

(2019) 04 MAN CK 0020
In the Manipur High Court
Case No : Writ Petition (c) No. 179 Of 2018

Yengkhom Shamu Singh And Others	Vs	APPELLANT
State Of Manipur And Others		RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Citation : (2019) 04 MAN CK 0020

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : M. Hemchandra, Y. Ashang

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri M. Hemchandra, learned Senior Advocate appearing for the petitioners and Shri Y. Ashang, learned Government Advocate appearing for the respondents.\

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to comply with the judgment and order dated 29/09/1997 passed by the Hon'ble Gauhati High Court, Imphal Bench in CR No.523 of 1995 in its totality thereby extending the benefit of past service for the purpose of retiral and pensionary benefits which have been repeatedly upheld by this Court and others including the Hon'ble Supreme Court.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioners were initially appointed as Muster Roll/Casual Forest Guards in the Department of Forest, Government of Manipur vide various orders issued by the respondents during the period from 1987 to 1992 and since then, they had been working uninterruptedly for more than 20 to 25 years till the date of their regularisation.

[3.2] On the persistent demands of the Muster Roll/Casual employees or workers of the Department of Forest, Government of Manipur, the authorities finally agreed to absorb the Casual/ Muster roll employees in the Department of Forest, Government of Manipur for which two Memoranda of Understandings were signed and executed between the representatives of the Muster Roll/Casual employees of the Department and the authorities on 03/10/1994 and 26/12/2003 respectively. However, the said two memoranda so executed by the concerned authority could not be implemented in time. Upon the failure of the State Government to execute and implement the said two memoranda, the Manipur Forest Employees Association, the apex body of all the Muster Roll and Casual Employees who were working under Department of Forest, Government of Manipur on different capacity including the present petitioners, approached the Hon'ble Gauhati High Court, Imphal Bench by way of a writ petition being CR No.523 of 1995 praying for absorption of their Casual/Muster Roll service on regular basis which was disposed of by the Hon'ble Gauhati High Court vide its judgment and order dated 29/09/1997, the relevant portion of which reads as under:

"Considering the existing facts and circumstances of the case as well as applying the established principles of law laid down by the Apex Court, I direct the respondents to prepare a scheme on rational basis, taking into account of the length of services of those employees/workers of the Forest Department as in Annexure A/1(1) to A/1(13), rendered in the Department with the vacancy position of the related post/posts, within a period of 3 months from the date of receipt of this judgment and order. It is also made clear that the benefit of the past services of those employees/workers shall be counted for the purpose of their retiral service benefits and other pensionary benefits and for the purpose of absorption. It is also further made clear that the employees/workers of the Department concerned who are equally situated with the employees/workers involved in the present case shall also be considered and they should be treated equally by the respondents. Interim order passed in Civil Misc Application No. 330/97 are merged with this judgment.

For the reasons, observations and directions made above, this writ petition is disposed of. No cost."

[3.3] Pursuant to the judgment and order dated 29/09/1997, the Government of Manipur framed a policy/ scheme for regularization/absorption of Casual/ Muster Roll employees of the Department of Forest, Government of Manipur wherein the terms and conditions for regularization and implementation were laid down. For the purpose of implementation of the policy/ scheme, the Principal Chief Conservator of Forests, Government of Manipur prepared a final seniority list of all Casual/ Muster Roll employees dated 03/02/1999 wherein the names of the petitioners were also figured. In compliance with the judgment and order dated 29/09/1997, a DPC was held on 8th & 9th July, 1999 for absorption/ regularization of Muster Roll/ Casual employees against the vacancies available

at the relevant time and on its recommendation, 35 (thirty-five) Casual/ Muster Roll employees were regularized as the first phase. After 35 (thirty-five) Muster Roll/ Casual employees were regularized, the Government of Manipur did not take up any action or initiate any process for absorption/ regularization of the remaining Casual employees without any plausible and conceivable reasons.

[3.4] Being aggrieved by the inaction on the part of the State Government, the Vice President of the all Manipur Forest Guard (MR/Casual) Employees Union submitted an application/ representation dated 13/04/2010 praying for regularization of Muster Roll/Casual employees in terms of the order dated 29/09/1997 passed by the Hon'ble Gauhati High Court. Since no action being taken up by the State Government, the all Manipur Forest Guard (MR/ Casual) Employees Union filed a writ petition being WP(C) No. 432 of 2010 before the Hon'ble Gauhati High Court, Imphal Bench which was disposed of on 21/12/2010 with the direction to implement fully the direction of the court's order dated 29/09/1997. The State Government, being aggrieved by the said order dated 21/12/2010, preferred a writ appeal being WA No. 6 of 2015 which was disposed of on 10/04/2015, thereby reaffirming the earlier order dated

21/12/2010, the relevant portion of which reads as under:

"... because of Uma Devi's case, the earlier order passed by the Court in CR No. 523 of 1995 could not be implemented. If this is the stand of the state appellants, they could have passed order while implementing the order dated 29.09.1997 passed in Cr No. 523 of 1995. So far as the impugned order is concerned, we find no infirmities as the learned single Judge only directed for implementation of the earlier order dated 29.09.1997 in full passed in CR No. 523 of 1995. This Writ Appeal has no merit. However, time for implementation of the impugned order having lapsed, we direct that the said order be implemented within one month from today. This writ appeal is, accordingly, dismissed."

[3.5] Since the judgment and order dated 10/04/2015 was not implemented, the all Manipur Forest Guard (MR/Casual) Employees Union filed a contempt petition being Contempt Case (C) No.153 of 2015 and during the pendency of the said contempt petition, the State Government preferred a Special Leave Petition being SLP No.16940 of 2015 challenging the judgment and order dated 10/04/2015 passed by this Court in WA No. 6 of 2015 which was dismissed by the Hon'ble Supreme Court on 08/07/2015.

[3.6] Instead of complying with the court's order, the Principal Chief Conservator of Forest, Government of Manipur issued an advertisement dated 04/08/2016 inviting applications from amongst the eligible candidates for appointment to 39 (thirty-nine) and 141 (one hundred and forty-one) posts of Forest Guards in accordance with the Forest Guard's Recruitment Rules, 2000. Being aggrieved by the said advertisement, the all Manipur Forest Guard (MR/ Casual) Employees Union approached this Court by way of a writ petition being WP(C) No.591 of 2016 questioning the advertisement which was disposed of on 14/09/2016 with

the direction to regularize the services of the members of the union by holding a Special DPC within 6 (six) weeks there from. Thereafter, the services of the petitioners were regularized vide order dated 12/06/2017 but the benefits of the past services rendered by them were not granted despite the direction being given by the Court. Being aggrieved by the said erroneous action of the State Government, the instant writ petition has been filed by the petitioners.

[4] The main ground on the basis of which the instant writ petition has been filed by the petitioners is that while issuing the government order dated 12-06-2017 regularising the services of the petitioners, the State Government has failed to comply with the directions contained in the judgment and order dated 29-09-1997 resulting in the denial of the rights accrued to them and that since most of the petitioners are on the verge of retirement, it is highly improper on the part of the State Government to delay the implementation of the said judgment and order. On the other hand, the stand of the State Government as indicated in their affidavit, is that since the revised scheme for recruitment of Casual/ Muster Roll employees of Forest Department was not given effect to, all the Casual/ Muster employees in the Department were regularized vide order dated 12-06-2017 only after 125 posts being created to accommodate them and in addition thereto, it has been stated that considering the creation of posts for their regularization and the OM dated 21-08-2010 of the Finance Department for adoption of the new defined Contribution Pension Scheme in the State, it may not be possible for the State Government to extend the benefits of their past service for the purpose of pensionary benefits.

[5] It is not in dispute that the Hon'ble Gauhati High Court, Imphal Bench, while disposing of the CR No.523 of 1995 vide its judgment and order dated 29-09-1997, directed the State Government to frame a scheme and regularize the services of the Casual/ Muster roll employees including the petitioners and it was made clear in the said judgment and order that the benefit of the past services of those employees/ workers should be counted for the purpose of their retiral service benefits and for the purpose of absorption. It appears that no appeal was preferred by the State Government against the judgment and order dated 29-09-1997 and therefore, it had attained finality. It may be noted that when an order is passed by an appropriate and competent court, the parties therein are bound by it, as long as it is not set aside or stayed by an appellate court. In our constitutional scheme, the judiciary is enjoined with the power and jurisdiction to interpret law and the court which is an integral part of it, is to decide the disputes. If the order of a court need not be implemented, the purpose of passing the order will stand defeated and it will lead to a constitutional crisis, in which event there will be turmoil in the society. Moreover, in WP(C) No. 432 of 2010 the Hon'ble Gauhati High Court, Imphal Bench while disposing it of vide its order dated 21/12/2010, directed for full implementation of the directions contained in the judgment and order dated 29/09/1997. An appeal being WA No.6 of 2015 preferred against it by the State Government was rejected on 10-04-2015 reaffirming the earlier order dated 21/12/2010 of the

learned Single Judge and a petition for special leave to appeal being SLP No.16940 of 2015 filed before the Hon'ble Supreme Court challenging the judgment and order dated 10/04/2015 was also dismissed by the Hon'ble Supreme Court on 08/07/2015. Therefore, the directions contained in the judgment and order dated 29-09-2017 need to be implemented at any cost by the State Government because a right for enjoying the retiral benefits after counting their past services, had accrued to the petitioners.

[6] Relying upon the averments made in the affidavit, it has been submitted by the learned Government Advocate that since the posts were created in the year, 2017 and the petitioners were regularized vide order dated 12-06-2017 with prospective effect, it was not possible for the State Government to grant the benefits as directed by the Court. The second argument advanced by him is that as the earlier pension system had been done away with and in its place, the new defined Contribution Pension Scheme was adopted sometime in the year, 2005, there was no question of granting benefits to the petitioners under the old pension scheme. His contentions appear to be correct in a normal case but it is not so in the present case where the directions of the court which attained finality, were/ are in operation, because of which certain rights to enjoy retiral benefits by counting their past services, had accrued to the petitioners. It is the problem created by the State Government and therefore, it is for the State Government to solve it. Had the posts being created sometime in the year, 1998/1999, the present controversy would not have arisen but since the State Government failed to do that, it had continued to arise till date. This problem will continue to arise, as long as the directions are not implemented by the State Government or the petitioners do not relinquish it. In view of the aforesaid, the State Government has no option but to implement it.

[7] In view of the above, the instant writ petition is allowed with the direction that the State Government shall comply with the judgment and order dated 29-09-1997, to its fullest extent, passed by the Hon'ble Gauhati High Court, Imphal Bench in CR No.523 of 1995 within three months from the date of receipt of a copy of this judgment and order..