
(2017) 03 MAN CK 0005
In the Manipur High Court
Case No : 429 of 2016

L. Raile Mao & anr.

APPELLANT

Vs

The State of Manipur & ors.

RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

[Fundamental Rules, 1963](#), Rule 53, Rule 54(1)(b), Rule 54-A(2)(i), Rule 54-B, Rule 54-B(1)(a), Rule 54(1)(a)

Citation : (2017) 03 MAN CK 0005

Hon'ble Judges : Rakesh Ranjan Prasad

Bench : Single Bench

Advocate : Kh. Tarunkumar, R.K. Umakanta

Judgement

1. Heard Mr. Kh. Tarunkumar, learned counsel appearing for the petitioners; and Mr. R.K. Umakanta, learned G.A. appearing for the State respondents.
2. Since the issues raised in both the writ applications are inter-related to each other, both were heard together and are being disposed of by the common order.
3. In W.P. (C) No. 429 of 2016, the petitioner has challenged that part of the order dated 31.05.2014, whereby an order has been passed to the effect that pay and allowances paid during the period of suspension shall remain restricted to the subsistence allowances, whereas, in W.P. (C) No. 873 of 2015, prayer has been made to direct the authority to release the rest of 25% of the pay and allowances during which the petitioners remained under suspension, and also allowances of one more month (taking the entitlement of pay and allowances for 13 months) and also the ration money for the period during which the petitioner was under suspension.
4. According to Mr. Kh. Tarunkumar, learned counsel appearing for the petitioners, the grievance of the petitioners is that by the impugned order dated 31.05.2014, an order has been passed that the pay and allowances paid to the petitioner shall confine to subsistence allowance to the extent of 75% of total

pay and allowance and thereby 25% of pay and allowances has been withheld which cannot be withheld without giving notice in terms of the provision as contained in Rule 54-A(2)(i) of the Fundamental Rules and thereby the authority be directed to release the rest of the 25% of the pay and allowances to the petitioners.

5. As against this, Mr. R.K. Umakanta, learned G.A. appearing for the State, submits that the prayer which has been made relating to the payment of rest of 25% of the pay and allowances is concerned, that is wholly untenable as the petitioner cannot claim entire pay and allowances on account of the reason that he has never been exonerated from the Departmental Proceeding, rather the petitioners have been inflicted with the punishment of withholding of 3 (three) increments with cumulative effect, and in that event, the authorities are absolutely justified in restricting the pay and allowances to the subsistence allowances in terms of provisions as contained in Rule 54-B of the Fundamental Rule. Rule 54-B of the Fundamental Rules reads as follows :- "(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

a) Regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

b) Whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the government servant shall, subject to provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may

determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceeding by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specially directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires such authority may order that period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of proviso-

(a) Extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) Leave of any kind excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or subrule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

6. Whatever claim the petitioners have put in for payment of entire pay and allowances (though 75% of pay and allowances by way of subsistence allowance has been paid) or for giving notice before putting order in terms of Rule 54-B (1) (a) of the Fundamental Rule is based on Provision as contained in Rule 54-A(2)(i)

of the said Fundamental Rule which reads as follows:- "(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice"

7. The situation contemplated under the aforesaid provision is quite different. This relates to a situation where order of dismissal, removal or compulsory retirement is set aside.

8. In the instant case, situation is quite different as the petitioners have been found guilty in the proceeding whereby three increments have been withheld. In such situation, the order seems to have been passed in terms of the provision as contained in Rule 53 read with Rule 54(1)(a) and (b) of Fundamental Rule which never appears to be wrong or erroneous and hence it needs no interference.

9. So far, the prayer relating to payment of the additional amount of subsistence allowance taking annual payment as that of 13 months instead of 12 months, it was submitted that the petitioners remained under suspension with effect from 01.07.2000 to 31.05.2014 and on account of that, the subsistence allowance was also paid but it was paid only for 12 months in a year though it should have been paid for 13 months in a year. It does appear that the petitioners have never raised this issue before the authority and therefore it would not be proper and appropriate for this Court to decide this issue, and accordingly, liberty is given to the petitioners to raise this issue before the authority by filing a representation not only with respect to this issue but also with respect to issue relating to non-payment of ration money within a period of 6 (six) weeks from today, so that the same be decided within 6 (six) weeks thereafter.

10. Thus both the writ applications stands disposed of.