
(2014) 01 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (C) No. 216 of 2013

Shri Badan Krishna Sinha

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 01 MAN CK 0004

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : K. Roshan, for the Appellant; R.S. Reishang, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This is the second journey of the petitioner to this Court for the same relief. The petitioner joined government service in 1986 and retired from service on superannuation w.e.f. 28.02.1989 while serving as Director of Horticulture and Soil Conservation, Govt. of Manipur. The main three prayers in the writ petition are as follows:-

(ii) Issue Rule nisi calling upon the respondents to show cause as to why a writ/order/direction in the nature of Certiorari/Mandamus for quashing and setting aside the impugned Notification bearing No. 5/8/87-PIC(III) Imphal, the 24th January, 1991 April, 1991 (at Annexure A/6) and the Office Memorandum bearing No. 5/8/87-PIC (III)(A) Imphal, the 12th April, 1991 (at Annexure A/7), in so far as it relates to the writ petitioner, in the facts and circumstances of the present petition;

(iii) To who cause as to why a writ/order/direction in the nature of Mandamus/Certiorari should not be issued for quashing and setting aside the impugned orders dated 26/9/2012(at Annexure-A/13) & Order dated 14/2/2013 (at Annexure -A/14) as they are issued illegally arbitrarily, without proper application of the mind to the facts and issues involved by the respondents.

(iv) To show cause as to why writ/order/direction(s) in the nature of Mandamus or any other appropriate writ/order/directive(s) should not be issued for calculating/fixing of the pension as well as the pensionary benefits of the petitioner on the basis of the Last Pay Drawn i.e. Rs. 5300-150-5600-2000-6800/- p.m. under the ROP '89, in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court of India, in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, .

2. The case of the petitioner is that on the date of retirement, he was drawing a pay scale of Rs. 5300-6800 in pursuance of ROP, 1989 adopted by Government of Manipur from July, 1987. The claim of the petitioner is that after retirement on superannuation, his pension should have been fixed on the basis of last pay drawn i.e. in the scale of Rs. 5300-6800/- whereas, pension has been fixed taking into account the scale of pay attached to the post held by the petitioner on the date of retirement on the basis of Office Memorandum dated 6.10.1989 and Manipur Civil Services (Pension) (Amendment) Rules, 1990. The petitioner had earlier approached this Court by filing W.P.(c) No. 538 of 2010 praying for correction/re-fixation of his pension on the basis of last pay drawn by him in the scale of Rs. 5300-6800/- per month. The writ petition was disposed of on 09.09.2010 directing the state authorities to consider the claim of the petitioner and take appropriate steps for release of his pensionary and retiral benefits within a specified time. As the said order had not been complied with within the time granted, contempt case No. 124 of 2011 was filed.

3. It is the further case of the petitioner that during pendency of contempt petition, Under Secretary (DP), Govt. of Manipur issued a letter on 5th September, 2011 to the Accountant General, Manipur stating therein that the pension of the petitioner had been wrongly fixed on the basis of pay scale of Rs. 3700 instead of Rs. 5300 per month. Though such a letter was written by Under Secretary (DP), Govt. of Manipur, final order in compliance of the order of the Court was passed on 26th September, 2012 stating therein that the petitioner shall be entitled to pension on basis of scale of pay of Rs. 3700-5000 as revised by the Manipur Services (Revised Pay) Rules, 1990 and also subsequent modification brought into the said rules. Challenging such fixation of pension, this writ petition has been filed for the relief mentioned earlier.

4. The sole contention of the petitioner is that on the date of retirement, he was getting salary in pay scale of Rs. 5300-6800/- and accordingly his pension should have been fixed. Merely because subsequent to his retirement, the said scale was withdrawn, his pension cannot be calculated on the basis of subsequent scale of pay of Rs. 3700-5000/-.

5. Counter affidavits have been filed on behalf of the respondent Nos. 3 and 4. It is stated in the counter affidavit of respondent No. 3 that State Government issued Office Memorandum dated 06.10.1989 and another Office Memorandum bearing the same date in relation to revision of provisions regulating pension etc.

in pursuance of Government decision on the recommendation of the Manipur State 3rd Pay Commission and Rationalisation of pension structure. However, these two office memorandums were withdrawn subsequently. The petitioner who was allowed the scale of pay of Rs. 5300-6800 was on the basis of above Office Memorandum of 1989 which was subsequently withdrawn. Therefore, merely because the petitioner was drawing the said scale on the date of retirement on the basis of an Office Memorandum which was withdrawn, he could not claim computation of pension on the basis of the said scale of pay. It is further stated in the counter affidavit that Office Memorandum dated 12.04.1990 itself clarifies that pension of the Government Servant of Government of Manipur who retire on or after 01.01.1986 shall be calculated on the basis of pay which the Government Servant was receiving or deemed to have been receiving immediately before his retirement under the Manipur Civil Service (Revised) Pay Rules, 1987 or 1990 whichever is more beneficial. After introduction of ROP, 1990 dearness relief of central rates as sanctioned by Government of India from time to time had been granted to the said pensionaries but there is no record indicating dearness relief under ROP, 1989. More or less, similar stand has also been taken by the respondent No. 4 in its counter affidavit.

6. It is not in dispute that the petitioner retired from service w.e.f. 28.2.1989 on attaining the age of superannuation and on the date of his retirement, he was drawing scale of pay of Rs. 5300-6800. This scale of pay had been granted to him under ROP, 1989 which was subsequently withdrawn. Therefore, the question that arises for consideration is as to whether the computation of pension of the petitioner is to be done on the basis of scale of Rs. 5300-6800 granted to him on the basis of ROP, 1989 or he is to be granted pension as per Manipur Service (Revised Pay) Rules, 1990. A similar question came up for consideration before this Court in Civil Rule No. 66 of 1990 as well as Civil Review No. 26/91/6/91 arising out of the above writ petition.

7. All Manipur Pensioners" Association had filed the above writ petition in the Gauhati High Court seeking for a direction for payment of pension to its members who have retired on or after 01.1.1986 on the basis of revised of pay scale of Manipur Services (Revised Pay) Rules, 1989. The court did not accept the prayer of the Association and directed that the government servants who retired after 01.01.1986 shall be paid pension as revised by the Revised pay rules 1990 or as modified by subsequent rules. This judgment of the Government has attained finality and covers the case of the petitioner.

8. We are, therefore, of the view that though the petitioner got the benefit of scale of pay under ROP, 1989, the same having been withdrawn, his pension has to be calculated and fixed in terms of Manipur Services (Revised Pay) Rules, 1990 or as modified by subsequent Rules. For the reasons stated above, we find no merit in the writ petition and accordingly dismiss the same.