the District & Sessions Judge, Imphal West, Manipur which granted

the same in her favour on 15-12-2017. After obtaining the succession certificate, she submitted additional pension papers/ documents including the

succession certificate and the order dated 17-03-2016 passed by this Court vide her letter dated 23-03- 2018. The office of the Chief Medical Officer,

Imphal West, Government of Manipur vide its order dated 20-04-2018 forwarded the same to the Directorate of Health Services, Manipur for

necessary action which, in turn, submitted them to the Principal Secretary (Health & FW), Government of Manipur vide its letter dated 28-07-2018

with a request to move the Finance Department (PIC), Government of Manipur for obtaining concurrence of the finalization of the pension case.

[3.5] The office of the Sub-Divisional Officer, Lamphel, Imphal West issued an order dated 24-08-2018 certifying the petitioner as the adopted

daughter of the deceased, late Yengkhom Promila Devi who expired on 11-04-2003 on the basis of an enquiry report submitted by the Sub-Deputy

Collector/HQ Lamphel, Imphal West vide its letter dated 21-08-2018 and the order of appointment of guardian by the Judge, Family Court, Manipur at

Lamphelpat, Imphal in Mat. (G&W) Suit No.19 of 2009. Being aggrieved by the inaction on the part of the respondents, the instant writ petition has

been filed by the petitioner.

[4] In the affidavit-in-opposition filed on behalf of the respondents, it has been stated that the adoption of the petitioner by the deceased, late

Yengkhom Promila Devi while she was in service, is very much doubtful and the issue involved is a disputed question of facts and law. After the

death of the deceased, Shri Koijam Suraj Singh produced an adoption deed alleging that he was adopted by her and the adoption deed was formally

registered on 06-01-2000. Since the execution of the said deed was never brought to or otherwise produced to the knowledge of the officials during

the lifetime of late Y. Promila Devi, the adoption of Koijam Suraj Singh is in violation of the provisions of law as prescribed in the Act. On the basis of

the adoption deed, he claimed for the benefits, such as GIS, GPF and leave encashment which were directed to be released by the authority in his

favour. He also submitted an affidavit dated 14-05-2003 stating that he is the only person entitled to all the service benefits. But the authority did not

release them in favour of Shri Koijam Suraj Singh, as he had already crossed 25 (twenty five) years of age and was not entitled to the said benefits.

On top of that, although he claimed to be adopted son, he continued to use his surname as Koijam which is in violation of provisions of law. Since the

pension and pensionary benefits were not released to Shri Koijam Suraj Singh, his elder sister, Koijam Bimota Devi submitted a representation dated

29-07-2006 along with an affidavit claiming that she is the legal guardian of the petitioner who was adopted by Late Y. Promila Devi during her

lifetime. Thus, the petitioner is entitled to get and enjoy the said family pension and pensionary benefits through her legal guardian. She submitted

another representation dated 11-08-2008 to the Director of Health Services, Manipur for granting family pension to her on behalf of the petitioner. In

the meantime, Koijam Bimota Devi produced the adoption deed dated 27-03-2000 adopting the petitioner by the deceased but the deed of adoption was made in collusion with unscrupulous persons. After the petitioner being adopted, her surname remains to be Akoijam in stead of Yengkhom. The authority has taken up steps for challenging the genuineness or otherwise veracity of the deed of adoption and also for verification of all the persons involved in the present issue. The present writ petition cannot be considered in the absence of Shri Koijam Suraj Singh who is not arrayed as party respondent and therefore, the same is liable to be dismissed on the ground of non-joinder of necessary party.

[5] It is not in dispute that when the petitioner approached this Court as back as in the year, 2011 by way of WP(C) No.642 of 2011 for grant of

family pension and retiral benefits accrued in favour of the deceased, late Y. Promila Devi, this Court disposed of it with the following observations:

“8. This Court is of the view that it would be appropriate for the petitioner to approach the Civil Court of competent jurisdiction to obtain

appropriate Succession Certificate on the strength of the registered Deed of Adoption which he claims to be valid. In the event the competent Civil

Court issued Succession Certificate/decreed in favour of the petitioner to the effect that the petitioner is indeed the adopted daughter of the said (late)

Yengkhom Promila Devi @ Y. Jamini Devi and as such entitled to the estates, including the pensionary benefits of (late) Yengkhom Promila Devi @

Y. Jamini Devi, there is no reason as to why the authority should deny the pensionary benefits entitled to the petitioner on account of the death of the

said Yengkhom Promila Devi.”

[6] The respondents herein have been arrayed as the respondents therein and since they appear to have not preferred any appeal against the order

dated 17-03-2016, it had attained its finality. On perusal of this Court's order dated 17-03-2016, it is seen that the observations contained therein

are twofold- one, it would be appropriate for the petitioner to approach the Civil Court of competent jurisdiction to obtain a succession certificate and

two, in the event of the succession certificate being granted by the Civil Court of competent jurisdiction in her favour, there is no reason as to why the

authority should deny the pensionary benefits entitled to the petitioner on account of the death of her adoptive mother. The said observations are plain

and unambiguous which require no interpretation at all. The implementation of the second observation as contained in this Court's order, depends

upon the outcome of the liberty as mentioned in the first observation, being exercised by the petitioner. In other words, the moment succession

certificate being obtained by the petitioner, she is entitled automatically to the pensionary benefits in terms of the order of this Court. So far as the first

observation is concerned, the petitioner appears to have approached the Civil Court of competent jurisdiction which has granted the succession

certificate in her favour, a copy of which has been placed on record.

[7] After the succession certificate being obtained by the petitioner, she approached the authority with copies of the succession certificate and this

Court's order dated 17-03-2016 being furnished to them. The grievance of the petitioner is that despite the said documents being furnished by her,

the respondents have failed to consider them and grant the pension and pensionary benefits. According to the petitioner, the failure on the part of the

respondents in granting the pension and pensionary benefits is highly unfair and unreasonable. Her contention appears to have some merit for the

reason that since she has been granted a succession certificate by the Civil Court of competent jurisdiction to be the adopted daughter, the legal

consequence ought to follow in terms of this Court's order. The stand taken by the State respondents is that she cannot be granted the pension

and pensionary benefits, as she has continued to use her surname. Their contention is too technical and will have no value at all, after the successive

certificate having been issued by the Civil Court of competent jurisdiction in her favour. It may further be noted that the pension and pensionary

benefits have legally accrued to the deceased which cannot be withheld and denied by the State Government, when the rightful person claims it in

accordance with law. The only exercise to be done by the State Government in such case is to verify as to whether the person claiming the said

benefits, is the genuine and rightful one and if such a person is found to be genuine and rightful one, the State Government is duty bound to grant the

same to him/her. In the present case, as the succession certificate has been granted by the Civil Court of competent jurisdiction in her favour and as

long as it is not quashed and set aside by an appellate forum, she is entitled to get and enjoy the pension and pensionary benefits. One objection which

the State respondents have raised in their counter affidavit, is that the writ petition is not maintainable because Shri Koijam Suraj Singh has not been arrayed as party respondent herein. Their objection is not sustainable in law for the reason that in their affidavit itself, it has been stated that the benefits cannot be released to him as he has crossed 25 years of age. If he has become ineligible for grant of benefits, it will make no difference whether he has been arrayed as party respondent or not. In any case, he can no longer be the claimant for the pension and pensionary benefits and therefore, his presence is not required at all while deciding the issue involved herein. Moreover, he appears to have not preferred any appeal against this Court's order dated 17-03-2016 before any appellate forum.

[8] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed with the direction that the respondents shall release the pension and pensionary benefits, accrued to the deceased, late Y. Promila Devi, to the petitioner, the adopted daughter within a period of three months from today. In other words, after the said benefits being computed by the respondents, the same shall be transferred to the account of the petitioner. If the said benefits are not released within the time as specified and directed above, the same shall accrue interest @ 6% per annum from the date of expiry of three months till the date of payment. There shall be no order as to costs.