

(2017) 03 MAN CK 0010
In the Manipur High Court
Case No : 713 of 2015

Konthoujam (O) Pramodini Devi

APPELLANT

Vs

The State of Manipur, through the Principal Secretary/
Commissioner/Secretary (Home), Govt. of Manipur, & Ors.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226, Article 311(2) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Power of High Courts to Issue certain writs - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State
Code of Civil Procedure, 1908, Order 6Rule 1 -
Indian Penal Code, 1860, Section 302, Section 307, Section 353, Section 329 -
Central Civil Services (Classification, Control and Appeal) Rules, 1957, Rule 11 -
Arms Act, 1959, Section 25(1B) -
Punishment for certain offences
Central Civil Services (Pension) Rules, 1972, Rule 54

Citation : (2017) 03 MAN CK 0010

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Th. Khagemba, R.K. Umakanta, K.R. Pamei

Judgement

1. Heard Shri Th. Khagemba, the learned counsel appearing for the petitioner; Shri R.K. Umakanta, the learned Additional Government Advocate appearing for the respondent Nos. 1 to 4 and Shri K.R. Pamei, the learned counsel appearing for the respondent No. 5.

2. By the instant writ petition, the petitioner has prayed for a direction directing the respondents to allow her to enjoy the family pension and other benefits for

the service rendered by her late husband.

3. 1. According to the petitioner, she is the widow of late Shri K. Inaocha Singh who was at the relevant time serving as Rifleman of the 8th Battalion, Manipur Rifles, Government of Manipur. In view of the policy decision of the State Government as regards the rehabilitation of surrenderee, a proposal for appointment of the petitioner's husband along with seventeen others as Rifleman in various Battalions of Manipur Rifles was approved vide order dated 31-07-1999 issued by the Director General of Police, Manipur with the specific order that the Commandant concerned should issue formal appointment orders and accordingly, the Commandant, 8th Bn. Manipur Rifles issued a formal order appointing the petitioner's husband as Rifleman of the 8th Bn. Manipur Rifles. As required in law, the petitioner's husband underwent basic training; completed it in time and thereafter, the Commandant, 7th Bn. Manipur Rifles issued an order dated 09-07-2002 releasing Riflemen on transfer from a Battalion to other Battalion and accordingly, the petitioner's husband was transferred and posted at 8th Battalion, Manipur Rifles, Leikun, Manipur. 3.2. The petitioner came to know about the unfaithful incident occurred on 04-11-2002 whereby it was informed that her husband fired upon his fellow rifleman and thereafter, he was killed by other fellow riflemen after chasing him in the jungle. After the post mortem being conducted over the dead body of her husband, a certificate thereof was issued by the Doctor who opined that the cause of death was due to internal bleeding following multiple bullet injuries leading to shock and death. After about five months from the death of her husband, the petitioner submitted a representation dated 15-03-2003 to the Director General of Police, Manipur for withdrawal of G.P. Fund and thereupon, the Special Secretary (Home), Government of Manipur issued an order dated 16-10-2003 according sanction for a sum amounting to Rs. 1,91,816/- (Rupees one lakh ninety one thousand eight hundred sixteen) only in respect of five police constables/Riflemen including the petitioner's husband and the amount sanctioned in respect of the petitioner's husband was Rs. 25,476/- (Rupees twenty five thousand four hundred seventy six) only.

3.3. Since the petitioner's husband having died in the manner as stated above, it is the bounden duty of the Commandant, 8th Battalion, Manipur Rifles to issue necessary order thereby terminating the service of the petitioner's husband so that the petitioner could enjoy the family pension in terms of Rule 54 of the CCS (Pension) Rules, 1972 adopted by the Government of Manipur. However, the authorities concerned including the Commandant, 8th Battalion, Manipur Rifles failed to issue such order of termination, as a result the petitioner could not get pensionary benefits as well as family pension other than the amount of GPF. The inaction on the part of the respondents thereby not allowing her to enjoy the family pension and other retiral benefits for the service rendered by her husband, was totally illegal, unlawful, arbitrary being violative of the fundamental rights guaranteed under the Constitution of India.

4. It is not denied by the respondents that the petitioner is the legal wife of late Shri K. Inaocha Singh who was a surrenderee appointed as Rifleman. However, in the affidavit in opposition filed on behalf of the respondent Nos. 1, 2 and 3, it is stated that on 04-11-2002, the petitioner's husband was on sentry duty and after his sentry duty was over, he was toying with his rifle and continued to play with the same even though he was instructed not to do so by his Guard Commander. In the meanwhile, Naik Shri L. Muhindro Singh who hails from the same village, went towards the petitioner's husband and urged him to desist from awkwardly toying with the arms and with no chance being given to react, the petitioner's husband opened fire and shot him dead and ran away with his service Rifle. Thereafter, a search operation was mounted and during the course of operation, the personnel of the 8th Battalion, Manipur Rifles came closer towards him but he started firing towards the search party thereby killing one Rifleman, Mr. N. Mathew Tangkhul and in the ensuing encounter, the petitioner's husband was also killed. It is further stated that after the death of the petitioner's husband, the then Commandant, 8th Battalion, Manipur Rifles issued an order by striking-off the name of the petitioner's husband from the strength of the Battalion with the order that the case of the petitioner's husband would be treated as dismissal from service for all practical purposes pending final disposal of the case under F.I.R. No. 11(11)2002-CDL-P.S. u/s 302/307/353/329-IPC & 25 (1-B) Arms Act registered against him and that since the case of the petitioner's husband having been treated as dismissal from service, the petitioner was not entitled to get any pensionary benefits under Rule 11, CCS(CCA) Rules which provides that a Government servant, removed or dismissed from service, shall forfeit his past service and shall not be entitled to pension/gratuity and therefore, no family pension of late Shri K. Inaocha Singh had been given to the petitioner. An affidavit on behalf of the respondent No. 4 has been filed wherein it is stated that the office of the Accountant General is the field office where the concerned Accountant General performs his/her duties within the parameters laid down by the C & AG of India. The administrative authority and power vests with the State Government and its office only implements the decision taken by the State Government in various issues relating to maintenance of GPF, Pension and Gazetted Entitlement. It is further stated that the issue of termination order of the deceased employee is the sole authority of the Administrative Department and the pensionary papers relating to the petitioner's husband were not received by its office and that as and when necessary papers are duly forwarded by the Department of Personnel (Pension Cell), Government of Manipur, appropriate action be taken accordingly. In the rejoinder affidavit filed by the petitioner, it has been stated that her late husband was killed by the authorities concerned of the 8th Battalion, Manipur Rifles after a well-planned conspiracy and therefore, the petitioner is entitled to compensation. It is further stated that it is a well settled law of the land that no criminal proceedings can be initiated against a deceased person and moreover, the punishment of "dismissal" can be awarded to an employee only after a regular departmental enquiry being held by following due process of law and in case of her husband, no such enquiry has ever been

held by the respondents.

5. During the course of hearing, Shri R.K. Umakanta, the learned Government Advocate raised three points - one, the present writ petition being not maintainable, is liable to be dismissed on the ground of laches; two, since the order dated 20-05-2003 striking-off the name of the petitioner's husband from the strength of the battalion and being treated as a dismissal order has not been challenged, the relief sought for by the petitioner in the writ petition cannot be granted by this court and three, the rejoinder being not a part of the pleadings, the prayer made in the rejoinder for quashing the portion of the order dated 20-05-2003 pertaining to dismissal, cannot be entertained at all by this court. As regards the first point, Shri Th. Khagemba, the learned counsel appearing for the petitioner has submitted that the respondents have not taken any specific plea in their counter affidavit that there was a delay or laches in filing the writ petition for which there was no explanation at all and that since this point was raised during the course of hearing only, there was no occasion for the petitioner to give any explanation or justification for the delay in approaching this court by way of the present writ petition. In order to substantiate his contention, he has relied upon the decision of the Hon'ble Supreme Court in S.K. Mastan Bee Vs. General Manager, South Central Railway and anr., reported in (2003) 1 SCC 184 wherein the appellant was the widow of a railway employee who died in harness on 21-11-1969 and according to her, she was entitled to family pension but because of ignorance and lack of legal assistance, she could not stake her claim for family pension till 12-03-1991. Since her claim was rejected on the ground that at the time when her husband died, he was not in service because he was medically invalidated. In a writ petition filed by her, the learned Single Judge allowed the writ petition and directed the railways to fix and pay the family pension to the appellant. The writ appeal preferred against the judgment and order of the learned Single Judge by the railway failed and accordingly, an appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court, noticing the fact that the appellant was an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right, held that it was obligatory for her husband's employer viz. the Railway, to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation and denial of her right to family pension by the railway was an erroneous decision and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. He has placed reliance also in Union of India Vs. Tarsem Singh, reported in (2008) 8 SCC 648 wherein the Hon'ble Supreme Court held:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can

be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

On the other hand, Shri R.K. Umakanta, the learned Government Advocate has relied upon the decision in Shiv Dass Vs. Union of India, reported in (2007) 9 SCC 274 wherein the appellant who was relieved from the service being invalidated out of service, claimed disability pension in the year 1983 which was rejected and the appeal preferred before the appellate authority remained undecided. Accordingly, he filed a writ petition in 2005 which was dismissed. When the matter came up before the Hon''ble Supreme Court, it held:

"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

He has also placed reliance in New Delhi Municipal Council Vs. Pan Singh & ors., reported in (2007) 9 SCC 278 wherein the respondents therein filed a writ petition after 17 years, the Hon''ble Supreme Court held that after such a long time, the writ petition could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. The Hon''ble Supreme Court further held that although there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily writ petition should be filed within a reasonable time.

6. On perusal of the above decisions, it is crystal clear and there can be no dispute that there is no period of limitation for filing a writ petition under Article 226 of the Constitution of India but it should be filed within a reasonable time. To

entertain or not to entertain a writ petition filed after a long time is a matter of discretionary jurisdiction which ought to be exercised judicially and reasonably by the High Court. In other words, it would depend upon the facts of each case. Delay or laches in filing the writ petition is one of the factors to be taken into consideration by the High Court while exercising the discretionary jurisdiction. In the present case, it is not in dispute that although the writ petition is filed after a long time, no objection has been raised by the respondents in the pleadings as regards the maintainability of the writ petition on the ground of delay or laches and only during the course of hearing, this objection was raised for the first time by the learned Government Advocate. In this regard, the submission of the learned counsel appearing for the petitioner is right to the extent that there was no occasion for the petitioner to give any explanation. Therefore, the examination of the question as to whether there is a delay or laches in filing the writ petition by this court will not arise at all for the reason that explanation is not available at all on record. Moreover, as has been held by the Hon''ble Supreme Court in Union of India Vs. Tarsem Singh case (supra) that continuing or successive wrongs, delay or laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party right, there is no reason as to why the present petition cannot be entertained by this court and decided on merit because no third-party right is involved at all in the matter except the question of entitlement of the petitioner's right to enjoy family pension.

7. As regards the second point, Shri Th. Khagemba, the learned counsel appearing for the petitioner has submitted that till the date of filing the writ petition, the petitioner was not aware of the said order dated 20-05-2003, because no copy thereof was served upon her. His further submission is that without a copy thereof being served upon her, the portion of the said order relating to dismissal, cannot be given effect to; that her right to enjoy family pension cannot be denied without an opportunity of being heard, given to her and relying upon the decision of the Hon''ble Supreme Court in Ram Ganesh Tripathi & ors. Vs. State of UP & ors. reported in (1997) 1 SCC 621, he submitted that since the said order had been issued inconsistent with the statutory rules, the same deserved to be quashed and set aside. In this case, the Hon''ble Supreme Court held:

"9.The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this court along with the counter affidavit of respondents 3, 7, 8 and 9 and is relied upon by all the respondents. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad-hoc appointees."

Referring to and relying upon the decision in Ram Ganesh Tripathi case, the Hon''ble Supreme Court in State of Orissa Vs. Mamata Mohanty, reported in (2011) 3 SCC 436 observed:

"68(xxi) The submission on behalf of the respondents that government orders/circulars/letters have been complied with, therefore, no interference is called for, is preposterous for the simple reason that such orders/circulars/letters being violative of statutory provisions and constitutional mandate are just to be ignored in terms of the judgment of this Court in Ram Ganesh Tripathi."

Refuting the aforesaid contentions, Shri R.K. Umakanta, the learned Government Advocate has submitted that the decision rendered by the Hon"ble Supreme Court in State of Orissa & anr. Vs. Mamata Mohanty case is not applicable to the facts and circumstances of the present case. He has placed reliance in Krishnadevi Malchand Kamathia & ors. Vs. Bombay Environmental Action Group & ors. reported in (2011) 3 SCC 363 wherein one of the submissions of the learned counsel appearing for the appellant was that the Notification dated 18-02-2009 issued by the Divisional Commissioner did not disclose what are the statutory provisions which conferred the power/competence to issue the said notification and therefore, the same was void ab initio for the reason that the procedure prescribed in law had not been followed. The Hon"ble Supreme Court held:

"19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

The case of the petitioner is that she was not aware of the said order dated 20-05-2003 till the date of filing the writ petition wherein it has been specifically averred that since the respondents had failed to issue any termination order, no family pension was given to her, nor was any intimation thereof was given to her so that she could have either challenged the legality thereof in a court of law or could have given up the idea of claiming the family pension. No material has been placed on record by the respondents to show that a copy of the said order dated 20-05-2003 has been served upon her since her husband having been killed or any intimation thereof has been given to her. It is an undeniable fact that in the absence of a copy being given to her, the question of challenging the same by her will not arise at all. The respondents cannot take advantage of their own mistake or lapse.

8. With respect to the third point, the learned counsel appearing for the petitioner, relying upon the decision of the Hon"ble Supreme Court in Sri-La Sri Subramania Desika Gnanasambanda Pandarasannidi Vs. State of Madras & anr. reported in 1965 SC 1578, has submitted that a plea taken in a rejoinder would form part of the pleadings. In the said case, a writ petition was filed questioning

the legally and correctness of a Notification dated 04-08-1956 issued by the Governor of Madras mainly on two grounds, one of which being that the notification was issued without giving an opportunity to the appellant to show cause why the earlier notification should not be extended. The Hon"ble High Court, conceding that before making such an order, it was necessary that the appellant should have been given an opportunity to be heard, declined to allow it on the ground that this specific point had not been taken by the appellant in his writ petition. When the matter came up before the Hon"ble Supreme Court, it held:

"(17) That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court."

On the other hand, the learned Government Advocate has relied upon the decision dated 18-12-1981 of the High Court of Delhi in Amarjeet Singh Vs. Bhagwati Devi wherein a petition for dissolution of marriage came to be filed by the appellant-husband on the ground of adultery and in her written statement, the wife alleged that the husband was most spendthrift, debauch and a depraved type of criminal and indulged in drinks and prostitution. In the replication filed thereto by the husband, it was contended that the allegation made by the wife itself was sufficient to prove that she had always been trying to defame him and had always treated him with cruelty. While dismissing the appeal, the Hon"ble High Court has observed that under Order 6 Rule 1 of CPC, "pleading" means plaint or written statement and therefore, replication is not a pleading for claiming relief. Similarly, in Anant Construction (P) Ltd. Vs. Ram Niwas decided by the Delhi High Court on 03-10-1994 and relied upon by the learned Government Advocate, wherein a suit for specific performance of a contract of sale was filed in the year 1982, the Delhi High Court held that Order 6 of CPC deals with pleadings generally. Pleading means plaint or written statement and pleadings by way of rejoinder/ replication are not to be found statutorily contemplated by the CPC. He has placed reliance also in Ashis Kumar Chakravorty & ors. Vs. Union of India & ors., reported in 2006 (4) GLT 746 wherein a misc. case application came to be filed in a pending writ petition, projecting subsequent developments, challenging the notice dated 13-05-206

issued by the Chief Executive of the Bank, the Hon''ble Gauhati High Court held that it being admittedly a subsequent event with a new cause of action and not being incorporated in the pleadings of the related writ petition, the petitioners were not entitled to get any relief sought for beyond the pleadings.

There can be no any dispute that "pleading" is defined in Order 6 Rule 1 of CPC and issues that arise in a suit, are to be decided within the bounds of the pleadings. But it may be noted that the provisions of CPC are not strictly followed in a proceeding under Article 226 of the Constitution of India whereby the High Court has been conferred discretionary jurisdiction which shall be exercised reasonably and judicially. It is trite that the manner in which the discretionary power shall be exercised by the High Court, cannot be put to a straight-jacket and it would depend upon the facts and circumstances of each case for doing complete justice in the matter. Two decisions of the Hon''ble High Court of Delhi, referred to herein above, have not been rendered in the proceedings under Article 226 of the Constitution of India and moreover, this court is not bound by them. It depends up the wisdom of this court either to subscribe them or not. The other decision of the Hon''ble Gauhati High Court has no doubt been rendered in a proceeding under Article 226 of the Constitution of India but it will not apply to the facts of the present case for the reason that it is true that the averments made in an application shall not form part of the pleadings. So far as the present case is concerned, this court is of the view that the decision of the Hon''ble Supreme Court in *Sri-La Sri Subramania Desika Gnanasambanda Pandarasannidi Vs. State of Madras & anr.* case (supra) will have some application, although it has not specifically laid down the law that a plea taken in a rejoinder shall form part of the pleadings. But it is very clear from the aforesaid decision that a plea taken in a rejoinder can be taken into account while deciding the writ petition.

9. The payment of family pension is governed by the provisions of Rule 54 of the Central Civil Services (Pension) Rules, 1972 as adopted by the Government of Manipur as Manipur Civil Service (Pension) Rules and the relevant portion of Rule 54 is under:

"54. Family Pension, 1964 -

(2) Without prejudice to the provisions contained in sub-rule (3), where a Government servant dies -

(a) after completion of one year of continuous service; or

(aa) before completion of one year of continuous service, provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for government service.

(b) after retirement from service and was on the date of death in receipt of a pension, or Compassionate Allowance, referred to in Chapter V, other than the

pension referred to in Rule 37,

the family of the deceased shall be entitled to Family Pension, 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below:"

It is not the case of the respondents that no family pension can be granted under the provisions of Rule 54 and the only stand of the respondents as reflected in their affidavit-inopposition is that since the petitioner's husband has been dismissed from service vide order dated 20-05-2003 issued by the then Commandant, 8th Bn. Manipur Rifles, the petitioner is not entitled to family pension in terms of Rule 11, CCS (CCA) Rules which provides that a Government servant removed or dismissed from service shall forfeit his past service and shall not be entitled to pension/gratuity. For proper appreciation of the stand of the respondents, the order dated 20-05-2003 is reproduced herein below:

"GOVERNMENT OF MANIPUR

OFFICE OF THE COMMANDANT: 8TH BAN. MANIPUR RIFLES, LEIKUN

O R D E R

No. B2/49/98-8MR/ Dt. 20-05-2003

Whereas Rfm. No. 0799010(L) K. Inaocha Singh of 8th Bn. M.R. Leikun was posted at No. 1 Gate and on 4.11.2002 at about 12.40 p.m. he shot dead one Naik No. 55616 L. Mohindro Singh of "SP" Coy. 8MR with his service rifle, and absconded from the place of occurrence, along with the rifle and the ammunitions issued to him.

And. whereas, an armed party chased him for arrest, and hidden in thick jungle, he again fired at the chasing party and killed one rifleman No. 7101 Methew Tangkhul at about 4.00 p.m. of the same day;

And, whereas, rifleman No. 0799010 (L) K. Inaocha Singh himself got killed in the ensuing encounter at about 4.40 p.m.;

And, whereas in connection with the incident, a case under F.I.R. No. 11(11)2002-CDL P.S. u/s 303/307/ 353/329-IPC and 25 (1-B) arms act was registered against him;

Therefore, consequent on his death as such, the name of Shri (L) K. Inaocha Singh Rfm. No. 0799010 is struct-off from the strength of this Bn. with effect from the afternoon of 4-11-2002, and the case will be treated as "DISMISSAL" from service for all practical purposes, pending final disposal of the F.I.R. case, by this court.

(Sarangthem Manaobi) MPS.

Commandant,

8th Bn. Manipur Rifles, Leikun

Endst. No. B2/49/98-8MR/ Leikun, the 20th May, 2003

Copy to:-

1. The Addl. D.G. of Police, (OPS), Manipur, Imphal.
2. The I.G. of Police, (OPS), Manipur, Imphal.
3. The Dy. I.G. of Police, (OPS), Manipur, Imphal.
4. The Director of Police, Wireless, Manipur, Imphal.
5. The Acctt. General, Manipur, Imphal.
6. The Adjutant, 8MR, Leikun for BRO.
7. The Quarter Master, 8MR, Leikun for info.
8. The Coy. Commander, concerned, 8MR, Leikun.
9. The Head Clerk, 8MR, Leikun for info.
10. P.C.
11. File.

(Sarangthem Manaobi) MPS.

Commandant,

8th Bn. Manipur Rifles, Leikun"

On perusal of the said order, it is seen that the petitioner's husband shot dead one of his colleagues and absconded from the place of occurrence and while he was being chased by the armed party, he killed one more of his colleagues and got himself killed in the ensuing encounter for which a case under FIR 11(11)2002-CDL PS under Section 302/307/353/ 329-IPC and 25(1-B) Arms Act was registered against him. Consequent upon his death, his name has been struck-off from the strength of the battalion and in the order, it is specifically stated that the case will be treated as "dismissal" from service for all practical purposes, pending final disposal of the FIR case by the court. In fact, it is not a dismissal order but only an order striking-off the name of the petitioner's husband from the strength of the battalion with a rider and no dismissal order can be issued in this manner. In terms of the provisions of Article 311(2) of the Constitution of India, no person as aforesaid in sub-article (1) shall be dismissed or removed or reduced in rank except after an enquiry in which he has been

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In the present case, no enquiry appears to have been held by the respondents and can never be held also, in view of the fact that the petitioner's husband has been killed and it may be for this reason that no order of dismissal has been issued by the respondents except the order dated 20-05-2003 treated as dismissal order which is conditional and will remain in operation till the disposal of the FIR case only. The moment the said FIR case is disposed of, the portion of the said order relating to conditional dismissal, will stand rendered otiose. The said FIR case was registered 14 years ago and no material has been produced on record by the respondents to show as to what happened to that case. It may be noted that since the petitioner's husband has been killed, no criminal proceedings can be initiated against him; no trial can take place and the only thing that the police could do, is to investigate the case and file a charge-sheet after the investigation being completed by it and not beyond that. The investigation is to be completed within the period of time prescribed in law or within a reasonable time depending upon the facts of each case and in the present case, a reasonable time having expired a decade's ago, the investigation might have been completed and consequently, the said FIR case might have been closed and in that event, the portion of the order dated 20-05-2003 as regards the same being treated as dismissal order might have been rendered no-nest and otiose. In case the investigation is being kept pending till date so as to deny the benefit of family pension to the petitioner, the action or inaction on the part of the respondents shall be rendered unreasonable and malafide being violative of Article 14 & 21 of the Constitution of India. As has been held by the Hon''ble Supreme Court in a catena of decisions, the State Government being an institution ought to act fairly and reasonably. At this juncture, it may be noted that the said order dated 20-05-2003 has not been issued by the respondents on the basis of the petitioner's husband being found to be guilty. There is no material on record as to what happened to the said portion of the order dated 20-05-2003 or as to whether the said case had actually been closed after a charge-sheet being filed after the investigation and in the absence of a concrete information, it may not be appropriate for this court to pass any order at this stage quashing it even though a prayer has been made in the rejoinder for quashing it. In such situation, one cannot lose sight of the fact that in terms of various decisions of the Hon''ble Supreme Court, the High Court is competent to mould the relief for the end of justice. Therefore, this court is of the view that in view of the law laid down by the Hon''ble Supreme Court in State of Orissa Vs. Mamata Mohanty (supra), the said portion of the order dated 20-05-2003, relating to dismissal pending disposal of the case under FIR No. 11(11)2002-CDL-P.S. u/s 302/307/353/ 329-IPC & 25 (1-B) Arms Act registered against the petitioner's husband, can be ignored by flux of time and appropriate action can be taken by the respondents towards payment of family pension to the petitioner. In other words, there appears to be no impediment for granting family pension by the respondents to the petitioner.

10. For the reasons stated herein above, the present writ petition is disposed of with the following directions: (a) The respondents shall compute the total family pension including arrears, from the day the petitioner is entitled to but not paid because of the order dated 20-05-2003, in terms of the Rule 54 of the Central Civil Services (Pension) Rules, 1972 as adopted by the Government of Manipur within two months from the date of this judgment and order;

(b) The respondents shall pay to the petitioner family pension, as computed as per direction (a) above, within six month from the date of expiry of the said two months and continue to pay family pension payable to her, thereafter, regularly;

(c) In the event of the family pension not being paid to the petitioner within six months as mentioned in direction (b) above, the same will accrue an interest @ Rs. 8% per annum from the expiry of the said six months. There shall be no order as to costs.