

(2005) 03 GAU CK 0056
In the Gauhati High Court

Yendrambam (N) Keithellakpam Ongbi Sanatombi Devi
Vs

APPELLANT

State of Manipur and Ors.

RESPONDENT

Date of Decision : 08-03-2005

Acts Referred:

Citation : (2005) 03 GAU CK 0056

Hon'ble Judges : T.Nanda kumar Singh, J

Bench : Single Bench

Advocate : Suresh Sarangthem, N.Ibotombi Singh, Ch.Robin Chandra Singh,
Advocates appearing for Parties

Judgement

1. These two writ petitions involve common question of facts and laws and as such they are taken up jointly for hearing as well as for passing common judgment and order.

2. Heard Mr. Ch. Robinchandra Singh, learned counsel for the petitioners as well as Mr. Suresh Sarangthem, learned Junior Advocate to the learned A.G., Manipur for the respondents 1 and 3 and Mr. N. Ibotombi, learned counsel appearing on behalf of the respondents 2 and 4 in respect of W.P(C) No. 62 of 2005 and Mr. Suresh Sarangthem, learned Junior Advocate to the learned A.G., Manipur for the respondents 1,2 and 3 and Mr. N. Ibotombi, learned counsel appearing on behalf of the respondent No. 4 in respect of W.P(C) No. 63 of 2005.

3. By these two writ petitions, the writ petitioners are seeking for a direction to the respondents for granting family pensions if they are entitled to as per the "Terminal Benefits for Workcharged Staff of PWD,IFC,PHE,MI,Electricity, Rules 1978 (as amended from time to time)". The writ petitioner of W.P(C) No. 62 of 2005 is the wife of late K. Bahu Singh who was initially appointed as Muster Roll Worker in the Public Works Deptt. (PWD), Manipur. While Shri K. Bahu Singh was serving as Muster Roll Worker, his Muster Roll service was converted to Workcharged Khalasi vide office order No. 828 dated 7.12.1979 (AnnexureA/1 in W.P(C) No. 62/05) issued by the respondent No. 2 (the Chief Engineer, PWD,

Manipur), thereafter his workcharged service was confirmed under order No. 322 dated 5.9.1991 (AnnexureA/2 in W.P(c) No. 62/05) issued by the respondent No. 2(the Chief Engineer, PWD, Manipur). In the said order of the respondent no.2, the Chief Engineer, PWD, Manipur, dated 5.9.1991, the name of K. Bahu Singh appears at sl. No. 4. While he (i.e. K. Bahu Singh) was serving as Workcharged Khalasi, he died on 13.12.1989. On his expiry, the respondent No. 2 (i.e. the Chief Engineer, PWD, Manipur) issued office order No. 243 dated 30th July, 1991 (AnnexureA/3 in W.P(C) No. 62/05) for terminating his service w.e.f. 13.12.1989. Thereafter, the writ petitioner approached the competent authority for granting her the pensionary benefits under the Terminal Benefits for Workcharged staff of PWD, IFC, PHE, MI, Electricity, Rules, 1978 (as amended from time to time) (for short "the Terminal Benefit Rules,1978), but she is not still getting the pensionary benefits.

4. The petitioner of W.P(C) No. 63 of 2005 is the wife of late M. Mani Singh who was initially appointed as Muster Roll Worker in the Irrigation and Flood Control Deptt., Govt. of Manipur. While he (i.e. M. Mani Singh) was serving as Muster Roll Worker, he was again appointed as Workcharged Road Mohorir along with others vide office order No. 351 dated 25th March, 1981 (AnnexureA/1 in W.P. (C) No. 63/05) and posted at Singda Irrigation Division, IFC Deptt., Manipur. Shri Suresh Sarangthem, learned Jr. Advocate to the learned A.G. pointed out that only in the year 1994, the respondent no.2 (i.e. the Chief Engineer, IFCD in W.P.(C) No. 63/05), issued office order No. 199 dated 25th January,1994 for confirming the workcharged services of late M. Mani Singh, the husband of the writ petitioner in W.P(C) No. 63/2005 along with others w.e.f. 1.10.1986 (AnnexureA/3 in W.P(C) No. 63/05). His further submission is that since the said order of the respondent no.2 was issued after the death of M. Mani Singh, the petitioner (i.e. wife of late M. Mani Singh) may not be entitled to get family pension under the said Terminal Benefit Rules, 1978. It is a well settled principle of law that the employee may not suffer for the administrative lapse of the employer. In this regard, I may refer to the decision of the Apex Court in Shri Amrik Singh and others vrs Union of India and others, reported in (1980) 3SCC 393. From the above facts, it is clear that Shri K. Bahu Singh's workcharged service was confirmed w.e.f. 1.10.1986 and also that Shri K. Bahu Singh while he was serving as Workcharged employee, died on 13.12.1989. After the death of her husband, the petitioner approached the competent authority for granting pensionary benefits under the said Terminal Benefit Rules, 1978. Mr. Suresh also submitted that sufficient statements are not made in the writ petitions to show that the petitioners had already approached the competent authority for granting them pensionary benefits on the death of their husbands under the Terminal Benefit Rules, 1978.

5. The Rules called "The Terminal Benefits for Workcharged staff of PWD,IFC,PHE,MI, Electricity Rules, 1978" came into force w.e.f. 18.9.1978. By a notification dated 21.6.1990 after Rule 6(ii) (b), rule 6(A) came to be inserted. The said rule 6(A) reads as under:

?The following shall be added as Rule 6(A) below Rule (ii) (b):

?Rule 6(A) Family pension as calculated under the Manipur Civil Services (Pension) Rules, 1977 as amended from time to time.?

The aforesaid rule 6(A) came into force with immediate effect, i.e., the date of publication (21.6.1990). By another notification dated 6.6.1991, rule 6(B) came to be added after rule 6(A). Rule 6(B) reads as under:

?Rule 6(B) Terminal Benefit shall also be admissible to the workcharged employees who retired prior to 18.9.1978 and whose family members are living on the date of issue of this order from 18.9.1978 and also Family Pension to the families of workcharged employees who died prior to 21.6.1990 and whose family members are living on the date of issue of this order.?

6. Here, in the case of W.P(C) No. 62 of 2005, the said confirmed workcharged employee, late K. Bahu Singh, died on 13.12.1989, i.e. prior to 21.6.1990 and in respect of W.P(C) No. 63 of 2005, the said confirmed workcharged employee, late M. Mani Singh, died on 7.10.1987, i.e. prior to 21.6.1990. This being the admitted factual position, on the bare perusal of the said Terminal Benefits for Workcharged staff of PWD, IFC, PHE, MI and Electricity Rules, 1978 (amended upto 6.6.1991) the petitioners of the W.P(c) No. 62 and 63 of 2005 are entitled to Family Pension under the said Terminal Benefits Rules, 1978. By another notification dated 21.5.1993, Rule 6 was amended as follows:

?Rule 6(A) Family pension as calculated under MCS (Pension) Rules, 1978 as amended from time to time subject to the following conditions:

(i) The benefit shall be available to the family of any permanent workcharged employee who died while in service on or after 21.6.1990 after rendering not less than 1(one) year of service after confirmation.

(ii) The payment of Family pension shall be effective from 21.5.1993 and no arrears in cash or otherwise for the period from 21.6.1990 to 25.5.1993 shall be paid.?

Thereafter, certain amendments had been made in respect of Rules

7. It is an admitted fact of both the parties that the writ petitioners are not getting the pensionary benefits under the Terminal Benefits for Workcharged staff of PWD, IFCD, PHED, MI and Electricity Rules, 1978. The learned counsel for the petitioners submits that some other persons who are similarly situated with the present writ petitioners had already approached this court by filing different writ petitions for the direction to the respondents for granting the pensionary benefits under the said Terminal Rules, 1978 (as amended from time to time) and this court had already disposed of the said writ petitions by directing the respondents to grant the pensionary benefits to the said writ petitioners. The learned counsel for the petitioners, further, submitted that against the said orders of this court, i.e. the order of the learned Single Judge of this court, the

state respondents had filed Writ Appeals being W.A.No.154/1998, 156/1998, 157/1998, 135/1998, 155/1998 and 102/2000 before the Division Bench of this Court. The Division Bench of this court had disposed of the said Writ Appeals by passing common judgment and order dated 1.10.2001 directing the respondents to pay the family pension under the Terminal Benefits Rules, 1978 and also to calculate the family pension as per the Manipur Civil Service (Pension) Rules, 1977 as amended from time to time. The further case of the petitioners is that the present cases are squarely covered by the said decision of the Division Bench dated 1.10.2001. The relevant portion of the said common judgment and order of the Division Bench dated 1.10.2001 is quoted hereunder:

? According to our analysis of the provisions regarding the admissibility of family pension, the family pension of such an employee who had died on or before 21.6.1990 would be governed by rule 6(A) which came to be inserted on 21.6.1990 or the second part of rule 6(B) which was inserted on 6.6.1991 which according to us is the same as rule 6(A) inserted on 21.6.1990. For those families whose next of kin, i.e., permanent employees, who had died on or before 21.6.1990 would be entitled to family pension irrespective of the service rendered after becoming permanent or confirmed. The condition of at least one year service by the employee after becoming permanent was introduced only on 21.5.1993 which was specifically made prospective. Accordingly, those writ petitioners would be entitled to family pension under rule 6(A) whose breadearners, i.e. employees, had died on or before 21.6.1990. The breadearners (employees) in the following writ petitions had died prior to 21.6.1990:

1. Civil Rule No. 62/97 out of which

W.A.No.154/98 has arisen.

Date of death: 6.3.1990.

2. Civil Rule No. 132/97 out of which W.A. No. 155/98 has arisen.

Date of death: 3.12.1983.

3. Civil Rule No. 425/98 out of which W.A.No.102/2000 has arise.

Date of death: 16.6.1983.

4. Civil Rule No. 1015/97 out of which W.A.No.156 of 1998 has arisen.

Date of death: 15.10.1988.

All employees in the aforesaid writ petitions whose families had come up in the writ petitions were confirmed employees prior to their death. Though the learned Single Judge while allowing these writ petitions had also observed that those employees before their death had also completed more than one year service after confirmation but according to us, the writ petitioners in the aforesaid four cases would be entitled even without the condition of one year service by the

employees after confirmation as that was introduced only on 21.5.1993.?

8. The learned counsel also, further, submits that the present writ petitions are squarely covered by the decision of this court dated 1.3.2005 passed in W.P(C) No. 1445/2003 and batch.

9. After careful perusal of the said judgment and order of the Division Bench dated 1.10.2001 and also the judgment and order of this court dated 1.3.2005 and also on perusal of the records, I am of the considered view that these writ petitions are squarely covered by the said decisions of this court. Accordingly the benefits of the judgment and orders of the Division Bench of this court dated 1.10.2001(AnnexureA/4 to the writ petitions) and the benefits of the judgment and order of the learned Single Judge of this court dated 1.3.2005 passed in W.P (C) No. 1445/03 and batch, shall be extended to the present writ petitioners.

10. In the result, these two writ petitions are allowed and the respondents are directed to grant the family pensions to the writ petitioners as per the Terminal Benefits for Workcharged Staff of PWD, IFC , PHE, MI, Electricity, Manipur Rules, 1978 and their family pensions be calculated as per the Manipur Civil Services (Pension) Rules, 1977 within a period of six months from the date of receipt of this judgment and order. No order as to costs.