

Serial No. 27
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 131 of 2019

Date of Decision: 24.08.2022

Shri. Anwarul Kadir

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.

For the Respondent(s) : Ms. Z.E. Nongkynrih, GA.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner who had served as a Headmaster of Rongrikimgre Deficit Upper Primary School, Baghmara, after rendering 25 years of service opted for Voluntary Retirement and was released from service by the Government on 02.02.2005. The only grievance in

the instant writ petition is that the retirement dues under the Meghalaya Death Cum Retirement Gratuity Rules, 1985 (DCRG) has not been released to the petitioner.

2. Mr. S.A. Sheikh, learned counsel for the petitioner submits that the benefit of the DCRG cannot be denied to the petitioner in terms of Rule 7 of the Meghalaya Aided School Employees (DCRG) Rules, 1985, as he had voluntarily retired and had not resigned from service. It is further submitted that the ground of denial of DCRG on the basis of Notification No. EDN.220/2007/93 dated 06.04.2015, is not tenable, inasmuch as, it is but an amendment by which the entitlement of DCRG under the rules has been made more explicit. Reliance has been placed on the judgment of this Court dated 25.10.2019, passed in WP(C) No. 277 of 2017 (*Shri. Aynal Hoque vs. State of Meghalaya & Ors.*), and in the judgments of the Hon'ble Supreme Court in the cases of *Shashikala Devi vs. Central Bank of India & Others.* reported in (2014) 16 SCC 260 and *Rajasthan State Road Transport Corporation Limited & Others vs. Mohani Devi & Another* reported in (2020) 5 SCC 741 respectively.

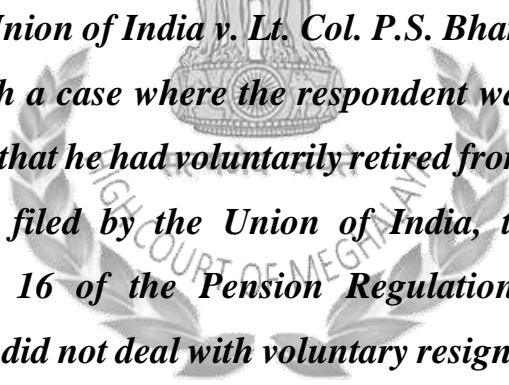
3. Ms. Z.E. Nongkynrih, learned GA for the State respondents submits that the prayer of the petitioner cannot be considered inasmuch as, the petitioner had retired voluntarily in 2005, whereas, the

Notification No. EDN.220/2007/93 dated 06.04.2015, which includes employees who retired voluntarily, was made effective only from the date of the said Notification. Learned GA has produced a communication dated 06.07.2022, indicating this fact, and submits that in view of this situation DCRG was not released to the petitioner.

4. I have heard learned counsels for the parties, and examined the materials on record. Pension and other terminal benefits is a vested right for payment of past services rendered by the employee. The only reason for denial of the DCRG to the petitioner by the respondents, is on the ground that it was only after the Notification No. EDN.220/2007/93 dated 06.04.2015, was issued amending the Meghalaya Aided School Employees (DCRG) Rules, 1985, that employees who have retired voluntarily have been considered to be eligible to be granted DCRG, and as the petitioner had retired before the said amendment, he would not be entitled to DCRG.

5. In the scheme of things, especially in matters of pension and grant of terminal benefits, it has to be kept in mind that, provisions or rules with regard to pension, which are beneficial in nature have to be interpreted liberally. In the instant case, the petitioner had taken Voluntary Retirement, after serving the requisite number of years to entitle him to pension and other terminal benefits. As such, to give a

interpretation that he is not entitled to DCRG, as the Notification No. EDN.220/2007/93 amending the provision was issued only on 06.04.2015, cannot be taken to be a justifiable ground to deny the DCRG to the petitioner. I find force in the submission of the learned counsel for the petitioner on his contention that, the notification is an amendment which is more clarificatory in nature, and if the legislative intent was to exclude Voluntary Retirement, the same would have been made clear in the rules itself. In the judgment of *Shashikala Devi (supra)* Para - 20 which is relevant is quoted herein below:



“20. In Union of India v. Lt. Col. P.S. Bhargava, this Court was dealing with a case where the respondent was denied pension on the ground that he had voluntarily retired from service. Dismissing the appeal filed by the Union of India, this Court held that Regulation 16 of the Pension Regulations applicable to the respondent did not deal with voluntary resignations and could not, therefore, be pressed into service to deny pension to the respondent. This Court said: (SCC p. 32, para 19)

“19. Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulations intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would

have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits.”

6. In view of the discussion above, and the fact that an employee is generally entitled to the payment of gratuity on putting in the required qualifying service, there is no reason that the respondents not take up the case of the petitioner for consideration for the grant of DCRG.

7. Accordingly, this writ petition is disposed of with the direction that the respondents consider the case of the writ petitioner for grant of DCRG within 6 (six) weeks' from the date of presentation of a certified copy of this order.

8. No order as to costs.

Judge

Meghalaya
24.08.2022
“D.Thabah-PS”