(2018) 05 GAU CK 0250

In the Gauhati High Court

Case No : Civil Writ Petition No. 148 of 2017

Roymon James C & 8 Ors APPELLANT

Vs

State of Mizoram & 5 Ors RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0250

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : B. Lalramenga, Rosie Malsawmtluangi, Roshan Subedi, JH Ramneihmawia, F. Lalhmingthangi, Sheila L. Hnialum, C. Lalhriatpuii, H. Kristazi, Mary L,

Final Decision : Allowed

Judgement

NELSON SAILO

1.Heard Mr. B. Lalramenga, the learned counsel for the petitioners as well as Ms. Mary L. Khiangte, the learned Government Advocate appearing

for all the respondents.

2. The brief facts of the case may be noticed at the outset. The 9 (nine) writ petitioners have been appointed as Work-charged Employees under the

State Public Works Department between the year 1996 - 2000. While the petitioner No. 1 was appointed as Electrician Grade-II on Work-charged

basis, the petitioner Nos. 2 to 9 were appointed as Draftsman Grade-III likewise. Since their initial appointments, all the petitioners have been working

in the capacity they were appointed and they were allowed to subscribe the General Provident Fund (GPF) by allotting them GPF Account Numbers

and they have been contributing towards their respective GPF accounts on regular basis as per the CCS (Pension) Rules, 1972 (Old Pension Scheme).

3. The State respondents pursuant to the directives of the Supreme Court to formulate a scheme for regularization of temporary and casual employees

came up with a scheme known as â??the Government of Mizoram Regularization of Work-Charged Employees (in Public Works Department, Public

Health Engineering Department, Power & Electricity Department and in Other Establishments) Scheme, 2000â? (Scheme of 2000) which came into

force on its publication in the Official Gazette on 05.06.2000.

4. The Scheme of 2000 amongst others provide that any person employed on Work-charged capacity in Group â??Câ?? & â??Dâ?? Category

under the Government of Mizoram and satisfactorily rendering a minimum continuous service of 5 years will be eligible for regularization to the

corresponding posts prescribed for direct recruitment in the relevant Recruitment Rules. Besides this, it is provided that the Work-charged employees

should possess the requisite education and other qualification as per the prescribed Recruitment Rules and that regularization would be subject to the

availability of vacant post in the direct quota of the corresponding post. Besides this, the Scheme of 2000 further provides that the past service

rendered on Work-charged capacity shall be counted as qualifying service for the purpose of pensionary benefits as per the provisions of the Old

Pension Scheme.

5. The petitioners since their initial appointment having rendered their services ranging from 16 years to 20 years, a proposal was initiated by the

Office of the Engineer-in-Chief, Public Works Department recommending regularization of the petitioners in service as provided by the Scheme of

2000. Such proposal was initiated on 02.03.2017 (Annexure-13) and on 21.02.2017 (Annexure-14). The proposals mentioned that there were

vacancies for regularization of the petitioners against the direct recruitment quota as per the relevant Recruitment Rules.

6. The said proposals were routed through the Department of Personnel & Administrative Reforms (DP&AR) as well as the Finance Department.

While the DP&AR gave its approval to the proposal on 06.06.2017 (Annexure-15) and 26. 04.2017 (Annexure-16) respectively, the Finance

Department regretted the proposal. The regret of the Finance Department was then communicated to the establishment of the Engineer-in-Chief,

Public Works Department for bringing the same to the notice of the Work-charged employees concerned. The observation of the Finance Department

as was communicated by the Deputy Secretary, Public Works Department to the Engineer-in-Chief, Public Works Department on 9. 08.2017 may be

abstracted as below:

â??Finance Department regrets the proposal for filling up of 8 (eight) posts of Draftsman Grade-III by way of regularization as per â??The Mizoram

Regularization of Work-charged Employees Scheme, 2000â?? since employees who are regularized on or after 01.09.2010 are to be governed by the

New Defined Contribution Pension Scheme, 2010 as amended from time to time, and the scheme does not give any exemptions to such government

servants who enjoy CCS (Pension) Rules, 1972 before their regularization. As such, the Work-charged employees would be losing their pension and

GPF benefits being enjoyed by them, when regularizedâ??.

7. Be it stated herein that the above observation was in respect of the petitioner Nos. 2 to 9, while a similar observation except for the difference in

the post concerned was also communicated by the Finance Department through the Administrative Department of the Public Works Department. As

can be seen, it is the contention of the Finance Department that in view of the coming into force of â??the New Defined Contributory Pension

Scheme, 2010â? (New Pension Scheme of 2010), employees regularized on or after 01.09.2010 would be governed by the New Pension Scheme of

2010 and as no exemption is given to Government Servants enjoying the Old Pension Scheme before regularization, the Work-charged employees on

regularization will be losing pension and GPF benefits enjoyed by them.

8. The petitioners have taken the examples of many other Work-charged employees under the Public Works Department who have since been

regularized. The petitioners through their Service Association approached the respondent No. 1 by filing a representation for withdrawal of the

observation made by the Finance Department vide its I.D. dated 28.07.2017 amongst others and to regularize the Work-charged employees and to

allow them to enjoy the Old Pension Scheme. However, the representation having not been considered and the petitioners being aggrieved have filed

the present writ petition.

9. Mr. B. Lalramenga, the learned counsel for the petitioners submit that the New Pension Scheme of 2010 came into force w.e.f. 01.09.2010,

wherein at Clause 2.1 (c), it is provided that persons entitled to the benefit of Contributory Provident Fund amongst others is exempted from the New

Pension Scheme of 2010. Further, in the amendment of New Pension Scheme of 2010, which was notified on 22.04.2016, it was provided that the

exemption of the New Pension Scheme of 2010 would also include all permanent Workcharged Employees recruited prior to 01.06.2008. He submits

that the petitioners were recruited as Work-charged employees between the years 1996 â?" 2000 and they were confirmed in their service on

17.09.2008 (Annexure-11) w.e.f. 01.06.2008 and therefore they have already been allowed to subscribe the GPF since their initial appointment, they

will not be governed by the New Pension Scheme of 2010. He further submits that a meeting of the Joint Consultative Machinery (JCM) was held on

12.09.2014 in the Office Chamber of the Chief Secretary to the Government of Mizoram, wherein, it was resolved that Work-charged employees

regularized on or after 01.09.2010 would enjoy the Old Pension Scheme as they were not included amongst the categories of Employees to be

governed by the New Pension Scheme of 2010 notified by the Finance Department on 27.02.2012.

10. Likewise, the Joint Consultative Machinery (JCM) meeting held on 29. 10.2015 resolved that the Work-charged employees who were regularized

on or after 01.09.2010 would be under the Old Pension Scheme and that a specific order in this regard should be issued by the Finance Department.

11. The learned counsel submits that this has to be understood in the context of the Amendment of the New Pension Scheme of 2010 amongst others,

wherein it is provided that all permanent Work-charged employees recruited prior to 1. 06.2008 will not be governed by the New Pension Scheme of

2010. Therefore, he submits that the petitioners cannot be denied regularization on the grounds taken by the Finance Department.

12. Mr. B. Lalramenga, the learned counsel for the petitioner by referring to the Order dated 05.08.2014 passed in WP(C) No. 77/2014 (Annexure-

28) submits that the petitioners therein who were also enjoying and subscribing the Old Pension Scheme on being given a GPF Account Number were

denied continuance under the Old Pension Scheme and were made to subscribe to the New Pension Scheme of 2010. However, this Court held that

since there was clearly an exemption clause i.e. Clause 2.1 (c) in the New Pension Scheme of 2010 and also considering the decision already taken in

WP(C) No. 46/2013 as well as WP(C) No. 90/2012, allowed the writ petition and directed that the petitioners would be entitled to the pensionary

benefit under the Old Pension Scheme and not under the New Pension Scheme of 2010.

13. He therefore submits that the case of the petitioners is covered by the said Judgment & Order of this Court and that the petitioners be considered

for regularization and further allowed to enjoy the benefit of the Old Pension Scheme.

14. Ms. Mary L. Khiangte, the learned Government Advocate appearing for the State respondents submits that the petitioners have misconstrued the

exception Clause given in the New Pension Scheme of 2010. By referring to Clause 2.1(c) of the New Pension Scheme of 2010, she submits that the

exemption provided is with regard to Contributory Provident Fund and not GPF. She submits that the petitioners are subscribers of GPF and therefore,

they will not be covered by the exception Clause. However, upon being asked the difference between Contributory Provident Fund and GPF, she is

unable to make a cogent distinction between the two. She further submits that in view of the Amendment of the New Pension Scheme of 2010,

notified on 27.05.2015, whereby Clause (2) and (4) of para 4 of the New Pension Scheme of 2010 has been amended prescribing that Government

servants who entered into Government service on regular basis or regularized on or after 01.09.2010 would be governed by the New Pension Scheme

of 2010 and therefore, the petitioners will have to subscribe to the New Pension Scheme of 2010 on their regularization. In that view of the matter, the

observation of the Finance Department does not suffer from any defect and it was rightly observed that on regularization, the petitioners will have to

forfeit their GPF which they have subscribed under the Old Pension Scheme.

15. Ms. Mary L. Khiangte, further submits that the Order dated 05.08.2014 passed in WP(C) No. 77/2014 would not be applicable to the case of the

petitioners inasmuch as the petitioners therein were already regularized in service whereas the petitioners in present writ proceedings are yet to be

regularized in service. Furthermore, the Amendment of the New Pension Scheme of 2010 came into effect after the Judgment and Order dated

05.08.2014 was passed and therefore, with such Amendment, the case of the petitioners will stand in a different footing altogether. She also submits that the Joint Consultative Machinery (JCM) is not a competent decision making authority and therefore, resolutions taken in its meeting would not be

binding upon the Government. In that view of the matter, she submits that the writ petition having no merit, the same should be dismissed.

16. I have heard the submissions advanced by the learned counsel for the rival parties and I have perused the materials available on record.

17. As may be noticed, the proposal for regularization of the services of the petitioners was approved by the DP & AR while the Finance Department

raised an issue with regard to the consequences on their regularization. Undisputably, the petitioners have been subscribing the GPF under the Old

Pension Scheme. From the observation of the Finance Department as captioned above, it may be seen that employees regularized on or after

01.09.2010 are to be governed by the New Pension Scheme of 2010 since the Scheme does not provide any exemption to such Government servant

who enjoyed the Old Pension Scheme before regularization. Therefore, it was observed that the Work-charged employees upon their regularization

would have to forfeit the benefit enjoyed by them under the Old Pension Scheme.

18. The New Pension Scheme of 2010 came into force w.e.f. 01.09.2010 and at Clause 2.1(c), it is provided that the persons entitled to the benefit of

a Contributory Provident Fund would be exempted from the New Pension Scheme of 2010. The Amendment which came into force vide Notification

dated 22. 04.2016 has introduced Clause (g) at Para 2 of the Principal Scheme, whereby all permanent Work-charged employees recruited prior to

01.06.2008 would stand exempted from the purview of the New Pension Scheme of 2010. The petitioners, in the instant case, were appointed

between the years 1996 â?" 2000 and thereafter, confirmed vide Order dated 17.09.2008, w.e.f 01.06.2008, coupled with the fact that they were

allowed to subscribe GPF since their initial appointment. It can therefore only be understood that they are exempted from the purview of the New

Pension Scheme of 2010. The same gets further reinforced by the Order of this Court dated 05.08.2014 passed in WP(C) No. 77/2014 which has a

further reference to the earlier writ petitions i.e. WP(C) No. 46/2013 and WP(C) No. 90/2012. As pointed out by the learned Government Advocate,

the notification dated 27.02.2015 published in the Official Gazette on 27.02.2015 introducing the First Amendment of the New Pension Scheme of

2010 by providing that it will be necessary on the part of the Government servant entering into Government service on regular basis or regularized on

or after 01.09.2010 to subscribe to the New Pension Scheme of 2010 would perhaps be of no consequence inasmuch as vide Notification dated

22.04.2016, the State Government themselves have decided to exclude the permanent Work-charged employees who were recruited prior to

01.06.2008 from the purview of the New Pension Scheme of 2010. Therefore, the observations of the Finance Department vide their I.D. No.

FIN(E)362/2017 dated 28.07.2017 appears to be only misconceived and therefore, liable to be interfered with.

19. At this stage, Mr. B. Lalramenga, the learned counsel for the petitioners also draws the attention of this Court that a notification has been issued

by the Deputy Secretary to the Government of Mizoram, Finance Department (E) to the General Secretary, Mizoram Work-charged Employees

Association communicating the regrets to their request for counting their past services rendered as Work-charged staffs with old pension benefits in

view of the fact that the word â??regularizedâ? was not included in clause (g) added by the Amendment Scheme of 2016 and therefore, all

permanent Work-charged employees recruited after 01.06.2008 are to be governed by the New Pension Scheme of 2010 as and when they get

regularized. However, on perusal of the Notification dated 22.04.2016, it can be seen that non-inclusion of the word â??regularizedâ? only excludes

the Work-Charged employees recruited prior to 01.06.2008 from the purview of the New Pension Scheme of 2010 and therefore, the communication

dated 12.10.2017 is of no relevance.

20. The net result of the above discussion is that the observation of the Finance Department impugned by the petitioners cannot be sustainable and the

same will not come in the way to consider the petitioners for their regularization as per the Scheme of 2000. The State respondents are therefore

directed to consider the case of the petitioners for regularization in terms of the proposal initiated by the office of the Engineer-in-Chief, Public Works

Department on 2. 03.2017 and 21.02.2017 and also in terms of the approvals given by the DP&AR on 06.06.2017 and 26.04.2017.

21. Such exercise should be carried out within a period of 6 (six) weeks from the date of receipt of a certified copy of this order.

22. It is also made clear that in the event of regularization of the petitioners, they will continue to enjoy the Old Pension Scheme in terms of the GPF

Account numbers already allotted to them.

23. With the above observations and directions, the writ petition stands allowed. No cost.

