

**(2017) 05 MAN CK 0001**  
**In the Manipur High Court**  
**Case No : 399 of 2016**

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|--------------------------------------------------------------------------------------------------|------------|
| Md. Kamaluddin, s/o Late HaziZamiruddin                                                          | APPELLANT  |
| Vs                                                                                               |            |
| The State of Manipur, represented by the Secretary<br>(Education), Government of Manipur, & Anr. | RESPONDENT |

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**Date of Decision :** 02-05-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-14>Article 14</a> - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions  
<a href=1767>Indian Penal Code, 1860</a>, <a href=1767-120B>Section 120B</a>, <a href=1767-420>Section 420</a>, <a href=1767-468>Section 468</a>, <a href=1767-471>Section 471</a> - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document

**Citation :** (2017) 05 MAN CK 0001

**Hon'ble Judges :** Kh. Nobin Singh

**Bench :** Single Bench

**Advocate :** L. Shashibhushan, K. Jagat

**Final Decision :** Allowed

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## Judgement

1. Heard Shri L. Shashibhushan, the learned counsel appearing for the petitioner and Shri K. Jagat, the learned Government Advocate appearing for the respondents.
2. By the instant writ petition, the petitioner has prayed for issuing a writ of Mandamus directing the respondents to issue termination/retirement order of the petitioner; to release his monthly salary w.e.f. the month of December, 2008 till February, 2009 after deducting the amount already paid which is Rs. 2,58,259/- (rupees two lakh fifty eight thousand two hundred and fifty nine) only and also to pay the retirement benefits.
3. 1. According to the petitioner, on the recommendation of a DPC, he was initially appointed as a Hindi Teacher for U.J.B vide order dated 11-08-1976 issued by

the Chief Executive Officer, District Council, Manipur West Autonomous District, Manipur and was accordingly posted at Makui U.J.B. School. While the petitioner was working as a Hindi Teacher at Makui U.J.B. School, he was transferred and posted at HaoreibiMakhaLeikai Government High Madrassa vide order dated 11-05-1982 issued by the respondent No. 2, the Director of Education (S), Government of Manipur and in pursuance of the said transfer order, the petitioner was released on 18-05-1982 so as to enable him to join his new place of posting and on being released, he did join his new place of posting as the Assistant Teacher which is an undergraduate post at HaoreibiMakhaLeikai Government High Madrassa. 3.2. After the petitioner having served as the Assistant Teacher at HaoreibiMakhaLeikai Government High Madrassa for more than six years, he was absorbed as the Assistant Teacher vide order dated 08-01-1989 issued by the Under Secretary (Education), Government of Manipur. On 08-02-1990 the Director of Education (S), Government of Manipur, pursuant to a Government policy decision, issued an order up-grading 275 undergraduate teachers to the post of graduate teachers in their respective schools with retrospective effect from 13-12-1987 in the scale of Rs.1650-2570/- and the name of the petitioner appeared at Sl. No.115 in the said list. Since the petitioner having obtained B.Ed. degree while he was working as the Assistant Teacher, the respondent No. 2 issued an order dated 08-05-1990 by which the upgraded graduate teachers including the petitioner, were allowed to enjoy the trained scale of pay of Rs. 1850-2900/- with effect from 01-07-1988. Subsequently, on the recommendation of a State Level Screening Committee constituted by the State Government, the petitioner having rendered 12 years of regular service in the grade, was allowed to enjoy the senior scale of pay attached to the post vide order dated 15-02-2002 and the petitioner's name appeared at Sl. No. 40 in the said list. While the petitioner was working as the graduate teacher at HaoreibiMakhaLeikai Government High Madrassa, the State Government undertook an exercise towards verification of credentials of all employees including the petitioner and thereafter, "the Manipur Government Employees List" came to be prepared wherein the name of the petitioner appeared at Sl. No.3. In spite of the petitioner's credentials having been found to be genuine and his name being entered in the said MGEL, the petitioner was not paid his pay and allowance w.e.f. the month of December, 2007 on the alleged ground that the initial appointment order of the petitioner was found to be fake on enquiry and that an FIR had been registered against him in respect of the alleged offence.

3.3. Being aggrieved by the actions of the respondents, the petitioner approached the Hon"ble High Court by way of a writ petition being W.P.(C) No.187 of 2009, praying for a direction to the respondents to release his monthly salary w.e.f. the month of December, 2007 till then, which was disposed of by the Hon"ble High Court vide its order dated 15-04-2010 directing the respondents therein to release the salary due payable to him within a period of three months therefrom. The respondents, by way of compliance with the said order, paid to

the petitioner a sum of Rs. 2,21,820/- (Rupees two lakh twenty one thousand eight hundred and twenty) on 29-01-2011 towards his salary for the months from 01-12-2007 till 28-02-2009. According to the petitioner, the authority's calculation was erroneous and his total monthly salary for the months from December, 2007 till February, 2009, on which date he retired from service on attaining the age of superannuation, ought to be Rs. 4,80,079/- (rupees four lakh eighty thousand and seventy nine) and there was short payment of Rs. 2,58,259/- (two lakh fifty eight thousand two hundred and fifty nine). In respect of the case under the said FIR No.10(10)2007 VPS u/S 420/468/471/120-B IPC, the Investigation officer after thorough investigation of the matter and on perusal of the documents collected by him, submitted an application dated 03-12-2014 before the court of Chief Judicial Magistrate, Tamenglong praying for discharging the petitioner in respect thereof on the ground that the appointment order appointing the petitioner was found to be genuine. The Hon'ble Chief Judicial Magistrate after examining the investigation officer of the case and on perusal of the documents submitted by him, accepted the prayer of the Investigation Officer vide its order dated 16-01-2015 by which the petitioner was discharged from the liability of the case. In spite of the said order being passed by the learned Chief Judicial Magistrate, Imphal East, the petitioner was not paid his retirement benefits by issuing termination/ retirement order and full salary w.e.f. the month of December, 2007 till February, 2009. Being aggrieved, the instant writ petition has been filed by the petitioner on the inter-alia grounds that the acts of the respondents in not issuing the termination/ retirement order resulting in non-payment of his retiral benefits, pension and full salary are arbitrary and illegal.

4. As usual, despite 12 times opportunities being granted to the respondents including the last opportunity being granted to them on 30-03-2017, they failed to file their counter affidavit for the reason best known to them and therefore, the matter is being taken up for consideration in the absence of the counter affidavit on behalf of the respondents. In view of the law laid down by the Hon'ble Supreme Court in a catena of decisions, the averments made in the writ petition shall be deemed to have been admitted by the respondents.

5. It may be noted that the averments made in the writ petition are mainly based on the documents filed along with the writ petition, the originals of which are probably in the custody, in one way or the other, of the respondents and since there is denial thereof by the respondents, there is no reason as to why the same are not to be believed by this court. The prayers in the writ petition are, by and large, two fold-one, a direction to the respondents to release his monthly salary with effect from the month of December, 2007 till February, 2009 after deducting the amount already paid to him and two, a direction to the respondents to issue termination/ retirement order so that the retiral benefits and the pension be given to him. As regards the first prayer, the contention of the learned counsel appearing for the petitioner is based on the "statement of salary to be drawn by the petitioner" prepared by the Headmaster/DDO,

HaoreibiMakhaLeikai Government High Madrassa filed along with the petition as Annexure-9 which is not controverted by the respondents at all. So far as the second prayer is concerned, the petitioner's contention is that no termination/retirement order has so far been issued by the respondents resulting in the denial of his retiral benefits as well as the pension. In the absence of a counter or any affidavit, for that matter, the reason as to why such termination/retirement order has not yet been issued by the respondents, is not known to this court. From the materials which are record, the reason appears to be that a case under the said FIR was pending against him. On perusal of the order dated 16-01-2015 passed by the learned Chief Judicial Magistrate, it is seen that the petitioner has been discharged from the said case, as his appointment order was said to have been found to be genuine during the course of investigation by the police. Two years have gone by since then, no reason as to why the termination/retirement order is still not issued by the respondents, is forthcoming from the respondents. The inaction on the part of the respondents as detailed herein above, is highly unreasonable, arbitrary being violative of Article 14 of the Constitution of India. In view of the above, this court has no option but to allow the writ petition and to issue appropriate directions.

6. For the reasons stated hereinabove, the instant writ petition is allowed with the following directions: (a)The respondents shall pay the petitioner his full monthly salary for the months from the December, 2007 till February, 2009, in terms of the statement given at Annexure-9, after deducting the amount already received by him, within a period of two months from the date of receipt of a copy of this judgement and order, failing which the amount due payable shall carry an interest @ Rs.8% per annum from the expiry of the said two months till the date of payment;

(b)The respondents and in particular, the respondent No.2 shall issue a termination/ retirement order in respect of the petitioner within a period of one month from the date of receipt of a copy of this judgment and order keeping in mind the fact that the petitioner has already retired in the year, 2009 on attaining the age of superannuation;

(c)The respondentsshall pay the petitioner his pension and retiral benefits within three months from the date of expiry of one month as directed at (b) above. There shall be no order as to costs.