
(2015) 05 MAN CK 0019
In the Manipur High Court
Case No : Writ Petition (C) No. 80 of 2011

Belal	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 146 FLR 732 : (2015) 3 GLT 299

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Robinchandra, for the Appellant; Y. Ashang, Govt. Advocate, S. Rupachandra, A.S.G. and L. Raju, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.

1. Heard Shri Ch. Robinchandra, learned counsel appearing for the petitioner; Shri Y. Ashang, learned Govt. Advocate for the State Respondents, Shri S. Rupachandra, learned ASG appearing for the respondent No. 5 and Shri L. Raju, learned counsel appearing for the respondent No. 2.

2. The present writ petition has been filed by the petitioner praying for grant/release of lifetime family pension to him which his mother was entitled to.

3.1 According to the petitioner, his father initially entered service as Work-Charged Khalasi in the Department of Irrigation and Flood Control, Government of Manipur with effect from 03-07-1956 and died on 24-11-1986 while he was in service as Khalasi and accordingly, the Chief Engineer, IFCD issued an office order dated 24-02-1987 to the effect that the petitioner's father, on his expiry on 24-11-1986, had ceased to be the Government servant with effect from 24-11-1986.

3.2 Since the petitioner's father had rendered more than 30 (thirty) years as

work-charged employee, he became qualified for benefits under the Terminal Benefits Rules, 1978 and when the petitioner's mother claimed for family pension, the concerned authorities did not consider her case and did pay only the gratuity to his mother vide order dated 11-11-1987 issued by the Accountant General, Manipur.

3.3 In the year 1990, the Government of Manipur brought an amendment in the Terminal Benefits Rules, 1978 vide notification dated 21-06-1990 by adding Rule 6(A) below Rule 6(ii)(b) and the relevant portion of Rule 6(A) is as under :-

"Rule 6(A) - Family pension as calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time."

The State Government further amended the Terminal Benefits Rules, 1978 vide notification dated 06-06-1991 by adding Rule 6(B) after Rule 6(A), the relevant portion of which is as under -

"Rule 6(B) - Terminal Benefit shall also be admissible to the work-charged employees who retired prior to 18-09-1978 but are living on the date of issue of this order, from 18-09-1978 and also family pension to the families or work-charged employees who died prior to 21-06-1990 but are living on the date of issue of this order."

3.4 Consequent upon the amendment in the Terminal Benefits Rules, 1978 by adding Rules 6(A) and 6(B), the Chief Engineer, IFCD, Government of Manipur issued an office order dated 03-04-1999, in respect of 25 (twenty five) deceased/retired work-charged employees including the petitioner's father, on the basis of the recommendation of a DPC and in pursuance of the State Government's letter dated 20-03-1999 granting retrospective confirmation as per details given in the said order. So far as the petitioner's father is concerned, the confirmation was given with effect from 03-07-1966. In the said order, it is specifically stipulated that the confirmation of the said deceased/retired work-charged employees was ordered as per policy decision of the State for the purpose of pensionary benefits.

3.5 Since the petitioner's father had rendered service for more than 30 years with qualifying service of 30 years as prescribed in the Terminal Benefits Rules, 1978 and his service having been confirmed with effect from 03-07-1966, his mother was entitled to family pension during her lifetime but she had died without availing family pension and since her mother had expired without availing family pension, the petitioner is entitled to receive the lifetime arrear of family pension which her mother was entitled to and accordingly, the present writ petition has been filed by the petitioner.

4. It is submitted by the learned counsel appearing for the petitioner that since the petitioner has fulfilled the requisite conditions prescribed under provisions of Rules 6(B) added by way of amendment vide notification dated 06-06-1991 and to substantiate his contention, the learned counsel appearing for the petitioner has relied upon the judgment and order dated 01-10-2001 passed by the

Hon"ble Gauhati High Court, Imphal Bench in the writ petition being W.A. No. 154 of 1988, etc. It is further submitted by the learned counsel appearing for the petitioner that family pension had already been granted by the respondents to the family of a deceased/retired work-charged employee who was similarly situated with that of the petitioner's father in as much as the petitioner's father and the said person had figured their names at Sl. Nos. 9 and 20 of the said order dated 03-04-1999. The learned Govt. Advocate appearing on behalf of the respondent No. 1 relying upon the affidavit-in-opposition filed on behalf of the respondent No. 1 has submitted that the petitioner's father was neither a confirmed nor a permanent work-charged employee at the time of his death and moreover, at the time when the petitioner's father died, there was no provision in the Terminal Benefits Rules, 1978 for grant of family pension and that an order dated 03-04-1999 by which the petitioner's father was granted retrospective confirmation, has been declared null and void ab-initio vide O.M. dated 10-10-2005 issued by the Commissioner (Finance), Government of Manipur.

5. The rules called "the Terminal Benefits for Work-charged Staff of PWD, IFC, PHE, MI, Electricity Manipur Rules, 1978" (hereinafter referred to as Terminal Benefits Rules, 1978) came into being with effect from 18-09-1978. Rule 6 of the Terminal Benefits Rules, 1978 is as under:

"6. The permanent Work-charged staff may be allowed to get the following benefits in the pattern of CPWD"

(i) (a) Pension only calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time if the permanent work-charged employee who retire at the age of 55 years and has at least 30 years service to his credit.

(b) Or to a permanent work-charged employee who had been incapacitated in service but had put in 20 years service before he was incapacitated at whatever age.

(ii) Gratuity calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time, provided -

(a) He had rendered more than 20 years service and retired at the age of 55 years or later;

(b) He had rendered 15 years of service before he was incapacitated for further services"

Initially when the said Terminal Benefits Rules, 1978 came to be made, there was no provision for payment of family pension which is now available by way of Notification dated 21-6-1990 after adding Rule 6(A) after Rule 6(ii)(b) and the said Notification dated 21-6-1990 is given as under:

"GOVERNMENT OF MANIPUR SECRETARIAT: WORKS DEPARTMENT

ORDERS BY THE GOVERNOR : MANIPUR Imphal, the 21st June, 1990

No. 6/3/70 - W(Pt)A: The Governor of Manipur is pleased to make the following rules to further amend Terminal Benefits for Work-charged staff of P.W.D., I.F.C.D., P.H.E.D., M.I. and Electricity Rules, 1978.

(1) This rule may be called the Terminal Benefits for work-charged staff P.W.D., I.F.C.D., P.H.E.D., M.I. and Electricity Rules, 1990.

(2) These orders shall come into force with immediate effect.

(3) The following shall be added as Rule 6(A) below Rule 6(ii)(b):-

"Rule 6(A) - Family pension as calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time.

By orders etc., Sd/- (M. Tuizar) Commissioner (Works), Govt. of Manipur"

6. The amendment vide Notification dated 21-06-1990 being prospective in operation, the result was that the family pension was admissible to the family of a work-charged employee who retired from service after 21-06-1990. It appears that the State Government might have thought that such benefit of family would be extended to the family of those who had died prior to 21-06-1990 and accordingly, by way of a policy decision, further amendment to the said Terminal Benefits Rules, 1978 came to be made vide Notification dated 06-06-1991 by adding Rule 6(B) after Rule 6(A) by which the family pension was admissible to the families of a work-charged employee who died prior to 21-06-1990 but are living on the date of issue of this order. The Notification dated 06-06-1991 adding Rule 6(B) after Rule 6(A) is given as under:

"GOVERNMENT OF MANIPUR SECRETARIAT: WORKS DEPARTMENT

ORDERS BY THE GOVERNOR : MANIPUR Imphal, the 6th June, 1991

No. 6/3/70-W(Pt)A: The Governor of Manipur is pleased to make the following amendments in the Terminal Benefits for Work-charged staffs of P.W.D./I.F.C.D./P.H.E.D./M.I. and Electricity Rules, 1978.

(1) These rule may be called the Terminal Benefits for work-charged staff of P.W.D./I.F.C.D./P.H.E.D./M.I. and Electricity Rules, 1991.

(2) The following shall be added as Rule 6(B) below Rule 6(A):-

"Rule 6(B) - Terminal Benefits shall also be admissible to the work-charged employees who retired prior to 18-09-1978 but are living on the date of issue of this order, from 19-09-1978 and also family pension to the families of work-charged employees who died prior to 21-06-1990 but are living on the date of issue of this order.

By orders and in the name of the GOVERNOR : MANIPUR Sd/- (M. Tuizar)

Commissioner (Works), Govt. of Manipur"

7. The conjoined reading of both the provisions of Rule 6(A) and Rule 6(B) makes it very clear that family pension is admissible to the families of the work-charged employees who had died either before or after 21-06-1990 and in other words, family pension is admissible as if it was there from the day the Terminal Benefits Rules, 1978 came into being.

8. It is submitted by Shri Ch. Robinchandra, the learned counsel appearing for the petitioner that the issue involved herein is covered by the judgment and order dated 01-10-2001 passed by the Hon''ble Gauhati High Court, Imphal Bench in the writ petition being W.A. No. 154 of 1998. There is force in the submission of the learned counsel appearing for the petitioner. It is not in dispute that the Hon''ble Gauhati High Court, Imphal bench, before examining the facts of each and every case, has analysed the provisions of the Terminal Benefits Rules, 1978 and in particular, Rule 6 with subsequent amendments thereof. For the purpose of the present case, the relevant portion of the judgment and order dated 01-10-2001 is reproduced herein below:"

"Now coming to the Writ Appeal No. 135 of 1998 arising out of Civil Rule No. 374 of 1995 which was dismissed by the learned Single Judge. The learned Single Judge non-suited the writ petitioner on the ground that the petitioner's husband (employee) was confirmed by order dated 01-09-1974 with effect from 06-03-1968 and he died on 15-06-1968. According to the learned Single Judge, since the employee had not completed one year of service after being confirmed and moreover, he had died much prior to the introduction of 1978 Rules which came into effect from 18-09-1978 and therefore, the writ petitioner was not entitled to family pension. We are of the view that both the reasons for non-suited the writ petitioner are not well-based. No doubt the rules regarding terminal benefit came into effect from 18-09-1978 and the employees had prior to introduction of the 1978 rules. However, vide Notification dated 06-06-1991 by which Rule 6(B) came to be added made the terminal benefits admissible to the employee who might have retired prior to 18-09-1978 and also family pension to the families of work-charged employees who died prior to 21-06-1990 and whose family members were living on 06-06-1991 when rule 6(B) was introduced. Under rule 6(B) there is no necessity that the employee after confirmation must have completed more than one year of service which as observed above was only introduced on 21-05-1993 (which was prospective). Consequently, the appellant in Writ Appeal No. 135 of 1998 would be entitled to family pension with effect from 06-06-1991 as the employee had died prior to 21-06-1990, i.e., 15-06-1968, and the family of the employee was living on 06-06-1991 when the rule 6(B) was inserted. In other words, the condition of rule 6(B) was complied with."

In the present case also, the petitioner's father was engaged as work-charged employee namely as Khalasi with effect from 03-07-1956 and after having served as work-charged employee for more than 30 years, the petitioner's father

died on 24-11-1986. His service was confirmed with effect from 03-07-1966 vide Office order dated 03-04-1999 issued by the then Chief Engineer, IFC Department. On 06-06-1991 when the rule 6(B) came to be added, the members of the employee namely father of the petitioner, were living though the petitioner's father had died prior to 21-06-1990. It is unfortunate that the petitioner's mother while she was alive, was entitled to family pension with effect from 06-06-1991 but without availing family pension, she died on 30-03-2010. Denial of such benefits to the petitioner's mother is highly unreasonable and illegal being violative of Article 14 of the Constitution of India. The present writ petition has been filed by the petitioner claiming the family pension which ought to have been given to his mother but not given to her during her life time without any justification and for the reasons best known to the respondents. Considering the facts and circumstances of the present case and also the decision rendered by the Division Bench of the Hon'ble Gauhati High, Imphal Bench referred to above, this court is of the view that the present writ petition can be allowed with the direction that the respondents shall calculate the family pension with effect from 06-06-1991 and pay same to the petitioner.

9. There is one aspect of the present case which the learned Government Advocate, during the course of hearing, has emphasised and vehemently submitted that the Office order dated 03-04-1999 by which the service of the petitioner's father was confirmed with effect from 03-07-1966, was in total violation of all the provisions of the Terminal Benefits Rules, 1978 and the Government instructions issued from to time and without concurrence of the Finance Department. It is submitted by the learned Government advocate that in view of such illegal orders, the State Government took a policy decision and issued an O.M. dated 10-10-2005 declaring such illegal orders as null and void ab-initio. This court is unable to accept this submission made by the learned Government advocate for the reason that the said Office order dated 03-04-1999 has neither been withdrawal nor has it been cancelled or superseded by any Government order including the O.M. dated 10-10-2005. The relevant and operative portion of the O.M. dated 10-10-2005 is reproduced herein below:

"3. In view of the above position, it has been decided by the Government that all cases of grant of promotions, pay revisions and creation of posts with retrospective effect issued by the Administrative Departments and subordinate Offices without obtaining prior concurrence of the Finance Department as required under the existing Rules, etc. Are irregular and ab-initio null and void in all respects"

From the perusal of the said O.M. dated 10-10-2005, it is clear that it has nothing to do with the confirmation of the service of the petitioner's father. Moreover, the Office order dated 03-04-1999 by which a right of confirmation has accrued in favour of the petitioner's father, cannot be taken away without following the principles of natural justice. At this juncture, the submission of the

learned counsel appearing for the petitioner that family pension had already been granted by the respondents to the family of a deceased/retired work-charged employee who was similarly situated with that of the petitioner's father in as much as the petitioner's father and the said person had figured their names at Sl. Nos. 9 and 20 of the said order dated 03-04-1999, is very much relevant and acceptable to this court. The learned counsel for the petitioner has produced a copy of the pension payment order dated 18-04-2001 issued in respect of that person similarly situated namely late Shri Kh. Cheitei Singh along with an additional affidavit which is not rebutted at all by the respondents. If that be so, the submission of the learned Government Advocate is not sustainable and is rejected and on the contrary, the act of the respondents in denying the family pension to the mother of the petitioner and the petitioner in particular, is unreasonable, arbitrary being violative of Article 14 of the Constitution of India. It may be quite relevant to mention here that similar stand of the State Government in respect of other Departments has, time and again, been rejected by the Hon"ble courts including the Hon"ble Supreme Court in many cases and it may be in the interest of the State Government that it may apply its judicious mind and take an appropriate decision, once and for all, so as to avoid such recurrence in future followed by taking certain exemplary actions against the erring officials.

10. In view of the above observations, the present writ petition is allowed with the direction that the respondents shall take immediate and appropriate steps to calculate the family pension with effect from 06-06-1991 and pay the same to the petitioner within a period of three months from today, failing which an interest of 6% be paid on the total amount of pension, so calculated, with effect from the date of this judgment and order till the date of payment. There will be no order as to costs.