
(2015) 01 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition (C) No. 680 of 2012

Smt. Ayekpam (O) Kananbala Devi	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 NEJ 444

Hon'ble Judges : Mr. Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Shri L. Anand, Advocate, for the Petitioner; Shri Shyam Sharma, Govt. Advocate, N. Ibotombi, Sr. Advocate and S. Rupachandra ASG, for the Respondent

Final Decision : Allowed

Judgement

Mr. Kh. Nobin Singh, J.— Heard Shri L. Anand, learned counsel appearing for the petitioner, Shri Shyam Sharma, learned Government Advocate appearing for the respondents No. 1 to 3, Shri S. Rupachandra, ASG appearing for the respondent No. 4 and Shri N. Ibotombi, learned Sr. Advocate appearing for the respondent No. 5.

2. The present writ petition has been filed by the petitioner praying for release of family pension under the provisions of the Terminal Benefits for Work-Charged Staff of PWD, IFC, PHE, MI and Electricity Rules, 1978 (hereinafter referred to as Terminal Benefits Rules, 1978).

The facts in brief are as under:

The petitioner is the wife of the deceased Government employee, Shri (L) A. Ganeshore Singh who was initially appointed as work-charged employee on 01-08-1986 to the post of Handyman in the Mechanical Division No. 1, Public Works Department, Manipur. While serving as work-charged employee, the petitioner's husband expired on 12-04-1996 leaving behind him his wife, sons and

daughters. Consequent upon the death of the petitioner's husband, his service was terminated w.e.f. 12-04-1996 vide order dated 22-05-1996 issued by the then Chief Engineer (PWD), Manipur. The work-charged employment of the petitioner's husband was confirmed w.e.f. 01-04-1995 vide office order dated 03-06-1999 issued by the then Chief Engineer (PWD), Manipur. In the said order dated 03-06-1999, the name of the petitioner's husband was wrongly shown as A. Janeshore Singh and the error was rectified by issuing a Corrigendum dated 05-10-1995 showing the name of the petitioner's husband as Shri A. Ganeshore Singh in place of A. Janeshore Singh.

After the expiry of the petitioner's husband and on completion of the compilation of pension papers along with relevant documents and due verification of the service of the petitioner's husband, the then Chief Engineer vide its letter dated 22-10-2010 submitted the pension papers to the Joint Secretary (Pension Cell), Manipur for payment of C.C.R.G. and pensionary benefits in favour of the petitioner. The grievance of the petitioner is that even after a lapse of more than 2 (two) years from the date of submission of the said pension papers, the respondents have not released family pension to the petitioner. Accordingly, the present writ petition is being filed to redress her grievances.

3. It is submitted by the counsel for the petitioner that by the time when the petitioner's husband died on 12-04-1996, the petitioner's husband had completed more than 1 (one) year of service after confirmation and therefore, the petitioner is entitled to family pension under the provisions of the Terminal Benefits for Work-Charged Staff of PWD, IFC, PHE, MI and Electricity Rules, 1978. It is further submitted by the counsel for the petitioner that in similar cases and in particular W.P. (C) No. 1445 of 2003, the Government of Manipur, Secretariat: Department of Personnel (Pension Cell) vide its notification dated 24-10-2005 has accorded approval to the payment of family pension in compliance of the order dated 01-03-2005 passed by the Hon'ble Gauhati High Court in the said case and connected cases. Since the case of the petitioner having been not considered, the petitioner submitted a representation dated 28-12-2008 to the respondents requesting for release of family pension to the petitioner. In spite of the receipt of the said representation, the respondents have not released the family pension and the act of the respondents in not granting the family pension to the petitioner is not only discriminatory but illegal, unlawful, arbitrary and vindictive.

4. The present writ petition is contested by the respondents No. 1 to 5 by filing separate and independent affidavits. In the affidavit filed on behalf of the respondent No. 1, it is stated that the petitioner's husband died on 12-04-1996 after rendering 9 (nine) years 7 (seven) months and 12 (twelve) days and his service was terminated vide order dated 22-05-1996. However, after expiry of the petitioner's husband, his service was confirmed vide order dated 22-05-1999 w.e.f. 01-08-1995 and the effective date of confirmation had been again corrected to 01-04-1995 vide order dated 03-06-1999. It is further stated that

while processing the proposal for grant of benefits, it was observed that since it was not known as to how the change of confirmation was made from 01-08-1995 to 01-04-1996, the Administrative Department was requested to examine the matter as per rules. However, no clarification was furnished by the Administrative Department.

In the affidavit filed on behalf of the respondent No. 2 namely, the Secretary (Works), Government of Manipur, it is stated that the petitioner's husband died on 12-04-1996 while in service and his service was terminated w.e.f. 12-04-1996. However, the service of the petitioner's husband to the post of work-charged Handyman was confirmed with retrospective effect from 01-04-1995 vide order dated 03-06-1999 and therefore, the petitioner's husband had rendered service for 1 (one) year and 11 (eleven) days after confirmation. It is further stated that the relevant pension papers in respect of the petitioner's husband had already been submitted to the Joint Secretary (Pension Cell), Government of Manipur vide letter dated 22-10-2010.

In the affidavit filed on behalf of the Respondent No.3, it is stated that since the proposal for payment of family pension was received after a lapse of more than 14 (fourteen) years and the concurrence of the Finance Department (PIC) being required under the O.M. dated 10-10-2005, the same was referred to the Finance Department (PIC), Government of Manipur. However, as directed by the Finance Department (PIC), Government of Manipur vide its letter dated 12-09-2012, the matter was referred to the Administrative Department for doing the needful and since the matter is still lying in the Administrative Department, the answering respondent had nothing to do.

In the affidavit filed on behalf of the respondent No. 4, it is stated that the relevant pension papers in respect of the petitioner's husband are not yet received in the office of the respondent No. 4 and on receipt thereof, the admissibility of family pension or gratuity or both would be examined and decided as per the Terminal Benefit Rules, 1978. It is further stated that nothing could be done by the office of the respondent No. 4 without receiving the pension papers of the petitioner's husband.

In the affidavit filed on behalf of the respondent No. 5, the stand similar to the one taken on behalf of the respondent No. 2 has been taken.

5. The short question which arise for consideration is whether the petitioner is entitled to family pension under the provisions of the Terminal Benefits Rules, 1978 or not ? The rule 6A by which family pension is payable, came to be added for the first time by way of an amendment to the Terminal Benefits Rules, 1978 in the year 1990. The said Terminal Benefits Rules, 1978 was amended from time to time and the amendment made vide Notification dated 08-09-1994 is relevant for the present case, the relevant provision of which namely Rule 6 (A) is reproduced herein below -

Rule 6 (A) - Family pension as calculated under MCS (Pension) Rules, 1977 as

amended from time to time subject to the following conditions:-

(i) The benefit shall be available to the family of any permanent work-charged employees who died while in service on or after 21-06-1990 after rendering not less than 1 (one) year of service after confirmation.

(ii) The payment of family pension shall be effective from 21-05-1993 and no arrears in cash or otherwise for the period from 21-06-1990 to 25-05-1993 shall be paid.

To grant family pension under Rule 6A of the said Terminal Benefits Rules, 1978, two conditions are required to be fulfilled namely - (a) the work-charged employee must have died on or after 21-06-1990 and (b) before the work-charged employee died, he must have rendered at least one year of service after confirmation. In the present case, it is submitted by the counsel for the petitioner that the petitioner's husband fulfilled the above two conditions because the petitioner's husband expired on 12-04-1996 and his service was confirmed w.e.f. 01-04-1995 vide office order dated 03-06-1999. There is force in the submission of the learned counsel appearing for the petitioner.

6. It is nowhere stated in any of the affidavits filed on behalf of the respondents that the petitioner's husband is not entitled to family pension under the provisions of Rule 6A of the Terminal Benefits Rules, 1978. The stand of the Administrative Department is that since the work-charged service of the petitioner's husband was confirmed w.e.f. 01-04-1995, he had rendered for 1 year and 11 days after confirmation and that the pension papers of the petitioner's husband had already been submitted to the Joint Secretary (Pension Cell), Government of Manipur which had referred the same to the Finance Department (PIC), Government of Manipur. From the affidavit filed on behalf of the Finance Department, the Respondent No. 1, it is evident that it had a doubt about the effective date being corrected to 01-04-1995 and therefore, it took the stand that despite clarification being sought, the Administrative Department did not furnish the same. The Finance Department (PIC), Govt. of Manipur appears to have forgotten that the effective date was corrected to 01-04-1995 vide office order dated 03-06-1999, issued by the then Chief Engineer, which is neither stated to have been challenged by anyone nor is it stated to have been withdrawn or cancelled. There is no material on record to show that the passing of the said office order dated 03-06-1999 can be attributed to the petitioner. Moreover, the said office order dated 03-06-1999 was issued not only in respect of the petitioner's husband but in respect of four others also. In case the Finance Department (PIC), Govt. of Manipur was suspicious about the correctness of the office order dated 03-06-1999 being issued by the then Chief Engineer, the matter could have been brought to the notice of the high level authority for appropriate decision. Instead of doing that, the Finance Department (PIC), Govt. of Manipur felt its duty being discharged by merely putting a note in the file and waiting for a clarification thereof from the Administrative Department. This attitude of the Finance Department as well as the Joint Secretary (Pension Cell),

Govt. of Manipur has resulted in denial of family pension to the petitioner which is unreasonable and arbitrary as being violative of Article 14 and 16 of the Constitution of India.

7. It appears that the present case is not the only case where such office order dated 03-06-1999 is issued granting retrospective confirmation by the State Government through its Engineering Departments which can be verified from its own records. There are many instances where retrospective confirmations had been granted, some of which can be found from the tabulation incorporated in the judgment and order dated 01-03-2005 passed by the Hon"ble Gauhati High Court, Imphal Bench in the case of a batch of writ petitions being W.P. (C) No. 1445 of 2003 and others, Smt. Naorem (O) Chaobi Devi. It is the submission of the learned counsel for the petitioner that the issue involved herein is squarely covered by the aforesaid judgment and order dated 01-03-2005 and that since the direction contained therein has been complied with and implemented by issuing an order dated 24-10-2005, the petitioner is also entitled to similar benefits namely family pension. The counsels appearing for the respondents have not cited any judgment wherein a view has been taken contrary to that of the above.

8. Having heard the learned counsels for the parties and under the aforesaid circumstances, this court is of the view that the petitioner having established her case, she is entitled to family pension. Accordingly, I allow the present writ petition and direct the respondents to release the family pension to the petitioner within a period three months from the date of receipt of a copy of this judgment and order. No order as to cost.