
(2015) 02 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (C) No. 899 of 2005

M. Chisa

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Citation : (2015) 4 GLT 468

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : N. Umakanta, for the Appellant; K. Jagat, Govt. Advocate and S. Rupachandra, ASG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri N. Umakanta, learned counsel appearing for the petitioner; Shri K. Jagat, learned Government Advocate appearing for respondents No. 1 to 4 and Shri S. Rupachandra, learned ASG appearing for the respondent No. 5.

2. The writ petition has been filed by the petitioner for directing the respondents for payment of family pension to the petitioner.

3. The facts of the case which are not in dispute, are that the petitioner is the wife of one Shri D. Pukeni Mao who was engaged as work-charged Chowkidar vide office order dated 15-09-1980 issued by the then Chief Engineer (Power), Electricity Department and expired on 22-02-1991 as a result thereof, the petitioner's husband was formally terminated from service vide office order dated 30-04-1991 issued by the then Chief Engineer (Power), Government of Manipur. Thereafter, the petitioner's husband was confirmed as a work-charged Chowkidar vide office order dated 15-01-2000 issued by the then Chief Engineer (Power), Electricity Department with retrospective effect from 06-12-1990.

4. According to the petitioner, she is entitled to family pension under the provisions of the Terminal Benefits for Work-charged Staff of PWD/IFCD/PHED/MI/

Electricity Manipur Rules, 1978 (herein after referred to as Terminal Benefits Rules, 1978) and accordingly, she approached the concerned authorities for payment of family pension and submitted necessary documents for her claims to the Executive Engineer, Senapati Division, Electricity Department, Government of Manipur. While the petitioner was anxiously waiting for the payment of family pension, the Administrative Officer (Power), Government of Manipur addressed a letter dated 12-07-2001 informing the said Executive Engineer that since the petitioner's husband did not render one year of service after confirmation, the benefit of family pension was not admissible to the petitioner. Being aggrieved, the present writ petition has been filed by the present writ petition questioning the correctness and validity of the said letter dated 12-07-2001.

5. In the counter affidavit filed on behalf of the respondents No. 1 to 4, the stand taken in the said letter dated 12-07-2001 is reiterated. In other words, it is stated that since the petitioner's husband had not rendered service at least one year after confirmation as is required under the provisions of the said Terminal Benefits Rules, 1978 amended vide Notification dated 08-09-1994, the family pension was not admissible to the petitioner. The stand of the respondent No. 5 is that the pension papers in respect of the petitioner's husband are not yet received by it and the admissibility of her claim will be ascertained and considered only after the receipt of the said pension papers.

6. The short question which arises for consideration by this Court is as to whether the family pension is admissible to the petitioner under the provisions of the said Terminal Benefits Rules, 1978. It is submitted by the counsel for the petitioner that though many persons who are similarly situated, have been given the benefits of family pension, the same is denied to the petitioner. To substantiate his contention, the learned counsel for the petitioner has relied upon the judgment and order dated 01-02-2001 passed by the Division Bench of the Hon'ble Gauhati High Court in W.A. No. 154 of 1998 and ors.

7. The Terminal Benefits Rules, 1978 came to be notified on 18-09-1978 and published in the Gazette on 27-09-1978 wherein there was no provision for payment of family pension. The said Terminal Benefits Rules, 1978 suffered various amendments. It was only by an amendment vide Notification dated 21-06-1990, Rule 6(A) came to be inserted which provided for payment of family pension. Rule 6A is as under:

"6(A) - Family pension as calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time"

By an amendment vide Notification dated 06-06-1991, Rule 6(B) came to be inserted and the same is as under:

"RULE 6(B) - Terminal Benefit shall also be admissible to the work-charged employee who retired prior to 16-09-1978 but are living on the date of issue of this order, from 18-09-1978 and also family pension to the families of work-charged employee who died prior to 21-06-1990 and those family member are

living on the date of issue of this order." By an amendment vide Notification dated 21-5-1993, Rule 6(A) was substituted by the following:-

"(i) The benefit shall be available to the family of any permanent work-charged employees who rendered not less than 1 (one) year of service after confirmation.

(ii) These amendments would have prospective effect only and no arrears shall be paid."

By another amendment vide Notification dated 08-09-1994, Rule 6(A) was again substituted by the following:

"RULE 6(A) Family Pension as calculated under MCS (Pension) Rules, 1979 as amended from time to time subject to the following conditions:-

(i) The family shall be available to the family of any permanent work-charge employee who died while in service on or after 21-06-1990 after rendering not less than 1 (one) year of service after confirmation.

(ii) The payment of family pension shall be effective from 21-05-1993 and no arrears in cash or otherwise for the period from 21-06-1990 to 25-05-1993 shall be paid.

8. From the perusal of the said Terminal Benefits Rules, 1978, it appears that the purpose of the said rules was initially to provide pension to the work charged staff numbering about 413 who had been made permanent, may be, for the reason that they were not governed by the provisions of the Manipur Civil Services (Pension) Rules, 1977. There was no provision for payment of family pension and only by an amendment vide Notification dated 21-06-1990, Rule 6(A) was inserted which provided for payment of family pension for the first time. It may be noted that Rule 6(A) is plain, simple and unambiguous which requires no interpretation and since it being not qualified by any condition, at the most it can be said that it will apply to the family of a permanent work charged employee who died on or after 21-06-1990. By an amendment vide Notification dated 06-06-1991, Rule 6(B) came to be inserted which is not relevant for the present case except that the word "permanent" is removed therefrom either consciously or unconsciously. By an amendment vide Notification dated 21-05-1993, certain conditions have been added to Rule 6(A) namely the benefit shall be available to the family of any permanent employees who rendered not less than one year of service after confirmation and the amendment would have prospective effect. These conditions were amended vide Notification dated 08-09-1994 with no much difference except that these amended conditions would apply to the family of any permanent work charged employee who died on or after 21-06-1990 and the payment of family pension would be effective from 21-05-1993.

9. Relying upon the said amendments made in Rule 6(A), the respondents No. 1 to 4 took the stand that the family pension was not admissible to the petitioner because the petitioner's husband had not rendered one year service after

confirmation completely forgetting the fact that the Division Bench of the Hon'ble Gauhati High Court in the case of State of Manipur Vs. Smt. Loitongbam (O) Ibemhal Devi, W.A. No. 154 of 1998 decided on 01-10-2001 had already held that the said conditions would be prospective in its operation. The relevant portions of the said judgment and order dated 01-10-2001 are reproduced herein below:

"The amendment to Rule 6(A) which was brought about on 21-05-1993 (Supra) made the admissibility to family pension subject to the following condition:

The permanent work charged employee before his death should have rendered at least one year of service after confirmation.

The aforesaid condition was to be prospective only, i.e., this condition was to be fulfilled for the admissibility of family pension after 21-05-1993 and would not be applicable to these families who might have already become eligible for family pension under the pre/existing rules.

The further conditions which were laid down vide Notification dated 08-09-1994 for admissibility of family pension under rule 6(A) were for those families of permanent work charged employees who had died on or after 21-06-1990. Rendering of less than one year of service after confirmation was required. It was further made clear by the aforesaid amendment that family pension would be effective from, 21-05-1993. This is because of the reason that one year service after being permanent was introduced only on 21-05-1993."

It is evident from the aforesaid judgment and order that the conditions added to Rule 6(A) by way of amendments vide Notifications dated 21-05-1993 and 08-09-1994 would not apply to the case of the present petitioner because her husband had died prior to 21-05-1993 and that family pension was already admissible to the petitioner under Rule 6(A) which came to be inserted vide Notification dated 21-06-1990. The submission made by the counsel for the respondents No. 1 to 4 in line with the averments made in their counter affidavit has no substance at all and is accordingly rejected. Moreover, while interpreting Rule 6(B) of the Terminal Benefits Rules, 1978, another Division Bench of the Hon'ble Gauhati High Court, Imphal Bench in the case of W.A. No. 29 of 2009, State of Manipur Vs. Smt. M. Binakumari Devi decided on 19-8-2010 has held that the expression "confirmation and permanent" cannot be brought into the said provision and that it cannot be said that the benefits to which the families of the said work-charged employees were provided by way of family pension, would require confirmation of service of the petitioner's husband therein for said benefit to the petitioner. It is thus clear that the family pension is admissible to the petitioner and since the benefit is being denied to the petitioner for so long, immediate and appropriate steps be taken by the respondents to ensure that the family pension is given to the petitioner at the earliest possible.

10. In view of the aforesaid, the present writ petition is allowed with the direction that the respondents shall pay family pension to the petitioner within a

period of three months from the date of receipt of a copy of this judgment and order. No order as to cost.