
(2015) 01 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition(C) No. 23 of 2014

B. Malsawma

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 1 GLT 403

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : Binarani, for the Appellant; A. Modhuchandra, GA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

N. Kotiswar Singh, J.

1. Heard Ms. Binarani, learned counsel for the petitioner and Mr. A. Modhuchandra, learned GA for the respondents.

2. The writ petition has been filed seeking for a direction to the respondents for release of the pensionary and other retiral benefits accrued to the petitioner upon his retirement.

3. According to the petitioner, he was earlier serving as a Head Clerk in the Department of Minorities, OBCs and SCs (MOBC), Government of Manipur and retired from service w.e.f. 29.2.2012 on attaining the age of superannuation.

4. It is the case of the petitioner that even though the petitioner had retired from service w.e.f. 29.2.2012, till date, he has not received any retiral benefit including pension. The petitioner contends that denial of such retiral benefits after having rendered service without any blemish is illegal and impermissible. Accordingly, after having approached the authorities by submitting representation dated 16.11.2013 of which there was no positive result, the petitioner has been compelled to approach this Court for an appropriate direction

for release of the retiral and pensionary benefits.

5. According to the petitioner, the reason for delay in denial of the pensionary benefits could be attributed to certain allegations made against the petitioner as mentioned in the letter dated 10.12.2013 of the Directorate of MOBC and SC, which was written in response to the representation of the petitioner dated 16.11.2013. In the said letter dated 10.12.2013 it has been mentioned that a sum of Rs. 10 lakhs, which was found to be missing from the department account has been shown to have been paid to one M. Damu in addition to Rs. 4,800/- as shown in the money receipt, on which the petitioner allegedly wrote "paid by me". It has been stated that the said M. Damu Singh, however, denied receipt of the sum of Rs. 10 lakhs, though he admitted to have received only Rs. 4,800/- which was due to him. It has been also stated that because of the said controversy, the Director, requested the petitioner to clarify as to whether he had paid only a sum of Rs. 4,800/- or Rs. 10 lakhs in addition as mentioned in the money receipt. It has been also mentioned in the said letter of the Directorate that the petitioner has refused to clarify the same till date and it is suspected that the petitioner was involved in the misappropriation of money along with others because of which the pensionary benefits had been withheld for the time being and asked the petitioner to cooperate in the inquiry made by the department.

6. Ms. Binarani, learned counsel for the petitioner submits that the aforesaid charge of misappropriation of Rs. 10 lakhs by the petitioner is a mere allegation and in fact the inquiry conducted by the department has been closed as evident from the order dated 11.4.2014 (Annexure-A/6 to the rejoinder affidavit) and accordingly submits that there is no reason why the retiral and pensionary benefits should not be released to the petitioner.

7. Mr. Modhuchandra, learned GA appearing for the State, relying on the affidavit-in-opposition filed by the State respondents has submitted that in the course of verification it has been found that an amount for payment of Rs. 8,75,645/- was due to be paid to a contractor for supply of certain materials but it was found that no such money was available with the department. The officials of the MOBC, accordingly, contacted the petitioner who was working as the Head Clerk at the relevant time to find out how the said amount had been missing from the Department's account because of which the payment could not be made to the supplier. It has been stated that in that context, the petitioner had handed over to the Department a photostat copy of the receipt signed by one M. Damu, showing receipt of Rs. 10 lakhs in addition to Rs. 4,800/-. However, on examination of the receipt it was found that the amount of Rs. 10 lakhs was apparently added later on in the receipt for the amount of Rs. 4,800/-. It was stated that on further verification from the said N. Damu, who was said to have received the amount, he had clarified that he received only the amount of Rs. 4,800/- and he never received the amount of Rs. 10 lakhs as shown in the receipt. It was also stated in the same line in the letter dated 17.8.2013 written

by the said Damu to the Director, MOBCs and SCs, a copy of which is annexed as part of Annexure-A/5 (colly) to the petition. Confronted with this position, the petitioner was asked to clarify by the Department as to whether he paid only Rs. 4,800/- or Rs. 10 lakhs in addition, as shown in the receipt to the said Damu. The Department contends that the petitioner however, has chosen to remain silent without making any explanation or clarification. It has been stated that because of the silence maintained by the petitioner, payment of retiral and pensionary benefits has been withheld till further verification. Accordingly, it has been submitted that there is no merit in the petition and deserves to be dismissed.

8. Having heard the learned counsel for the parties and perusal of the materials on record, it is observed that the apparent reason for non release of pensionary and retiral benefits to the petitioner is for the reason of non accountability of Rs. 10 lakhs which was discovered by the Department for which the petitioner was also suspected to have played some role. Though the Department claims to have possessed certain documents indicating involvement of the petitioner in the misappropriation/non accountability of Rs. 10 lakhs, the petitioner has denied his involvement in any such misappropriation.

9. The fact remains that an amount of Rs. 10 lakhs has remained unaccounted. This of course has to be investigated by the authorities concerned as to who are responsible for the misappropriation or missing of such amount from the Department account. However, till any such finding is reached against the petitioner, there would be no reason to withhold the release of pensionary benefits to the petitioner. Of course, the authorities by invoking the provisions of Rule 8 as well as Rule 9 of the Manipur Civil Services (Pension) Rules could withhold or withdraw pensionary benefits permanently or for a specified period on the conditions mentioned in the said rules. However, as evident, till date there is no such finding against the petitioner that he is responsible or was involved with the said misappropriation. It may be also stated that the authorities could initiate departmental proceeding against the petitioner, if there are adequate materials against him as provided under Rule 9(2)(b). However, so far no such departmental proceeding has been initiated against the petitioner.

In this regard, we may refer to the relevant provisions of Rule 8 and 9 of the Manipur Civil Services (Pension) Rules, 1972.

Rule 8 of the Manipur Civil Services (Pension) Rules, 1972 reads as follows:

"8. Pension subject to future good conduct

(1)(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of [Rupees three hundred and seventy-five] per mensem." (2).....

Rule 9(2) (b) of the Manipur Civil Service (Pension) Rules, 1972 reads as follows:

"9. Right of President to withhold or withdraw pension

[(1) The Governor reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Manipur Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.] (2)(a).....

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."

Therefore, this Court is of the view that withholding payment of retiral or pensionary benefits by the authorities concerned on the mere allegation will not be permissible under the Rules unless the authorities have invoked the provision of Rule 8 or 9 of the MCS (Pension) Rules, 1972.

10. As regards the allegation of misappropriation of amount of Rs. 10 lakhs, the authorities are duty bound to investigate the matter by initiating a departmental

enquiry or get the matter investigated by registering appropriate criminal cases against those persons, against whom prima facie evidence exists. The authorities are required to take appropriate actions against those who are found to be involved and responsible, by taking all actions including criminal actions against such persons.

In other words, the authorities would be competent and in fact under obligation to initiate departmental proceeding even against the retired persons by invoking the provisions of Rule 9(2) of the MCS (Pension) Rules, 1972.

The respondents are accordingly, directed to initiate appropriate action against those persons responsible, including the petitioner, if prima facie materials are available against him, departmentally as well as by initiating criminal complaint against the said persons responsible, by conducting a preliminary enquiry within a period of six months from today.

If on conclusion of the preliminary enquiry, which may be conducted within six months as directed above, no case is made out against the petitioner, obviously he cannot be denied the retiral benefits and the same has to be released to the petitioner. On the other hand, if there are materials against the petitioner, the respondent authorities are directed to initiate both departmental proceeding as well as criminal proceeding against those including the petitioner, if his involvement is indicated. However, even in such eventuality also, the provisional pension as provided under Rule 69 as mentioned in Rule 5(2)(4) of the Manipur Civil Services (Pension) Rules cannot be denied to the petitioner and is to be sanctioned. It is ordered accordingly.

Since the issue involves loss/misappropriation of funds to the extent of Rs. 10 lakhs, the Chief Secretary, State of Manipur, though he has not been impleaded as a respondent in the writ petition, is directed to look into this aspect for compliance of the direction as mentioned above. Accordingly, a copy of this order may be furnished to the Chief Secretary, Manipur.

With the above observation and direction, the writ petition stands disposed of.