

(2013) 04 MAN CK 0002
In the Manipur High Court
Case No : WA No. 21 of 2013

State of Manipur and Others		APPELLANT
	Vs	
L. Pakchao Singh and Another		RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 04 MAN CK 0002

Hon'ble Judges : Abhay Manohar Sapre, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ibohal, A.G, for the Appellant; N. Kumarjit, for the Respondent

Final Decision : Partly Allowed

Judgement

1. This is an intra court appeal filed by the respondents of WP(C) No. 1178 of 1999 under Rule 2 Chapter V-A of Rules of Gauhati High Court against the order dated 25.05.2006 passed by the learned single Judge in the aforementioned writ petition. Heard Mr. Th. Ibohal, learned Advocate General, Manipur appearing for the appellants and Mr. N. Kumarjit, learned senior counsel for the respondents.

2. By the impugned order, the learned single Judge allowed the writ petition in part and passed the following order:

11. After carefully examining the case of the present petition, I am of the considered view that the judgment and order of the Division Bench of this Court dated 26.9.2006 passed in WA No. 87 of 1996 still holds the field which squarely covers the cause of action of the petitioner and the same verdict as indicated in the order dated 26.9.1996 shall have to be extended to the petitioner. In other words, the petitioner is entitled to get invalid pension irrespective of fact that even if the petitioner was made to retire on medical ground as a quasi-permanent employee, the amount to be payable to the petitioner as pension (invalid pension) shall not be less than the amount of family pension admissible under Sub-rule (2) of Rule 1972. Therefore, the respondents are directed to pay pension within 4 (four) months from the date of receipt of certified copy of this

judgment and order and if the pension is not finalized and paid within the stipulated time, an interest at the rate of 8% per annum shall have to be paid by the respondents.

With these observations and directions, writ petition is allowed. No order as to cost.

3. It is not in dispute that the sole writ petitioner, Shri L. Pakchao Singh, had already expired during pendency of the writ petition and to be more precise he died on 23.11.2002. It is also not in dispute that none of his LRs were brought on record in the writ petition and the said writ petition came to be heard and was allowed in part by the learned single Judge by the impugned order giving rise to filing of this appeal by the State.

4. Having heard the learned counsel for the parties and on perusal of the record of the case we are inclined to allow the appeal and while setting aside of the impugned order remand the case to writ court for deciding the writ petition afresh on merits in accordance with law.

5. Law on this point is rather too well settled. On the death of a party to the lis, it automatically comes to an end. It is then the duty of the party concerned to make an application to bring the legal representatives of the deceased party on record to enable the court to continue the lis provided a cause of action survives for prosecution of the lis and if it devolves upon his legal representatives. If no steps are taken in that regard, within the time specified in law (90) days, then the proceedings stands abated. In such circumstances all the orders passed in such proceedings by the court becomes a nullity and are amenable to question in any proceedings including even in collateral proceedings.

6. Since in this case, no legal representatives of the sole writ petitioner were brought on record after his death, the writ petition stood abated on the death of the sole writ petitioner on 23.11.2002. The order impugned therefore, could not have been passed by the writ court either by allowing the writ or even by dismissing it on its merit except to dismiss the writ petition as having been abated.

7. Keeping in view the aforesaid well settled legal position which has full application to the facts of this case, we are inclined to allow this appeal, set aside the impugned order and restore the writ petition to its file by granting liberty to the widow of the writ petitioner who is now represented by Mr. N. Kumarjit, learned senior counsel in this appeal to make an application before the writ court in the writ petition for substitution of her name in place of the sole writ petitioner.

8. Liberty is also granted to the other legal representatives of the sole writ petitioner to become writ petitioners along with the widow, in case if there are more legal representatives in addition to the widow. On such application being made, the writ court will allow such application and permit all the legal representatives to become writ petitioners in place of the original writ petitioner.

We also direct the widow to implead all the legal representatives as proforma respondents in the writ petition in the event, they do not come forward to apply for becoming to the writ petition.

9. Since the right to prosecute the writ petition has devolved upon all legal representatives of the sole writ petitioner and hence all have the rights to become writ petitioners and prosecute the writ for the reliefs claimed by the sole writ petitioner in his writ petition in accordance with law.

10. The writ court will now proceed to decide the writ petition on merits in accordance with law after affording an opportunity to all parties concerned. The appeal thus succeed and is allowed in part. The impugned order is set aside and the case is remanded to writ court for deciding the writ petition on merit as observed supra. No cost.