(2005) 02 GAU CK 0053

In the Gauhati High Court

K.Benimadhop Singh APPELLANT

Vs

State of Manipur and Ors. RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Citation : (2005) 02 GAU CK 0053

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : R.S.Reisang, N.Ibotombi Singh, L.Birendra kumar, Advocates appearing for Parties

Judgement

1. Heard Mr.L.Birendrakumar, learned counsel for the petitioner and Mr.R.S.Reisang, learned GA for respondent nos.1 and 3 as well as Mr.N.Ibotombi, learned CGSC for respondent No. 2.

2. In the present case the petitioner is only aggrieved with the amount of average emolument calculated by the Accountant General, Manipur for payment of his pension. The following short factual matrix will suffice for deciding the issue involved in the present writ petition:

3. The petitioner was initially appointed as LDC in the Electricity Division, Public Works Department, Government of Manipur on 4.12.1957. While he was serving under the Government of Manipur he was sent on deputation in the year 1977 and continued to serve in the office of the Accountant General, Assam and Meghalaya till he retired on superannuation w.e.f. 2.6.1977. While he was on deputation in the office of the Accountant General, Assam and Meghalaya, he was allowed to hold the post of Unqualified Divisional Accountant and in this regard, learned counsel, Mr.N.Ibotombi, appearing for respondent No. 2 had pointed out that as he failed to qualify the Divisional Accountant Grade Examination for appointment in the post of Divisional Accountant, in the office of the Accountant General, Assam and Meghalaya, he was repatriated to his parent department, i.e. PWD, Manipur. But the petitioner could not be repatriated to his

parent department as he obtained stay order from the Central Administrative Tribunal, Guwahati passed in O.A No. 127/94 and in pursuance of the said stay order of the CAT, Guwahati passed in OA No. 127/94, he continued to serve in the office of the Accountant General, Assam and Meghalaya and he retired on superannuation as unqualified Divisional Accountant.

4. Learned counsel for the petitioner submits that the Governor of Manipur in exercise of power conferred by proviso to Article 309 of the Constitution of India made the Manipur Civil Services (Pension) Rules by adopting the Central Civil Services (Pension) Rules, 1972 vide order being No. 1/3/71/HF, Imphal the 3.3.1977. The Manipur Civil Services (Pension) Rules, 1972 is nothing but the Central Civil Services (Pension) Rules, 1972 in as much as the Central Civil Services (Pension) Rules, 1972 had been adopted only with the condition the that whenever the word/words ?Union?, ?President?, ?Government?, ?Ministry? and ?Head of Department? as/had been referred to the Central Civil Services (Pension) Rules, 1972, the same shall be construed as referring to the ?State of Manipur?, ?Governor of Manipur?, ?Government of Manipur? and ?Head of Department? declared as such by the Governor of Manipur respectively. A clearcut submission of the learned counsel for the petitioner is that since the petitioner was enjoying basic pay i.e. Rs./6800/ w.e.f. 1.8.96 till his retirement on 31.7.1997 his retirement benefit ought to have been calculated on the average emolument drawn by a government servant during the last 10 (ten) months before his superannuation. The only grievance of the petitioner is that his retirement benefits had been calculated at Rs.6000/ per month. Learned counsel for the petitioner submits that the meaning of ?emolument? as defined in Rule33 of the Pension Rules and expression ?emolument? means basic as defined in Rule9(21)(a)(i) of the Fundamental Rules. According to FR 9(21)(a)(i) means ? pay? other than the special pay or pay granted in view of his personal qualification, which had been sanctioned for the post held by him substantively or on officiating capacity or to which he is entitled by reason of his position in the cadre. Therefore, according to the learned counsel for the petitioner, the total emolument mentioned in Rule33 of the Pension Rules is nothing but the basic pay of the government employee at the time of retirement and further, Rule 34 of the Pension Rules defined the meaning of ?average emolument? and it means ? the average emolument shall be determined with reference to the emolument drawn by a government servant during the last ten months of his service?. Therefore, as the petitioner has been enjoying his basic pay of Rs.6800/ per month the average emolument of the petitioner within the meaning of Rule34 of the Pension Rules would be Rs.6800/ per month and as such, the amount of pension is to be calculated according to Rule 49 of the Pension Rules. It is further submitted by learned counsel for the petitioner that on bare perusal of the Rule 49 of Pension Rules it is very clear that the government servant retiring in accordance with the provisions of Rules after completing qualifying service of not less than 33 years, the amount of pension shall be calculated at 50% of the average emolument. As stated above in the case of the present petitioner the

amount of pension according to Rule 49 of the Pension Rules would be half of the average emolument i.e. Rs.6800/ inasmuch as the petitioner retired on superannuation after serving more than 39 years.

5. From the above factual backgrounds it is clear that the Maniur Civil Services (Pension) Rules, 1977 is nothing but the Central Civil Services (Pension) Rules, 1972. Even if the average emolument of the petitioner is to be calculated according to the Manipur Civil Services (Pension) Rules, 1977, it would be Rs.6800/ per month and amount of pension according to Rule 49 of the Manipur Civil Services (Pension) Rules, 1977 would be half of Rs.6800/ per month i.e. Rs.3400/ per month. But while the respondent No. 2 calculating the pension for the petitioner, Rs.6000/ per month had been taken as the last pay instead of Rs.6800/ per month according to pension payment order (AnnexureA/4 to the writ petition).

6. For the reasons above said, I am of the considered view that this writ petition could be disposed of with the direction to the respondents to calculate pension and other retirement benefits of the petitioner taking Rs.6800/ as the last pay i.e. average emolument of the petitioner mentioned in Rule 34 of the Manipur Civil Services (Pension) Rules, 1977 and calcuate the amount of pension according to Rule 49 of the Pension Rules above said within a period of 4 (four) months from the date of receipt of this order.

Accordingly the present writ petition is disposed of with the above direction. No costs.

