**(1999) 11 GAU CK 0035**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 761 of 1998

Nambam Remeshwor Singh APPELLANT

Vs

State of Manipur and Others RESPONDENT

**Date of Decision :** 12-11-1999

**Acts Referred:**
Manipur Civil Services (Pension) Rules, 1977 — Rule 9(2)

**Citation :** (2001) 2 GLT 640

**Hon'ble Judges :** N.S. Singh, J

**Bench :** Single Bench

**Advocate :** L. Nandakumar Singh and L. Sashi Bhusan, for the Appellant; Kh. Nimaichand Singh and N. Ibotombi Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

N.S. Singh, J.—The impugned memorandum dated 6th October, 1997 bearing No.28/2/92-Power, the Office order/letter dated 1st August, 1998 bearing No.1/10/(9)/92-CE(P)/5239-40 and office order/letter dated 8th August, 1997 bearing No.4/1(39)/97-CE(P)/4923-25 pertaining to the Departmental Proceedings as against the writ petitioner as well as withholding the pensionery benefits of the writ petitioner as in Annexures-A/4, A/6 and A/7 are the subject-matters under challenge in this writ petition.

2. Supporting the case of the writ petitioner, Mr. L. Nandakumar Singh, learned senior Advocate contended that the petitioner retired from service as Executive Engineer under the respondents with effect from 30th April, 1997 on attaining his age of superannuation and, that the petitioner before his retirement from service, the respondent No. 1 issued a letter dated 21st March, 1997 requesting All Commissioners/Secretaries, Govt. of Manipur, All Head of Departments, Manipur, All Deputy Commissioners, Manipur, Joint Secretary (Vigilance), Govt. of Manipur that the petitioner is due to retire from service on 30th April, 1997(A/N) on superannuation and to intimate if there is any Government due(s) to be recovered from the petitioner on or before 20th April, 1997, falling which it will

be presumed that there is no Government due(s) to be recovered from him as seen in the document marked as Annexure-A/1 to the writ petition and none of the Government Departments including the respondent No. l intimated the petitioned about any dues to be recovered from him and, apart from it, the respondent No. 1 accorded sanction for payment of leave salary for 240 days in view of unutilised Earned Leave for 240 days as seen in the document marked as Annexure-A/3 to the writ petition and even the petitioner submitted all the required documents along with duly filled up prescribed forms for grant of pensionery benefits in terms of the Manipur Civil Services (Pension) Rules, 1977; but to the utter surprise of the petitioner the impugned memorandum dated 6th October, 1997 was served upon the petitioner on 25th November, 1997 along with the copy of memorandum of charges and an enquiry has been proposed to be held against the petitioner and one Shri L. Babutombi Singh under Rule 14 of the CCS(CC&A) Rules, 1965. The alleged charges levelled against the petitioner and Shri L. Babutombi Singh are that while they were functioning and working as Executive Engineer and Assistant Engineer respectively at Electricity Stores Division, Yurembam during 1988-90 they had not carry out physical stock verification and checking as was required under the provisions of the CPWD Manual and as a result of it there was shortage of store materials worth Rs. 10,54,317.50 P (Rupees ten lakhs fifty four thousand three hundred seventeen and fifty paise) only. According to Mr. L. Nandakumar Singh, no Departmental Proceedings can be taken up against the petitioner as he had already ceased to be a Government servant and rather, he retired from service with effect from 30th April, 1997 (A/N). It is also argued by the learned senior counsel that the said proceeding shall not be instituted as against the writ petitioner in view of the provisions of law laid down under Rule 9(2)(b) of the Manipur Civil Services (Pension) Rules, 1977 because of the fact that the said proceeding being one which relates to the alleged commission and omission that took place in the year 1988-90. A great injustice has been done to the writ petitioner by the State respondents thus, debarring the petitioner to enjoy his pensionery benefits and directing him to appear in person before the Inquiring Authority on 20th August, 1998 under the related impugned orders of 1st August, 1998 and 8th August, 1997 as in Annexures-A/6 and A/7 to the writ petition Mr. L. Nandakumar Singh argued. The learned senior counsel went on to contend that necessary direction may be issued from the end of this Court to the State respondents to afford pensionery benefits with interest in view of the judgment rendered by the Apex Court in a case between Dr. Uma Agarwal v. State of UP and Anr. in writ Petition(C) No. 771 of 1995.

3. At the hearing Mr. Kh. Nimaichand Singh. learned Addl. Govt. Advocate had produced and placed a related copy of the Power Department''s order/letter dated 22nd July, 1997 bearing No.28/ 2/92-Power, Govt. of Manlpur (Marked as "X") and submitted that the Vigilance Department made a recommendation for sanction of Departmental enquiry against the present petitioner and one Shri L. Babutombi Singh, Assistant Engineer (Elect.) in the year 1997 and there is no

 

delay while submitting the memorandum of charge-sheet against the petitioner in connection with the said Departmental enquiry and there is no bar under the law to initiate or institute Departmental Proceedings against the Government employees after his or her retirement. The learned Addl. Govt. Advocate also argued that the authority has the power and jurisdiction to withhold the pension and gratuity under the provisions of CCS (Pension) Rules, 1972 in view of the decision of the Apex Court render in Union of India and another Vs. G. Ganayutham (Dead) by LRs., and, as such, there is no irregularity or incorrectness thus withholding the pensionery benefits of the writ petitioner because of the pendency of the said Departmental proceeding. It is also argued by the learned Addl. Govt. Advocate that if the charges are proved as against the petitioner and one Shri L. Babutombi Singh, Asstt. Engineer, the related loss of money amounting to Rs. 10,54,317.50 p has to be recovered from them and that the provision of Rule 9(2)(b) of the said Rules, 1977 is not applicable in the instant case as the initiation of the Departmental enquiry is a joint one against the petitioner and another person namely Shri L. Babutombi Singh.

4. The Rules namely, Manipur Civil Services (Pension) Rules, 1977 have come into force on the 1st Day of January, 1977 and by virtue of the said Rules, 1977 the pension, family pension and retiring benefits in respect of Government servants shall be governed by the provisions of Central Civil Services (Pension) Rules, 1972 as adopted under Rule 3 of these Rules of 1977. For just determination of the real point in controversies between the parties the provisions of Rule 9(2)(b) is very much relevant in the instant case and, as such, the same is quoted below:

"9. Right of President to withhold or withdraw pension. -

(1) The President reserves to himself the right of.....permensum.

(2) (a) The departmental proceedings referred to ...... to the President.

(b)The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment.-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by much authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

5. On bare perusal of the memorandum of charges as in Annexure-A/4 to the writ petition, It has been revealed that the alleged omission or commission in other words, the event took place during the period from 1988-90 and the Departmental Proceedings as against the petitioner was initially instituted in the

 

moth of October, 1997 under the impugned memorandum dated 6th October, 1997 (Annexure-A/4) i.e. after the lapse of about 7 years from the date of the alleged event. It is not disputed that for the purpose of determining the period of 4 years, the Govt. of India''s instructions and notification bearing No.7/14/90-P&W(f) dated 23rd August, 1991 under CCS (Pension) Rules, 1972, Rule 9 specifically lays down that departmental proceeding shall be deemed to be instituted on the date on which the statement of charge is issued to the Govt. servants or pensioners. It is true that if a Govt. servant or officers caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty then the departmental proceeding should also be instituted after his or her retirement as expeditiously as possible as there is no such bar for institution of the sale proceeding during the law but the omission or commission or in other words, the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement i.e. the cause for the institution of proceeding should not have been placed more than 4 years before the date of institution of the proceedings and the Departmental proceeding if not instituted while the Government servants were in service, such proceeding shall not be in respect of any event which took place more than 4 years before such institution. This legal issue has been settled by the Apex Court. At this stage, I hereby recalled the decision of the Apex Court rendered in State of U.P. and Another Vs. Shri Krishna Pandey, wherein the Apex Court held thus:

"It would thus be seen that proceedings are require to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351 -A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss of the Government or embezzlement, i.e., the cause for the institution or proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the state had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the pro visions of

Rule 351-A of the Rules."

In view of the above legal issue and position which has been settled by the Apex Court and also the provisions of law laid down under Rule 9(2)(b) of Manipur Civil Services (Pension) Rules, 1977, I hereby opined that the alleged events took place more than 4 years before the institution of the said department proceeding as against the petitioner which is not permissible under the law as discussed above, though the Court is of the view that the State respondents under certain circumstances had disabled itself by their deliberate omissions to take appropriate legal action against the petitioner.

For the reasons, observations and discussions made above, I am of the view that the proposed departmental proceeding and the enquiry as against the petitioner only under the related impugned orders of 6th October, 1997 and 1st August, 1998 is barred by limitation and the restriction rather debarring the petitioner to get his pensionery benefits under the impugned order of 8th August, 1997 as in Annexure-A/7 to the writ petition is an illegal order and, accordingly, these impugned orders as in Annexure-A/4 (only in the case of the writ petitioner), A/6 and A/7 are hereby quashed with a further direction to the respondents/ competent authority concerned to afford the pensionary benefits to the writ petitioner as early as possible preferably within a period of one month from today.

In the result, the writ petition is allowed but no orders as to costs.

 