
(2015) 05 MAN CK 0021
In the Manipur High Court
Case No : Writ Petition (C) No. 114 of 2015

Waikhom Premchandra Singh

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 300-A

Citation : (2015) 05 MAN CK 0021

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Th. Babita, for the Appellant; K. Jagat, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Ms. Th. Babita, learned counsel appearing for the petitioner and Shri K. Jagat, learned Government Advocate appearing for the respondents.

2. To redress his grievances, the present writ petition has been filed by the petitioner praying for issuing a Mandamus directing the respondents to issue a retirement order with effect from 28-02-2014 and to allow him to get pensionary and other retiral benefits.

3.1. According to the petitioner, he joined as Graduate Teacher in the Ashram Schools under the Tribal Development Department, Government of Manipur vide appointment order dated 27-09-1985 issued by the Secretary (TD), Government of Manipur. By way of a policy decision, the establishment of all the Ashram Schools was transferred from the Tribal Development Department to the Education Department (Schools), Manipur by introducing an amendment in the Rules of Business of the Government of Manipur vide notification dated 12-11-2001 and consequent upon the said transfer of the establishment of Ashram Schools, the Government of Manipur issued an order dated 03-08-2002

transferring the petitioner from Thingba Khullen Ashram School, Senapati to Lilashing Khongnangmakhong High School, Imphal. Before the petitioner joined the Lilashing Khongnangmakhong High School, the Government of Manipur issued another order, in partial modification of the earlier order dated 03-08-2002, transferring the petitioner and posting him at the Heingang High School, Imphal vice Shri L. Punshi Singh vide order dated 22-08-2003 issued by the Link-Commissioner, Education (S), Government of Manipur.

3.2. Pursuant to the State Government's order dated 22-08-2003, the petitioner was released from Thingba Khullen Ashram School on 06-09-2003 and accordingly, the petitioner joined the Heingang High School on 10-09-2003 as is evident from the letter dated 14-10-2003 of the Headmaster, Heingang High School.

3.3. The Director of Education (S), Government of Manipur issued an order dated 25-09-2003 to the effect that the service of the petitioner was absorbed in the Department of Schools (S) with immediate effect against the vacancy caused by Shri L. Punshi Singh who retired on Superannuation. Since the petitioner having been transferred as aforesaid, his name figured in the Manipur Government Employees List (MGEL) by allotting an Employees Identification Number.

3.4. The petitioner while serving as a Graduate Teacher (Arts) at Heingang High School, Imphal under the Department of Education (S), Government of Manipur, retired on attaining the age of superannuation with effect from 28-02-2014 and on his retirement, it was the duty of the State Government to issue a termination order which the State Government failed to do so. On enquiry, the petitioner was informed that since the absorption order dated 25-09-2003 was issued without approval from the State Government, the Director of Education (S) was awaiting the ex-post facto approval. After having waited for more than a year, the present writ petition has been filed by the petitioner.

4. The grievance of the petitioner is that in spite of the fact that the petitioner has retired on attaining the age superannuation with effect from 28-02-2014, no retirement order has yet been issued by the Director of Education (S) as a result, the petitioner has been denied to enjoy his pensionary and other retiral benefits. Ms. Th. Babita, the learned counsel appearing for the petitioner has submitted that the intentional denial of his rightful claim of enjoying pensionary and retiral benefits is violative of the Article 21 of the Constitution of India and that the discrimination has been meted out to him by denying pensionary benefits when the same were given to other graduate teachers, similarly situated, who also were transferred from the Ashram Schools to the Schools under the Department of Education (S) resulting in violation of Article 14 of the Constitution of India. No affidavit-in-opposition is filed on behalf of the State respondents despite number of opportunities being given to them. However, it is submitted by the learned Government Advocate during the course of hearing that since the order dated 25-09-2003 had been issued without the approval of the State Government, no retirement order could be issued by the Director of Education (S).

5. It is well settled that the pension is not a bounty but is hard earned benefit for long service rendered by the employee which cannot be withheld or taken away at the sweet will of the State Government. It becomes a property. To substantiate her contention, Ms. Th. Babita has relied upon the decision rendered by the Hon"ble Supreme Court in the case of State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, (2013) 9 AD 48 : AIR 2013 SC 3383 : (2014) 117 CLT 945 : (2013) 139 FLR 74 : (2013) 11 JT 351 : (2013) LabIC 3674 : (2013) 5 LLN 91 : (2013) 4 LLN 56 : (2013) 10 SCALE 310 : (2013) 12 SCC 210 : (2013) 4 SCT 429 : (2013) 114 SLJ 370 : (2013) AIRSCW 4749 : (2013) 6 Supreme 5 wherein the Hon"ble Supreme Court referring to earlier decisions, inter-alia, has held that it is an accepted position that gratuity and pension are not bounties and an employee earns these benefits by dint of his long, continuous, faithful and unblemished service. The Hon"ble Supreme Court has further held that a person cannot be deprived of his pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution.

6. The facts of the case are matter of records which are undeniable and moreover, the State respondents have chosen not to file an affidavit-in-opposition rebutting the averments made in the petition. From the perusal of the letter dated 24-06-2014 of the Director of Education (S), it is evident that the petitioner had retired on attaining the age of superannuation with effect from 28-02-2014 but the only reason as to why the termination order has not been issued is that the absorption order dated 25-09-2003 was issued without approval and that the ex-post facto approval was being awaited. This is an internal problem between the Directorate of Education (S) and the State Government which cannot be attributed to the petitioner and therefore, the petitioner cannot be made to suffer on account of the lapses on the part of the State respondents without any fault of the petitioner.

7. It is further well settled that as per rules applicable to his/her service, an employee is bound to retire on attaining the age of superannuation and on his retirement, he/she is entitled to pension and other retiral benefits provided no disciplinary proceedings/criminal cases are pending against him/her. When a right is conferred upon an employee in law, a corresponding duty is cast upon the State Government and denial of such a right by the State Government is highly unreasonable and illegal. Moreover, the learned counsel appearing for the petitioner has submitted that two graduate teachers - Shri L. Krishnachandra Sharma and Shri N. Hemanta Singh who were also transferred from the Ashram schools to Schools under the Department of Education (S), had been allowed to enjoy pensionary and other retiral benefits by issuing termination order dated 28-08-2012, whereas the same benefits had been denied to the petitioner resulting in violation of Article 14 of the Constitution. Considering the overall facts and circumstances of the present case and the decision rendered by the Hon"ble Supreme Court, this court is of the view that the present case is a fit case where this court can interfere and issue mandamus by allowing the writ

petition.

8. With the above observations, the present writ petition is allowed with the following directions:

(a) The respondents and the Director of Education (S) in particular, shall issue an order of termination, terminating the petitioner from service with effect from the day he has retired on attaining the age of superannuation, within a month from today;

(b) After the termination order having been issued, the respondents shall furnish the requisite papers to the office of the Accountant General within a month thereafter; and

(c) The Accountant General, the respondent No. 3 shall, on receipt of the said relevant papers, complete the formalities within a month thereafter for purpose of releasing the pension and other retiral benefits to the petitioner. There shall be no order as to costs.