(2019) 04 MAN CK 0015

In the Manipur High Court

Case No : Writ Appeal (WA) No. 56, 57, 58 Of 2017

State Of Manipur & Ors APPELLANT

Vs

S.Paiso & Ors RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Manipur Civil Services (Pension) Rules, 1977 — Rule 70, 70A
Indian Penal Code, 1860 — Section 120B, 420, 468

Citation : (2019) 04 MAN CK 0015

Hon'ble Judges : Ramalingam Sudhakar, CJ;Lanusungkum Jamir, J

Bench : Division Bench

Advocate : Lenin, M.Hemchandra, S.Samarjeet

Final Decision : Allowed

Judgement

Ramalingam Sudhakar, CJ

[1] Heard Mr. Lenin, learned Addl.AG for the appellants as well as Mr. M.Hemchandra, learned senior counsel for the respondents. Also heard Mr. S.Samarjeet, learned CGC for the Union respondents.

[2] These writ appeals, WA No.55/17, WA No.56/17 and WA No.57 of 2017 are against the common judgment and order dated 01.12.2015 passed in W.P(C) No.61 of 2015, W.P(C) No.209 of 2015 and W.P(C) No.325 of 2015.

[3] The writ petitioners/respondents herein, challenged the Government order dated 28-11-2014 issued by the Principal Secretary (Finance), Government of Manipur who directed recovery of excess drawal of pension and family pension on the ground that the retired Head Pandits/ Head Masters of LP schools/Primary Schools and JB Schools have benefited by way of excess salary to non-existent posts on non-existent pay scales. This was first identified by the department in the proceeding dated 08.3.2006 that came to be challenged in a number of writ petitions and one writ petition, being W.P(C) No.954 of 2006 was allowed by the learned Single Judge. The present batch of cases also, the learned Single Judge

allowed the writ petitions primarily holding that the W.P(C) No.954 of 2006 has been challenged before the Hon'ble Division Bench but there is no need to await the outcome of the appeal pending for more than five years. This was recorded by the learned Single Judge in the last part of para No.10 of the impugned judgment and order, page No.29 which read as follows:-

"10. *** *** ***

*** *** ***

It is submitted by Shri K.Jagat, learned Government Advocate that a writ Appeal being Misc. Case (W.A.) No.143 of 2009 preferred against the order dated 26.10.2009 passed by the learned Single Judge in W.P(C) No.954 of 2006, is pending for adjudication by this court. However, in view of the law having been settled by the Hon'ble Supreme Court in State of Punjab & ors. vs. Rafiq Masih (White Washer) & ors. reported in (2015) 4 SCC 334 the issues involved herein can be decided and there is no need for this court to await the outcome of the said writ appeal pending for more than five years."

[4] It is pertinent to point out that the impugned proceedings dated 28.11.2014 is the outcome of the decision taken by the State /appellants in the proceedings dated 08.3.2006, Annexure-A/3, page 48-49 and it reads as follows:-

"No. 17/13/2005-FD(PIC)(Pt)

GOVERNMENT OF MANIPUR

SECRETARIAT : FINANCE DEPARTMENT

Imphal the 8th March, 2006

To

The Accountant General,

Manipur, Imphal

Subject : Orders passed by the Hon'ble High Court in W.P.(C) No. 1167/05, W.P.(C) No. 846 of 2005, W.P.(C) No. 850 of 2005, W.P(C) No.894 of 2005 and similar cases - release of pensions to retired teachers.

Sir,

Please refer to my letter of 17/9/205 on the above subject requesting you to release pensions in respect of retired teachers as per the orders of the Hon'ble High Court Gauhati. Please also recall the proceedings of the two meetings held subsequently by us on 9.12.2005 and 20.01.2006 to finalize the modality of release of pensions of retired teachers.

It is understood that release orders for pensions are not yet passed from your side in the absence of confirmation from the Department of Education (S) about the names of the teachers in whose case higher scales had been granted irregularly. Confirmation from the Department of Education regarding the existence or otherwise of the posts of Head Masters in L.P. Schools at the time of retirement of such teachers had also been sought.

Department of Education (S) have now confirmed vide their letter No. 4/8/2005-SE(S) dated 25.03.2006 (copy enclosed) that no such posts exist. This was also the position stated by the Department in our meeting held on 12.10.2004 (copy enclosed). The position is further clearly reflected in the order passed by the Education (S) Department in their order vide No. 1/11/05-SE(S) dated 28.05.2005.

In view of this the retired teachers are not eligible for pensions on the basis of higher scales. It is clear that the benefit of higher scale was granted to them by the Govt. in compliance with the orders of the Court or otherwise only for the period of their tenure as i/c. Headmaster/Head Pandit. The pensions of the retired teachers may, therefore, be immediately released in compliance with the order of the Hon'ble High Court, Gauhati with reference to the substantive posts of teachers. This will apply to all cases including those retired to in Para No. 2 of this office letter of even number dated 17th September, 2005 where specific orders were passed either by the Court or the Govt. to grant pensions with reference to the higher scales.

"Recovery of the excess payment made to the retired teachers in form of higher pensions may also be made as per rules and suitable order may be passed accordingly at the time of release of pensions."

It will be appreciated if the pensions are released in accordance with the above urgently in order to comply with the orders of the Hon'ble Court passed in the above cases as well as similar cases.

Yours faithfully,

Sd/-(RR Rashmi)

Commissioner (Finance)

Government of Manipur"

[5] The proceedings dated 28.11.2014, Annexure-A/6, page 148, reads as follows:-

"Annexure-A/6

GOVERNMENT OF MANIPUR

SECRETARIAT: FINANCE DEPARTMENT

(PAY IMPLEMENTATION CELL)

ORDERS BY THE GOVERNOR ; MANIPUR

Imphal, the 28th November, 2014

No. 17/195/2014-FD(PIC) : WHEREAS on having come to the notice of the Government that huge excess payment of arrear pay an allowances, pension, family pension, gratuity and commutation of pension had been made in het non-existent pay scale and post of Head Pandits/ Head Masters of L.P. Schools, the State Government by an instruction issued vide Message

No. 8/21/2004-FD(TRY0, dated 21/04/05, No. 8/21/2004-Fd(TRY), dated 25/04/2005 stopped the payment of monthly pension// family pension with immediate effect in respect of retired/deceased Teachers of L.P. Schools further the Accountant General (A&E), Manipur was instructed vide letter. No. 17/13/2005-FD(PIC)(Pt.), dated 08/03/2006 for recovery of the excess and inadmissible amount drawn by the retired Teachers/ families of the deceased Teachers of L.P. Schools;

2. AND WHEREAS considering the financial hardships faced by the pensioners/ family pensioners, the State Government vide letters No. 9/43/2004-FD(PIC), dated 20/01/2007 AND 12/02/2007, respectively addressed to the Accountant General (A&E), Manipur, the Treasuries and the Banks, released the monthly pension/family pension w.e.f. 01/01/2007 based on the substantive pay of the Teachers of L.P Schools subject to the condition that release of arrear pension/ family pension for the period from April, 2005 to December, 2006 (21 months) shall be considered after finalization of all pending Court Cases filed by the All Manipur Retired LP/JB/Primary Head Pandit/Head Master Association;

3. AND WHEREAS the Manipur Civil Services (Pension) Amendment Rules, 2006 had been issued by the Department of Personnel & Administrative Reforms (Pension Cell) under Notification No. 60/1/2006-PC, dated 06/04/2006, published in the Manipur Gazatte Extraordinary No. 24, dated 15/04/2006 by amending Rule-70 and inserting Rule 70-A allowing recovery of any overpayment of pay and allowances and pension benefits including arrears on account of any error or irregularity of adjustment irrespective of the date of detection of error of irregularity, at any time, in installments by short payment of pension or family pension, as the case may be, at the rate as decided by the Government after proper verification and, accordingly, the State Government has decided vide Order No. 60/1/2006-PC, dated 25/07/2009, published in Manipur Gazette Extraordinary No. 149, dated 25/07/2009, that the recovery of overpayment as is permissible under Rule 70-A of the Manipur Civil Services (Pension) Rules, 1977, as amended , shall not ordinarily be made at the rate exceeding one-third of the pension which also shall not be reduced below the minimum amount of pension;

4. AND WHEREAS the Hon'ble Gauhati High Court, Imphal Bench vide Order dated 29/08/2008 passed in MC(W.P.(C) No. 263 of 2008 [Ref: W.P. (C) No. 447 of 2007 {All Manipur Retired Lower Primary/Primary J.B. Schools Head Pandit/ Headmaster Association-Vs.- The State of Manipur & 2 Ors.}] the Respondents

were directed to pay the arrear pension to the members of the petitioner association for the period from April, 2005 to December, 2006 calculating on the basis of the substantive pay of the teachers within a period of 2 (two) months from the date of receipt of the copy of the order;

5. AND WHEREAS in Writ Petition(C) No. 646 of 2011 filed by S. Paiso & 49 pensioners/family pensioners, the Hon'ble High Court passed Order dated 09/05/2012 directing the State respondents to release the pension arrears of the petitioners for the period commencing from January, 2005 to December,2006;

6. AND WHEREAS in Writ Petition (C) No. 388 of 2012 filed by L. Ramkahao & 29 pensioners/ family pensioners was also disposed of by the Hon'ble High Court vide order dated 07/09/2012 in terms of the direction of this Court passed in W.P. (C) No. 646 of 2011 on 09/5/2012 and the respondents are directed to calculate the entitlement of the petitioners in terms of the aforesaid direction in W.P. (C) No. 646 of 2011 on 09/5/2012;

7. AND WHEREAS, with the consent of the All Manipur Retired LP/JB/Primary Head Pandit/Head Mater Association, Order No. 17/52/2007-FD(PIC), dated 09/11/2009 had been issued releasing arrear pension/ family pension for the period from 4/2005 to 12/2006 (21 months) after making recovery, instalments as per rules, of excess drawal of pension/family pension and subsequent recovery till the full recovery of the

amount of excess drawal and in other analogous cases/claims also similar orders have been issued;

8. NOW, THEREFORE, in compliance with the Hon'ble Court's Orders dated 09/05/2012 passed in Writ Petition (C) No. 646 of 2011 and Order dated 07/09/2012 passed in Writ petition

(C) No. 388 of 2012, the Governor of Manipur is pleased to order that the Accountant General(A&E), Manipur shall issue revised Pension Payment Orders [PPos] to the petitioners (Pensioners/family pensioners) of Writ petition (C) No. 388 of 2011[L. Paiso & 49 Ors.-Vs.- The State of Manipur & 3 Ors.] and Writ Petition (C) No. 388 of 2012 [L. Ramkahao & 29 Ors. -Vs.- The State of Manipur & 3 Ors.] on the basis of the substantive pay of the retired / deceased Teachers of L.P. Schools with effect from April, 2005 to December, 2006 (21 months) and the release the arrear pension/ family pension by short payment of pension or family pension, as the case may be, in installments at the rate of exceeding one-third of the pension which also shall not be reduced below the minimum amount of pension from April, 2005 to December, 2006 and from the date of issue of this order till the full recovery of the excess amount drawn irregularly.

Sd/-

(Barun Mitra)

Principal Secretary (Finance),

Government of Manipur"

[6] The first paragraph of the proceeding dated 28.11.2014 itself gives details of the proceedings of the Accountant General (A&E), Manipur vide its letter No.17/13/2005-FD(PIC)(Pt.) dated 08.3.2006. As mentioned earlier, the order dated 8.3.2006 was the subject matter of W.P(C) No.954 of 2006 set aside by the learned Single Judge in favour of the teachers against which the State preferred a appeal. The same is WA No.3 of 2016.

[7] The Hon'ble Judge who has passed the impugned order in the present case was a party to the proceeding in WA No.3 of 2016 against the final order dated 26.10.2009 in W.P(C) No.954 of 2006. The Hon'ble Division Bench by order dated 27.7.2018 in the appeal by the State allowed the appeal upholding the order dated 8.3.2006 passed by the Commissioner (Finance). The order reads as follows:-

"Heard Mr. N. Ibotombi, learned senior counsel assisted by Ms. Savitri, learned counsel for the State appellant.

[2] No one is present for the writ petitioners, respondents herein in spite of service of notice upon them and the name of the counsel being shown in the cause list.

[3] The present appeal has been preferred against the order dated 26-10-2009 by which the learned Single Judge quashed the portion of the impugned order dated 08-03-2006 whereby, the recovery of the excess payment has been ordered by the Commissioner(Finance), Government of Manipur.

[4] It has been submitted by Mr. N. Ibotombi, learned senior counsel for the State appellant that there has been a huge problem of withdrawal of excess money illegally through enhanced pay and allowances because of which the authorities after due consideration passed the aforesaid impugned order dated 08-3-2006 for recovery of excess payment.

[5] In this regard, Mr. N. Ibotombi, learned senior counsel has drawn the attention of this Court to the criminal case being FIR No. 71 (4) 05 2005 Lamphel P.S u/s 420,468,120B of the IPC registered in connection with the fraudulent drawal of arrears and pensions, in which a large number of officials and persons were arrested. He, accordingly submits that, if this impugned order passed by the learned Single Judge is upheld, it would disable the State Government from recovering excess pay and allowances illegally withdrawn.

[6] As regards the issue relating to recovery of excess drawal of salary and allowances by the employees, it has been settled by the Apex Court and also as recorded in the impugned Judgment, inSyed Abdul Qadir & Ors Vs. State of Bihar, (2009) 3 SCC 475 in which it has been held that excess payment ought not to be recovered unless the concerned official or the beneficiaries had contributed towards excess payment by way of collusion or mis-representation or by practicing fraud, etc.

[7] Mindful of the aforesaid legal position, it would not be permissible for the authorities to direct recovery of excess payment unless the contribution or the participation of the employees concerned in the excess withdrawal is established.

[8] After considering the materials on record and the peculiar facts as pleaded and also as reflected in the Memo of Appeal, we modify the impugned order passed by the Ld. Single Judge by holding that the recovery of excess payment as directed by the Commissioner (Finance) can be allowed, if the writ petitioners are found to have been involved or participated/contributed to the said excess withdrawal.

[9] Accordingly, the present appeal is allowed by upholding the validity of the order dated 08.03.2006 passed by the Commissioner (Finance) with the condition that, if such recovery of excess payment as ordered by the Commissioner (Finance) is to be effected against the petitioners, it can be done if the participation or contribution of the employees concerned/petitioners concerned is established"

This order was subsequently followed and recovery proceeding completed.

[8] Hon'ble Single Judge in the present case was pleased to allow the writ petition primarily on the ground that the writ appeal against the W.P(C) No.954 of 2006 is pending before the Division Bench. As of today, it is evident that the Division Bench in Writ Appeal No.3 of 2006 by order dated 27.7.2018 has upheld the proceeding of 8.3.2006 and in order in appeal, liberty has been given to the Department to recover excess payment as per procedures established by law.

[9] Therefore, the impugned order of the learned Single Judge setting aside the proceedings dated 28.11.2014 becomes irrelevant and academic. As has been pointed out the government order dated 28.11.2014 which has been set aside by the impugned order cannot be justified because the source of power to act is the order dated 8.3.2006, of the respondents. This 8.3.2006 order has been upheld by the Division Bench.

[10] Since the order dated 8.3.2006 has been upheld, the consequential order dated 28.11.2014 cannot be set aside without just and reasonable cause.

[11] Therefore, in view of the final order passed in WA No.3 of 2016, which is not challenged by any of the private respondents, the present State appeals have to be allowed. The authorities will be at liberty to settle the arrears of pension in terms of the Government order dated 28.11.2014, para No.8 which has already been extracted above.

[12] Mr. Lenin, learned Addl.AG appearing for the respondents states on instruction that in some of the cases, the State has given detailed documents complying with the direction of this Court to issue show-cause notice in respect of the recovery. Thereafter, final settlement orders have been passed pursuant to order dated 9.11.2009. The issue has attained finality because the Association gave a reply and accepted the terms of settlement.

[13] Individual teachers who got settled their pension and other benefits by individual government orders have been recorded in batch of writ petitions which are disposed of. The same are W.P.(C)No.447 of 2007, W.P(C) No.765 of 2009, W.P.(C)No.716 of 2009, W.P(C) No.783 of 2009, W.P(C) No.572/2006, W.P(C) No.565 of 2009, W.P.(C) No.708 of 2006, W.P.(C) No.925 of 2006, W.P(C) No.988 of 2006, all dated 05.4.2019.

[14] We record the statement of Shri Lenin, learned Addl.AG in this regard. In view of the Division Bench order in WA No.3 of 2016 dated 27.7.2018, the impugned order of the learned Single Judge cannot be sustained and accordingly, all the appeals are allowed. The impugned order of the learned Single Judge is set aside.

[15] In so far as the respondents teachers are concerned, they will be entitled to such benefits as has been extended to similarly placed teachers pursuant to the government order 9.11.2009 and subsequent orders passed which are recorded in a batch of writ petitions decided on 5.4.2019. They are entitled to move a representation if there is any pending dues which will be decided on its merit and entitlement.

