(2018) 06 GAU CK 0139

In the Gauhati High Court

Case No : Civil Writ Petition No. 189 Of 2016

Biakngheta and ors APPELLANT

Vs

Govt. of Mizoram and ors RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:
Constitution Of India, 1950 — Article 162, 309

Citation : (2018) 06 GAU CK 0139

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : Rualkhuma Hmar, V. L Nghata keivom, Reuben Lalrinsanga, Zothansangi Hmar, Vanlalchhuanpuii, Joseph L. Renthlei, A.K Rokhum

Final Decision : Allowed

Judgement

MICHAEL ZOTHANKHUMA

1. Heard Mr. Rualkhuma Hmar, learned counsel for the petitioner as well as Mr. A.K Rokhum, learned Addl. Advocate General, learned counsel for

all the respondents.

2. The petitioners case is that after having retired from Government service on 31.01.2018, the petitioners should have been paid pensionary benefits

as per the Revision of Pay Rules, 2010, issued by the State Government on 06.08.2010. The petitioners counsel submits that the impugned Office

Memorandum dated 27.10.2010, on the basis of which the benefits of the ROP Rules, 2010 was being paid to serving and retired State Government

employees, but not being given to retired Government Employees of the State, who retired between 01.01.2009 and 27.10.2010, having been set aside

by this Court in WP(C) No. 51/2016, the petitioners cannot be denied the benefits under the ROP Rules, 2010.

3. Mr. A.K Rokhum, learned Addl. Advocate General, fairly submits that the present case is covered by the Judgment & Order dated 22.09.2017,

passed in WP(C) No. 51/2016 and accordingly, the petitioners would be entitled to the pensionary benefits as per the ROP Rules, 2010. He also

submits that the reason for not applying the ROP Rules, 2010, for the purpose of pension to the petitioners seems to be due to financial constraint, as

reflected in the Letter No. 18018/36/2016-F. Est dated 03.05.2017, issued by the Under Secretary to the Government of Mizoram, Finance

Department (E) and which was addressed to him.

4. I have heard the learned counsels for the parties.

5. The facts of the case in brief is that the Government of India revised the pay and allowances of its employeesâ?? w.e.f. 01.01.2016 and the said

Revision of Pay (ROP) was made on the basis of the Sixth Central Pay Commission/Revision. The Government of Mizoram also decided to follow the

said Central Sixth Pay Revision for its employees. Accordingly, for its implementation, the State Government in the Finance Department (Pay

Research Unit) issued a Notification vide No. G.12017/2/2008-FIN (PRU)/A dated 06.08.2010, in exercise of the powers conferred by the proviso to

Article 309 read with Article 162 of the Constitution of India and thereby framed the Mizoram (Revision of Pay) Rules, 2010. The State Government

brought the said 2010 Rules into force w.e.f. 1st day of January, 2006, with the observation that the pay under the said 2010 Rules shall be fixed

notionally w.e.f. 01.01.2006, while the actual monetary benefits shall be paid w.e.f. 1. 01.2009 only. The notification dated 06.08.2010 also clarified

that the arrears of pay and allowances from 01.01.2009 to 31.07.2010 shall be impounded into the GPF accounts of the employees in Group

â??Aâ??, â??Bâ?? & â??Câ?? categories and regarding Group â??Dâ?? employees, including the employees retiring within three months from

the date of issue of the said Notification (dated 06.08.2010) and those employees not eligible to subscribed to GPF, shall be paid in cash.

6. Subsequent to the above, the Finance Department (APF Branch) of the State Government issued an Office Memorandum vide No.

G.17011/4/2010-F.APF/54 dated 27.10.2010, introducing Revised Pension Scheme for post 1. 01.2006 Retirees. The Government of Mizoram in the

Finance Department in the name of implementing the Mizoram (ROP) Rules, 2010, by the said O.M. dated 27.10.2010, introduced revisions and

modifications in the Rules regulating Pension, Retirement/Death/Services/ Gratuity commutation of Pension/Family Pension/Disability Pension/Ex-

Gratia lump-sum compensation under the Central Civil Services (CCS) (Pension) Rules, 1972 and Commutation of Pension under CCS (commutation

of Pension) Rules, 1981 and also CCS (Extra Ordinary Pension) Rules, 1939 observing that the said O.M. dated 27.10.2010 shall apply to the Mizoram

Government Employees governed by CCS (Pension) Rules, 1972.

7. In the OM dated 27.10.2010 issued by the Finance Department, Government of Mizoram, para 5.1 and para 5.4 states as follows:-

â??5.1 A Government servant retiring in accordance with the provisions of the CCS (Pension) Rules, 1972 before completing qualifying service of ten

years shall not be entitled to pension but he shall continue to be entitled to service gratuity in terms of Rule 49(1) of the CCS (Pension) Rules, 1972.

5.4 The revised provisions for calculation of pension in para 5.2 and para 5.3 above shall come into force with effect from the date of issue of this

O.M. and shall be applicable to Government servants retiring on or after that date. The Government servants who have retired on or after 1.1.2006

but before the date of issue of this O.M. will continue to be governed by the Rules/orders which were in force immediately before coming into effect

these orders.â??

8. In view of the above OM dated 27.10.2010, the benefits of the ROP Rules, 2010, were not being given to the petitioners as they had retired

between 01.01.2006 and 27.10.2010. By the said OM dated 27.10.2010, the state respondents have made 2 (two) distinct and separate groups of

retirees from Government Service and had given to them different pensionary benefits under the Mizoram ROP Rules, 2010. The 2 (two) different

and distinct groups comprised of those State Government Employees, who had retired between 01.01.2006 and 27.10.2010 and those who retired after

the issuance of the OM dated 27.10.2010.

9. A group of State Government Employees, who had retired between 01.01.2006 and 27.10.2010, made a challenge to the OM dated 27.10.2010, by

which different pensionary benefits were given to State Government Employees, though they all were to be governed by the Mizoram ROP Rules,

2010, vide WP(C) No. 51/2016.

10. WP(C) No. 51/2016 was disposed of by this Court vide Judgment & Order dated 22.09.2017, wherein this Court has held at para 39 to 42 as

follows:-

â??39. In the present case by the aforesaid 2010 rules, the State respondents in one side paid the revised and enhanced scale of pay and allowances

to its employees w.e.f. 01.01.2009, whereas, on the other hand, deprived its employees from revised and enhanced retirement benefits to those, who

have retired between 01.01.2009 and 27.10.2010, that too, on the ground of financial constraints in the State, but at the same time granted the

enhanced and revised pensionery benefits to its employees who have retired after 27.10.2010. By such action the State respondents have tried to

approbate and re-probate at the same time and it cannot blow hot and cold at the same breath. The said action of the State respondents is in clear

violation of the Article 14 of the Constitution, where the pensioners of the State are treated differently without any reasonable and justifiable grounds.

40. For the reasons above the decision of the State respondents by the impugned Office Memorandum dated 27.10.2010 of giving their monthly

salaries as per the said Mizoram (ROP) Rules, 2010 in the revised and enhanced scale of pay w.e.f. 01.01.2009, but not giving the revised and

enhanced retirement benefit to the retired Government employees of the State retiring between 01.01.2009 and 27. 10.2010, whereas giving such

revised and enhanced retirement benefit to its employees retiring after 27.10.2010 apparently amounts to discrimination and is accordingly set aside

and quashed.

41. As such, petitioners who are retired employees of the Government of Mizoram, retired between 01.01.2009 and 27. 10.2010 shall be paid similar

pensionery benefits by the State respondents as provided to those employees of the Government Mizoram, who have retired after 27.10.2010 as

prescribed by the impugned Office Memorandum No. G.17011/4/2010-F.APF/54 dated 27. 10.2010 issued by the Government of Mizoram in the

Finance Department (APF), from their date of retirement.

42. The State respondents shall now pay the arrear pension to the petitioner Nos. 1 to 17, 20 and 22, as entitled by them, within a period of six months

from today, on or before 31st March, 2018 without fail.â??

A perusal of the above extract of the Judgment & Order dated 22.09.2017 shows that the State respondents action in giving different pensionary

benefits to retirees, depending on the dates of their retirement, was held to be discriminatory.

Accordingly, the Court held that similar pensionary benefits should be given to those retirees who retired between 01.01.2009 to 27.10.2010 and those

who retired after 27.10.2010. In view of the above, there is no justification for the State respondents to deny the petitioners the benefits of the ROP

Rules, 2010, as the same amounts to discrimination.

11. In view of the present case being covered by the Judgment & Order dated 22.09.2017, passed in WP(C) No. 51/2016 (R. Lalthlamuana alias R.

L.T Muana Vs State of Mizoram & Anr), the present case is also disposed of in line with the Judgment & Order dated 22.09.2017, passed in WP(C)

No. 51/2016.

12. The state respondents are accordingly directed to pay to the petitioners their pensionary benefits as per the Mizoram ROP Rules, 2010 and their

arrear pension within a period of 6 (six) months from today.

13. Writ petition is accordingly allowed.