

(2003) 09 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (C) No. 1861 of 2001 and W.P. (C) No. 1117 of 2002

Gotimayum Ibotombi Sharma

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Terminal Benefits for Work Charged Staff of P.W.D./IPC PHE/M.1./Electricity, Manipur Rules, 1978 — Rule 6

Citation : (2004) GLT 260 Supp

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Kh. Binoy Kr. Singh and Kh. Binoy Singh, for the Appellant; N. Ibotombi, K. Kumar and Th. Sobhana, for the Respondent

Judgement

D. Biswas, J.—By this Common judgment Writ Petition Nos. 1861 of 2001, 1117 of 2002 and 1948 of 2001 are being disposed of.

2. I have heard Mr. Kh. Binoykumar Singh, learned senior counsel and Mr. Kh. Benoy Singh, learned Counsel for the Petitioners and Mr. N. Ibotombi, learned State Counsel assisted by Mr. K. Kumar and Mrs. Th. Sobhana counsel for the Respondents.

3. The writ Petitioner in Writ Petition (C) No. 1861 of 2001 was initially appointed as Work Charged employee under the Public Works Department, Government of Manipur on 1.12.1969. He was retrenched from service and again appointed. Eventually he was reappointed on 1.12.1966 and he continued in service till his retirement on 30.6.2000. In between he was also confirmed in service by the order dated 3.8.1994.

4. The writ Petitioner in W.P. (C) No. 1117 of 2002 joined the service in 1968 as Muster Roll Worker and, thereafter, as work charged with effect from 20.2.1978. He was confirmed in service by the order dated 27.9.1999 and retired therefrom on superannuation with effect from 10.5.2000.

5. The writ Petitioner in W.P. (C) No. 1948 of 2001 served the Government of Manipur as Muster Roll Worker from -1972 to 1976 and as Work Charged from 1976 to 2000. He was confirmed in service on 1.1.1996 and retired therefrom on 30.8.2000.

6. The terms and conditions of service of the work charged employees are governed by the Executive Order known as "Terminal Benefits for Work Charged Staff of P.W.D./I.F.C./P.H.E./M.I./Electricity, Manipur Rules, 1978. Rule 6 provides for service benefits to the work charged employees. Hence, the provisions therein are quoted below:

6. The permanent work charged staff may be allowed to get the following benefits in the patten of C.P.W.D.

(i)(a) Pension only calculated under Central Service Regulations Article 474 of Government of India if the permanent, work charged employees who retire at the age of 55 years and 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 aged.

(ii) Gratuity calculated under Article 474 of C.S.R. of Government of India, provided.

(a) he had rendered more than 20 years services and retired at the age of 55 or later.

(b) he had rendered 15 years of service before he was incapacited for further service,

The aforesaid Rule was amended by the order dated 24th May, 1982 and Sub-Rule (i)(a) of Rule-6 has been substituted by the following:

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

7. It would appear from above that minimum 30 years of service is required for a work charged employee to be eligible for pension. In the instant case, none of the writ Petitioners completed uninterrupted service for a period of 30 years as work charged employee. If the period spent by them in service prior to their appointment as work charged employee on regular basis is taken into consideration, it would appear that all of them have rendered more than 30 years of service. The Rules in force do not permit any of the writ Petitioners to claim pension though all of them have completed more than 30 years in Government service in the capacity of Muster Roll as well as Work Charged employees. The Rules of 1978, referred to above, also do not provide any provision to relax the eligibility criteria.

8. Mr. Binoykumar Singh, learned senior counsel appearing for the writ Petitioners submitted that the State cannot deny pensionary benefits to these poor strata of employees who have spent more than 30 years of their life in the service of the Government. In support of this contention, the learned Counsel for the Petitioner referred to the decisions in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, and in Dhan Raj and Ors. v. State of J.K. and Ors. (1998) 4 see 30. In All India Reserve Bank Retired Officers Association (supra), the Supreme Court in para-5 held that the concept of pension is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of the life of a superannuated employee and that such security plans are consistent with the socioeconomic requirement of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. In para-8, the Supreme Court further held that any artificial division of a homogeneous group of employees not based on any logic or rational and having no nexus to the object to be achieved offends the equality clause in Article 14.

9. The decision in para-8 do not apply in the instant case since no division has been made in the Rule of 1978 between the work charged employees by prescribing a cut-off date. Only the work charged employees who have completed 30 years of continuous service as such have been declared eligible for pension. The decision in Dhan Raj and Ors. (supra) is also on the same premises. The aforesaid two decisions serve no purpose because of marked factual difference. However, the fact remains that the concept of pension is not a charity or bounty dependent on the whims and sweet will of the employer. It would appear that the work charged employees in the State of Manipur have been treated differently than the other State Government employees who are governed by the Manipur Civil Services (Pension) Rules, 1977. This Rule provides for calculation of pension for the holders of civil posts under the Central Civil Services (Pension) Rules, 1972. The provisions of the Central Civil Services (Pension) Rules, 1972 make an employee eligible for pension on completion of 20 years of continuous service. While one set of employees working under the State Government have been made eligible for pension on completion of 20 years of continuous service, the Rules of 1978 provide for 30 years of service for the work charged employees. The discrimination is apparent and, therefore, has to be removed to eliminate the injustice flowing therefrom. The powers of the Court under Article 226 is available to ensure substantial justice and, for that purpose, the Court may even travel beyond the reliefs sought in the writ petition. Hence, this Court proposes to dispose of the writ petitions at hand with a direction to the State Government to amend the Rules of 1978 to remove the discriminatory provision so as to bring the work charged employees at par with other employees of the State Government in so far pension is concerned.

10. In the result, the writ petitions are disposed of with the direction to the State

Government to amend the Rules of 1978 suitably so as to render the work charged employees who have completed more than 20 years of continuous service eligible for pension with effect from the date of their superannuation. The exercise in this behalf shall be initiated and completed within a period of two months from the day when a copy of this judgment is furnished by the writ Petitioners. Writ of Mandamus for payment of pension is not issued in view of the decisions in V.M. Gadre (Dead) by L.Rs. and others Vs. M.G. Diwan and others, State of Manipur Vs. Thingujam Brojen Meetei, Government of Tamil Nadu and another Vs. K. Jayaraman, and in Union of India and Others Vs. Rakesh Kumar etc.,

No costs.