
(2005) 03 GAU CK 0075
In the Gauhati High Court

M.Henia

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 08-03-2005

Acts Referred:

Citation : (2005) 03 GAU CK 0075

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Kh.Tarun kumar Singh, Jalal Uddin, Advocates appearing for Parties

Judgement

1. Heard Mr. Kh. Tarunkumar, learned counsel for the petitioner as well as Mr. Jalal, learned Government Advocate for the respondents.
2. Succinct fact of the petitioner's case is that her son (late) D. Pfokehrii was serving as a Constable being No.868027 in the Police Department, Government of Manipur. In an unfortunate incident on 3/7/1989 he was killed by expected underground extremists while discharging his duty as one of the escort party of the then SubDivisional Police Officer (SDPO), Thoubal. After the petitioner's son was killed in that incident on 3/7/1989, Superintendent of Police, Thoubal issued order being No.E/17/11/85/SPTBL : Thoubal the 4th July, 1989 to the effect that ?Constable No.868027 at 11.00 a.m. in an encounter with an armed extremist group suspected to be PLA at Leirothal Village under Yairipok Police Station. Their names have been struck off from this District Strength w.e.f. 4/7/1989? (AnnexureA/1 to the writ petition).
3. Further case of the petitioner is that Government of Manipur in exercise of the power conferred by proviso to Article 309 of the Constitution of India was pleased to make the Rules called ?The Manipur Service (Pension) Rules, 1982 and the provisions of the said Pension Rules, 1982 are applicable to the Government employees who were killed by members of the extremist organization. The amount of pension under the said Special Pension Rules will be equivalent to the total emolument including dearness allowance and

compensatory allowance last drawn by the deceased Government servant. In this regard, learned GA submits that only the persons mentioned in Rule 3.1 are entitled to get the pension benefit under the said Special Pension Rules. Learned counsel for the petitioner, in this regard contends that under Rule 9 of the said Pension Rules, 1982, Government of Manipur has some relaxation. Rule 9 of the Special Pension Rules, 1982 reads as follows :

9. Whereas the Governor is satisfied that the operation of any of these Rules causes undue hardship in any particular case or class of cases, he may be order in the official Gazette, dispense with or relax the application of that rule to such extent and subject to such conditions as he may consider necessary.?

4. After the death of her son, the petitioner filed an application dated 21/9/1990 to the Superintendent of Police, Thoubal, Manipur for granting Special Pension to her deceased son D. Pfokhrehii, Exconstable No.868027. The said application of the petitioner dated 21/9/1990 was also forwarded by the SP, Thoubal under his letter dated 20/4/1990 (AnnexureA/3 to the writ petition) to the AIG (ADM) Imphal PHQ. Ultimately, under the order of Government of Manipur being No.13(1)/46/80H(III) dated, Imphal the 11/2/1992 (at AnnexureA/9) informed the Director General of Police that the proposal for payment of special pension in respect of late D. Pfokhrehii, exconstable has not been acceded by the Finance Department (AnnexureA/9 to the writ petition). Only on 18/3/1994, the Government of Manipur under the letter of Under Secretary (Home) being No.13(1)/46/80H(III) dated 18/3/1994 (at AnnexureA/11) had informed the petitioner that her request for payment of special pension had been examined minutely and the same has not been entertained as it was not admissible under the existing government rules. Being aggrieved by the said two letters of Government of Manipur dated 11/2/1992 (AnnexureA/11 to the writ petition) filed this writ petition on the inter alia, reasons that :

(1) In respect of other similarly situated exconstables who were killed by extremists, Government of Manipur was pleased to extend Special Pension to their mothers and/or fathers;

(2) In similar case also this court had already passed order dated 27/10/1998 in a joint writ petition i.e. C.R. No.260 of 1998 filed by 12 petitioners that case of those petitioners shall also be dealt with the same manner as has been done in the manner in which the government of Manipur had granted pension in respect of the mothers/fathers of the exconstables who were killed by extremists (AnnexureA/15 to the writ petition).

5. Learned counsel for the petitioner also submits that in respect of other constables who were killed by extremists, Government of Manipur under letter being No.13(1)/46/80H dated 20/1/1986 conveyed approval to grant special pension by exercising the relaxation power. Similarly, Government of Manipur issued another letter being No.13(1)/46/80H dated Imphal 6/6/1986 to the Inspector General of Police. The said two letters of Government of Manipur

dated 20/1/86 and 6/6/86 reads as follows :

?No.13(1)/46/80H

Govt. of Manipur,

Home Department, Dated the 20th Jan., 86

To

The Inspector General of Police, Manipur.

Subject : Sanction for Special Pension in respect of late Refer. No.60436 N. Nabakumar Singh of 6 Bn. Manipur Rifles.

Sir,

I am directed to refer to your letter No.3/27/54/83/PHQ(A) dated the 21st September, 1985 on the above subject and to convey approval of the Government to the grant of Special Pension of Rs.728.90 (Rupees seven hundred twenty eight and paise ninety) only by relaxation of the MS (Special Pension) Rules, 1982 in respect of late N. Nabakumar Singh, Rfr. No.604436 of 6th Bn., Manipur Rifles to his father Shri N. Kwaklei Singh for his life or till the date the late employee would have attained superannuation whichever is earlier. The details of pay and allowances are given below :

1. Pay Rs. 470.00

2. D.A. Rs. 65.80

3. ADA Rs.148.10

4. SCA Rs. 45.00

Rs. 728.90

2. This issues with the concurrence of Finance Department vide their U.O. No.92/85/86FD(18185) dt.14/1/85.

3. This service Book and pension papers are returned herewith which may kindly be acknowledged.

Yours faithfully,

Sd/

(Kh. Mohendro .Singh)

Under Secretary(Home) to the

Government of Manipur.?

?No.13(1)/46/80H

Government of Manipur.

Home Department Dated, Imphal 6/6/1986

To

The Inspector General of Police, Manipur.

Subject : Sanction for special pension in respect of late L/NK No.60959 Tejem Kabui of 6th Bn. Manipur Rifles.

Sir,

I am directed to refer to your letter No.E/27/54/83PHQ dated 25th Jan., 1996 on the above subject and to convey approval of the Government to the grant of special pension of .Rs.714.30 (Rupees seven hundred fourteen and paise thirty) only by relaxation of the MS (Special Pension) Rules, 1982 in respect of late L/NK No.60959 Tejem Kabui of 6th Bn. M.R. to his mother namely Smt. Ekashini Devi for life or till the date late employee would have attained superannuation whichever is earlier. The detailed of pay and allowances are given below :

1. Pay Rs. 640/
2. D.A. Rs. 64/
3. ADA Rs.144.90
4. SCA Rs. 45.00

Total Rs.714.30

2. This issues with the concurrence of Finance Department vide their U.O. No.3/8687/ED (186) Dt.31/5/86.

3. The Service Book and pension papers are returned herewith which may kindly be acknowledged.

Enclos. As above Yours faithfully,

Sd/

(Kh. Mohendro Singh)

Under Secretary (Home) to the

Government of Manipur.?

6. Learned counsel for the petitioner also draws the attention of this Court in a number of cases where number of orders i.e.

- (1) Order dated 31/5/2000 (AnnexureA/16 to the writ petition).
- (2) Order dated 31/5/2000 (AnnexureA/17 to the writ petition).
- (3) Order dated 31/5/2000 (AnnexureA/18 to the writ petition).
- (4) Order dated 31/5/2000 (AnnexureA/19 to the writ petition).

(5) Order dated 31/5/2000 (AnnexureA/20 to the writ petition).

(6) Order dated 31/5/2000 (AnnexureA/21 to the writ petition).

(7) Order dated 31/5/2000 (AnnexureA/22 to the writ petition).

were issued under Rule 9 of the Manipur Services (Special Pension) Rules, 1982 for according sanction to grant of special pension to the mothers/fathers of the constables/Rifleman of the Manipur Police who were killed by the members of the Extremist organizations.

7. From bare perusal of the said orders as well as submission of learned counsel for the petitioner, it appears that discriminatory treatment had been meted out to the present petitioner. Learned counsel for the petitioner submits the following case laws:

1. The Principal, King George's Medical College, Lucknow .Vs. Dr. Vishan Kumar Agarwal & Anr reported in U.J.(S.C.) 1984 7;

2. Ramana Dayaram Shetty Vs. International Airport .Authority of India & Ors reported in (1979) 3 SCC 489 ;

3. Govt. of .A.P. & Anr Vs Maharashi Publishers Pvt. Ltd. & Ors. Reported in (2003) 1 SCC 95 and

4. John Val.lamattom & Anr Vs. Union of India reported in (2003) 6 SCC 611 in order to impress the Court.

9. The Apex Court in Ramana Dayaram Shetty Vs International Airport Authority of India & Ors. (supra) held that "The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual."

10. The Apex Court in Ramana Dayaram Shetty (supra) also held that : "It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other form of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual deal with any person it pleases, but its action must be in conformity with standard of norms which is not arbitrary, irrational or irrelevant.

11. Regarding the power to exercise relaxation power, the Apex Court in the Principal, King George Medical College (supra) held that : conditions relaxed in other candidates should also be available to the other similarly situated candidates. Para 12 of the U.J.(S.C.) 1984 is quoted hereunder :

"12 We agree with the High Court that the papers relating to the admission of Dr. (Miss) Saxena and Dr. (Mrs.) Gupta show that the requirement of clause (c) was

not invariably insisted upon by the University or by the College. They did not regard that requirement as mandatory. We consider it unfair that the respondent should be picked up for a differential treatment, though situated similarly in the matter of the application of clause (c). If the requirement of clause (c) could be relaxed in the case of the other two candidates in regard to their admission to the M.D. course of studies, it would not be permissible to the University to regard that requirement as mandatory in the case of the respondent when he applied for admission to the very same course of studies. Clause (c) does not apply differently to men and women.?

12. The Apex Court in *John Vallamattom & Anr Vs Union of India* reported in (2003) 6 SCC 611 held that "Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first part of Article 14 of the Constitution of India is a declaration of equality of civil rights for all purposes within the territory of India and basic principles of republicanism and there will be no discrimination. The guarantee of equal protection embraces the entire realm of "State action". It would extend not only when an individual is discriminated against in the matter of exercise of his right or in the matter of imposing liabilities upon him, but also in the matter of granting privileges etc. In all these cases, the principle is the same, namely, that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same.

13. For the reasons mentioned above and also from perusal of the materials available on record it appears that equality clause mentioned and guaranteed under Article 14 and 16 of the Constitution had been denied by the respondents by denying the special pension to the writ petitioner on the death of her son late D. Pfokehrii, exconstable No.868027.

14. Learned G.A. appearing for the respondents submits that there is inordinate delay in approaching this Court by referring to the decision of the Apex Court in *Union of India & Ors Vs. Rajendra Kumar* reported in AIR (2001) SC 1877. But considering the entirety of the facts and also considering different orders of the Government of Manipur mentioned in AnnexureA/16 to 22, I am of the considered view that the respondents shall pass necessary orders in exercise of its power under Rule 9 of the Manipur Services (Special Pension) Rules, 1982 for according Special Pension to the present writ petitioner on the death of her son D. Pfokehrii.

Accordingly, the impugned letters dated 11/2/1992 (at AnnexureA/9) and dated 18/3/1994 (AnnexureA/11) are hereby quashed and this writ petition is disposed of with the direction to the respondents to pass necessary orders according sanction to grant of special pension to the petitioner on the death of her son D. Pfokehrii within a period of six months from the date of receipt of this judgment & order.