**(2016) 03 MAN CK 0012**

**In the Manipur High Court**

**Case No :** W.P. (C) No. 484 of 2013

Duidang Soul — APPELLANT

Vs

The State of Manipur and Others — RESPONDENT

**Date of Decision :** 02-03-2016

**Acts Referred:**

**Citation :** (2016) 03 MAN CK 0012

**Hon'ble Judges :** Kh. Nobin Singh, J.

**Bench :** Single Bench

**Advocate :** Serto T. Kom, Advocate, for the Appellant; K. Jagat, Govt. Advocate, for the Respondent

**Final Decision :** Allowed

# Judgement

Kh. Nobin Singh, J.—1. Heard Shri Serto T. Kom, learned counsel appearing for the petitioner and Shri K. Jagat, learned Government Advocate appearing for the State respondents.

2. By the present writ petition, the petitioner while praying for quashing the letters dated 30-12-2005 and dated 08-03-2006, has prayed for directing the respondents to refund Rs. 55,235/- (rupees fifty five thousand two hundred and thirty five) only and to pay his pay and allowances for the period from August, 2004 to March, 2005.

3.1 According to the petitioner, he was initially appointed as Surveillance Inspector in the Medical Department, Government of Manipur vide order dated 26-02-1965 issued by the State Government and his date of birth entered in his Service Book was 01-03-1946. In the year 1966, the petitioner did pass his Matriculation Examination conducted by the Board of Secondary Education, Assam, the certificate of which had shown his date of birth as 01-03-1949. Accordingly, his date of birth was later on corrected in his Service Book as 01-03-1949 for all purposes including the seniority list. While in service, the petitioner was promoted to the higher posts of (i) Non-Medical Assistant; (ii) Non-

 

Medical Supervisor and (iii) Leprosy Health Education Officer.

3.2 The respondent No. 2, the Director of Health Services, Manipur vide its Memorandum dated 18-02-2003 instructed the petitioner to submit his initial appointment order, bio-data and educational qualifications and also to provide information as to whether he passed the HSLC Examination after entering into service or not. In reply thereto and in compliance thereof, the petitioner vide his letter dated 11-04-2003 submitted all the required information and documents to the respondent No. 2.

3.3 The petitioner was paid his pay and allowances till July, 2004, although he was allowed to continue in service till 29th March, 2005 which is clear from the letter dated 08-06-2004 by which the respondent No. 2 informed the Commissioner (Health) that the petitioner was still in service. However, the respondents took some time to decide as to when the petitioner would retire from service and only on 29-03-2005 the Principal Secretary (Health), Government of Manipur issued an order to the effect that the date of birth of the petitioner should be 01-03-1946 and the petitioner ought to retire from service on attaining the age of superannuation w.e.f. 29-02-2004. Immediately thereafter, the petitioner submitted a representation dated 04-04-2005 to the Principal Secretary (Health), Govt. of Manipur praying for releasing his pay and allowances for the period from 01-08-2004 to 29-03-2005. It appears that a report was called for from the respondent No. 2 who informed the Commissioner (Health) vide its letter dated 12-08-2005 that there was no inordinate delay in the submission of his retirement process on the part of the Medical Directorate and in case of any over payment, the same be deducted from his pensionary benefits as per rules. The respondent No. 2 addressed another letter dated 30-12-2005 to the Commissioner (Health), as regards payment of pay and allowances for the period from 01-03-2004 to 29-03-2005, informing that the reported attendance of the petitioner got no official validity because his date of superannuation was ordered to be 29-02-2004. Consequently, the Treasury Officer, Lamphel vide its letter dated 08-03-2006 requested the Account Officer (GOE), Office of the Deputy Accountant General (A & E), Manipur to recover excess drawal for an amount of Rs. 55,235/- from the account of Gratuity to be paid to the petitioner with justification that the petitioner was to be paid his salary till February, 2004 only and accordingly, a challan was prepared by it.

4. Being aggrieved by the said actions of the respondents, the petitioner filed two writ petitions being W.P. (C) No. 180 of 2006 and W.P. (C) No. 857 of 2006 which were withdrawn with liberty to file a fresh petition vide orders dated 21-08-2006 and 08-10-2012, respectively, passed by the Hon''ble Gauhati High Court, Imphal Bench. Hence, the instant writ petition had been filed by the petitioner on the inter-alia grounds that since the petitioner was allowed to continue in service till 29-03-2005, he was entitled to his pay and allowances for the said period from 01-03-2004 to 29-03-2005; that the petitioner''s continuance in service beyond 28-02-2004 was due to delay in taking decision by

the respondents and could not be attributed to him and that the recovery of alleged excess drawal for a sum of Rs. 55,235/- was illegal in view of the law laid down by the Hon''ble Supreme Court in a catena of decisions. The respondent Nos. 1 and 2 contested the writ petition by way of an affidavit-in-opposition contending that the petitioner corrected his date of birth after 30 years without knowledge of the competent authority; that although the petitioner attended office on his own, his service was not utilised beyond 29-02-2004; that the delay in issuing the retirement order was due to correction to be made as regards the date of birth and that there was delay of 8 (eight) years in filing the present writ petition.

5. On perusal of the materials on record, it is quite evident that the petitioner had continued in service beyond the date of retirement i.e., 29-02-2004 and in particular, the letter dated 08-06-2004 addressed to the Commissioner (Health) by the respondent No. 2 informing that the petitioner was still in service as per records available in the Directorate and the letter dated 23-09-2004 addressed to the Dean of Studies, National Institute of Health and Family Welfare, New Delhi by the State Leprosy Officer, Government of Manipur nominating the petitioner for participating in the provisional training on Capacity Building for IEC of Official/Program Managers for the session of 2004-2005. Moreover, the termination order was issued only on 29-03-2005 to the effect that the petitioner ought to retire with effect from 29-02-2004 and it is specifically stated therein that the said termination order could not be issued for want of a decision from the Government. The respondent Nos. 1 and 2 made an attempt in their affidavit filed before this court to deny the fact that the petitioner had served beyond 29-02-2004 by contending that the petitioner attended the office on his own and his service was not utilised at all which is an afterthought and is not tenable at all. It is hard to believe that an employee after his retirement would attend his office. The petitioner had to attend his office because his termination order was not issued for quite some time. It may be noted that in the year 2003 itself, the respondent No. 2 was aware of the fact that the petitioner was retiring and appropriate order was required to be issued in respect thereof and it was for that reason that the memorandum dated 18-02-2003 was issued directing the petitioner to furnish the requisite information. Moreover, admittedly the petitioner''s date of birth was corrected in his Service Book sometime in the year 1994 and a decade''s time was available with the State Government to take a decision as regards the actual date of birth acceptable to it. Therefore, it has been submitted by the learned counsel appearing for the petitioner that since the petitioner had rendered service upto 29-03-2005, he was entitled to his pay and allowances. Reliance has been placed in State of Bihar v. Narasimha Sundaram, reported in , 1994 Supp (3) SCC 705 wherein the respondent had to retire on 31-01-1998 but remained in service till 30-09-1989, probably, by playing fraud on the department. Since no proceedings were ever initiated for enquiry as to the fraud played by him, the Hon''ble Supreme Court directed that the respondent therein be paid his arrears of salary. The facts of the present case are

 

not exactly the same as that of the case referred to above but based on the said decision, it can be safely held that the petitioner is entitled to his pay and allowances for the period from 01-03-2004 to 29-03-2005 for which he had rendered service to the State Government.

6. As regards the issue relating to the validity and correctness of the excess drawal, the learned counsel appearing for the petitioner has submitted that the recovery of excess drawal was illegal in view of the law laid down by the Hon''ble Supreme Court in Shyam Babu Verma v. Union of India, reported in (1994) 2 SCC 21; Sahib Ram v. Board of Haryana, reported in 1995 Suppl. (1) SCC 18 and Nand Kishore Sharma v. State of Bihar, reported in 1995 Suppl. (3) SCC 722. This court need not refer to and examine the said decisions in detail, as regards their applicability to the facts of the present case, for the reason that this court in the preceding para has already held that the petitioner is entitled to his pay and allowances for the period from 01-03-2004 to 29-03-2005 and the period for which the question of excess drawal has arisen, falls in that. Therefore, the respondents are liable to refund the said amount of Rs. 55,235/- to the petitioner within a reasonable time.

7. During the course of hearing, the learned Govt. Advocate has submitted that there was delay or laches of 8 years in filing the present writ petition and therefore, the same is liable to be dismissed on this ground. On perusal of the averments made in the petition as well as the documents placed on record and in particular, the orders dated 21-08-2006 and 08-10-2012 passed by the Hon''ble Gauhati High Court, Imphal Bench, it is indubitably clear that the present writ petition had been filed pursuant to the liberty granted by the Hon''ble Gauhati High Court, Imphal Bench as stated hereinabove. Therefore, the contention of the learned Government Advocate has no substance and cannot be countenanced at all.

8. For the reasons stated herein above, the present writ petition being W.P.(C) No. 484 of 2013 is allowed and consequently, the letters dated 30-12-2005 (Annexure-A/9); dated 08-03-2006 (Annexure-A/10) and the Challan (Annexure-A/11) are quashed and set aside with the following directions:

"a) The respondents shall refund the petitioner the said amount of Rs. 55,235/- (Rupees fifty five thousand two hundred thirty-five) only which has been recovered from him as excess drawal;

b) The respondents shall pay the petitioner his pay and allowances for the period from August, 2004 to March, 2005;

c) The above directions (a) & (b) shall be complied with within a period of three months from the date of receipt of a copy of this judgment and order. There shall be no order as to costs."

 