
(2011) 03 GAU CK 0028
In the Gauhati High Court
Case No : Writ Petition (C) No. 114 of 2011

Kshetrimayum Jitendra Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Central Service (Pension) Rules, 1972 — Rule 69
Constitution of India, 1950 — Article 309

Citation : (2011) 4 GLR 326

Hon'ble Judges : Ashok Potsangbam, J

Bench : Single Bench

Advocate : A. Sachikumar, for the Appellant; S. Nepolean, for the Respondent

Judgement

Asok Potsangbam, J.—Heard Mr. A. Sachikumar, learned counsel appearing on behalf of the petitioner and Mr. S. Nepolean, learned Government Advocate appearing on behalf of the Government respondents.

2. Time was granted to the learned Government Advocate to obtain instructions on one or two occasions but no instruction has been placed by the learned Government Advocate as he was not furnished any instruction by the Government. Considering the grievance of the petitioner and the relief sought for in this writ petition, I propose to dispose of this case at this stage as there will be meaningful purpose to keep the case pending any further.

3. It is stated that the petitioner was earlier employed in an aided school under the District Council of Chandel and thereafter, the school was taken over by the Government of Manipur vide order dated 16.8.2000 along with some posts including the post of Hindi Graduate Teacher held by the petitioner. A DPC headed by the Director of Education (S) as Chairman was held on 7.5.2003 and on the recommendation of the DPC with the approval of Government, the petitioner was appointed as Hindi Graduate Teacher. After having appointed as a regular Hindi Graduate Teacher, the petitioner was transferred from one place to another. In the meantime, Finance Department, Government of Manipur, issued

certain instruction, which is known as Manipur Government Employees List (for short "MGEL") and as per instruction contained in the aforesaid Finance Department's order, posts in the Department are to be identified with post creation orders and the holders of the post are also to be identified so as to enable the Government to maintain the exact number of regular employees holding sanctioned posts. In the aforesaid process, the name of the petitioner had been identified as one holding a regular post of Hindi Graduate Teacher at Kwatha Junior High School under DI, Moreh and by order dated 17th April, 2006, the petitioner was transferred from Kwatha Junior High School to Khomidok Khabi Arapti Primary School. It is submitted by Mr. Sachikumar, learned counsel for the petitioner, that as per department wise list of employees working under the Government of Manipur, prepared by the Finance Department, the name of the petitioner is shown as a regular Hindi Graduate Teacher and his DDO Code number is 1507036.

4. It is further submitted by the learned counsel appearing for the petitioner that the petitioner had been paid his pay and allowances only upto May, 2009 and his due salary from June, 2009 onwards has not been paid till date. The only ground on the basis of which the pay and allowances of the petitioner had been withheld by the Government is non-finalisation of MGEL in the School Education Directorate, Government of Manipur. Mr. S. Nepolean, learned Government Advocate was directed to obtain a copy of the MGEL and other connected instructions issued by the Government of Manipur and accordingly, a set of orders/OM issued by the Finance Department relating to MGEL are placed before the Court.

5. The service conditions of a regular Government employee of the Government of Manipur is governed by the rules framed by the Government of Manipur as well as the rules of the Central Government adopted by the Government of Manipur from time to time. The Central Civil Services (Classification, Control and Appeal) Rules, 1965, Central Services (Conduct) Rules, 1964, Central Services Regulations, FR & SR are applicable to the service conditions of the employees of the Government of Manipur and the recruitment aspect is governed by the recruitment rules or service rules framed by the Governor of Manipur under Article 309 of the Constitution of India. In addition to the above, salary of an employee of the Government of Manipur is to be governed by the revised pay rules issued by the Government of Manipur from time to time under Article 309 of the Constitution of India. It is pertinent to state that even a person placed under suspension in contemplation of a disciplinary proceeding, is entitled to get subsistence allowances as well as enhanced subsistence allowances on completion of a certain period under FR 54. Again, even a retired person, against whom some criminal/disciplinary proceedings are pending and as a result, the final pension payment order could not be issued, is still entitled to get provisional pension under Rule 69 of the Central Service (Pension) Rules, 1972.

6. Payment of pay and allowances to a Government servant is governed and

regulated by FR 19 to 22 and there is no provision in the FR & SR or in any other service Rules enabling the Government to withhold the salary of a regular employee. Perusal of the service rules as well as FR & SR as applicable to the service conditions of a regular employee would establish that the above proposition is the correct position in law.

7. I have also carefully perused the Office Memorandum dated 6th July, 2006 issued by the Finance Department and also the subsequent Office Memorandum dated 25th September, 2009. In the subsequent Office Memorandum dated 25th September, 2009, the discussion was confined to the exemption of applicability of the MGEL and other related instruction to the organised service and specific instruction was issued to update the MGEL, without any loss of time, in the case of officers belonging to organised service but there was no such order/instruction issued by the Government in respect of other employees governed by the recruitment rules i.e. unorganised service. The discrimination appears to be writ large in the matter of application of MGEL.

8. The aforesaid OM and other connected orders issued by the Finance Department, Government of Manipur, is basically for identification of the sanctioned posts and the number of employees holding the sanctioned posts and this is supposed to be an internal administrative exercise to be conducted by the department concerned and in no way, it can be taken to be a legally authorised instrument to interfere with the payment of monthly pay and allowances of an employee under FR 19 to 22 of the FR & SR. Therefore, the Court is to hold that this executive instruction relating to MGEL is meant only for the internal administrative exercise within the departments of the Government of Manipur for the aforesaid purpose and the same cannot be allowed to interfere with the entitlement of the employees under the Rules. It must be clearly understood that executive instructions cannot override the statutory provisions.

9. Having held that the MGEL is only an executive instruction, not having the status of a statutory rules, the authority has no right and competency to withhold the pay and allowances of a regular employees, just simply on the ground that MGEL in a department has not been finalised. It is noticed that, admittedly, the Director of School Education has taken years to finalize MGEL thereby depriving a large number of teachers of their monthly pay and allowances and taking unlimited time for finalisation of MGEL has been made possible because no time frame is provided in the Government OM issued in this regard and there is also no penalty clause in case of failure to finalize the MGEL with promptitude. In other words, MGEL and the related orders issued in this regard give unguided discretion to the department concerned with regard to finalisation of MGEL and in consequence thereto, a large number of poor and innocent Government employees are made to suffer due to non-payment of their monthly pay and allowances. This cannot be allowed to continue any further. Therefore, this Court is of the considered opinion that in all the case where updation of MGEL is required due to transfer/promotion of employees, the same

shall be completed within a period of one month from the date of such transfer/ promotion and the Government shall not be allowed to withhold the pay and allowances of a regular employee for more than one month on account of non-finalisation of MGEL and if an employee is not paid his pay and allowances on either transfer or by promotion for more than one month, he shall be entitled to 7% per annum interest to his withheld pay and allowances.

10. Coming back to the facts of the case, the respondents are directed to release the pay and allowances of the petitioner, payable and due from June, 2009 along with the current salary, within a period of one month from the date of receipt of a certified copy of this order. In case, the department fails to comply the above directions within the time stipulated by the Court, the withheld pay and allowances of the petitioner will carry an interest of 7% per annum from the date it became due to the petitioner.

11. With the above observations and directions, this writ petition stands disposed of.