

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 532 of 2020

Smt. W. Manileima Devi

Vs.

State of Manipur & ors.

... *Petitioner*

... *Respondents*

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

JUDGMENT & ORDER

(Oral)

25-04-2024

[1] Heard Mr. I. Denning, learned counsel appearing for the petitioner; Mr. Th. Vashum, learned GA appearing for the respondents No. 1 to 4 and Mr. S. Jasobanta, learned counsel appearing for the respondent No. 5.

[2] The case of the petitioner is that she was initially appointed as a Substitute Assistant Graduate Teacher at Khurai Girls' High School at Imphal vide order dated 06-09-1986 issued by the Director of Education (S), Government of Manipur, for a period of six months and her service was extended from time to time. Subsequently, by an order dated 21-07-1992 issued by the Director of Education (S), Government of Manipur, the petitioner along with other 151 (one hundred and fifty one) candidates were appointed temporarily as Arts Graduate Teacher w.e.f. the date of issuance of the said order. Later on, by an order dated 16-02-2005 issued by the Director of Education (S), Government of Manipur, the period of service rendered by the petitioner from the date of her appointment as Substitute Teacher w.e.f. 06-09-1986 till the date of her regular appointment as Arts Graduate Teacher, i.e., 21-07-1992 was regularized by linking up such period of service. Thereafter, the petitioner retired from service w.e.f. 31-10-2019 on attaining the age of superannuation. After her retirement from service, due process were taken up by the authorities for releasing

her pension and other retiral benefits. During the course of such process, the Office of the Accountant General (A & E), Manipur, wrote a letter dated 01-05-2020 to the Under Secretary (Pension Cell), Government of Manipur pointing out some irregularities in the fixation of the pay scale of the petitioner as well as linking up of her past service and requesting for making rectification of the irregularities and to submit a revised LPC, statement of excess payment and for recovery of over-payment of pay and allowances from the retiral benefits of the petitioner.

[3] After receiving the said letter from the Office of the Accountant General, Manipur, the concerned authorities of the State Government did not take any action for making any rectification and as such, the petitioner was not given any retiral benefits or pension even after her retirement from service w.e.f. 31-10-2019 for the last about five years. Having been aggrieved, the petitioner approached this court by filing the present writ petition for redressing her grievances.

[4] Mr. I. Denning, learned counsel appearing for the petitioner submitted that even assuming that if any excess payments have been made to the petitioner, the same had been done more than 19 years ago and that since the petitioner has retired from service in the year 2019, the respondents cannot make any recovery of any alleged excess payment from the retiral benefits or pension of the petitioner. It has further been submitted that the issue raised in the present writ petition is squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of "**State of Punjab & ors. Vs. Rafique Masih (White Washer) & ors.**" reported in **(2015) 4 SCC 334** and the order dated 11-01-2024 passed by this court in WP(C) No. 528 of 2018. The learned counsel, lastly, submitted that as the petitioner has been suffering for the last about five years due to non-payment of her pensionary and other retiral benefits, the present writ petition may be disposed of by directing the authorities to expedite the

process of releasing her pensionary and other retiral benefits and to release the same within a stipulated period.

[5] Mr. S. Jasobanta, learned counsel appearing for the respondent No. 5 submitted that scrutiny of pension papers of a retired Government employee is the bounden duty of the Office of the Principal Accountant General (A & E), Manipur and that on scrutiny of pension papers and service records of the petitioner, it was ascertained that certain irregularities have been committed by the authorities in fixation of her pay scale and in regularizing her past service rendered on substitute basis and as such, the Office of the Accountant General (A & E), Manipur, wrote the impugned letter dated 01-05-2020 to the Under Secretary (Pension Cell), Government of Manipur, for rectification of the irregularities and to submit a revised LPC, statement of excess payment and recovery of over-payment of pay and allowances from the retiral benefits of the petitioner. The learned counsel accordingly, submitted that as the authorities have not make any rectification, the Office of the Accountant General could not process for releasing the pensionary and other retiral benefits of the petitioner.

[6] Mr. Th. Vashum, learned GA appearing for the State respondents submitted that certain mistake has been committed by the authorities in linking up and regularizing the past service rendered by the petitioner on substitute basis and that the authorities have the power and right to recover any over-payment of pay and allowances from the retiral benefits of the petitioner on discovery of such irregularities, however, the learned GA fairly submitted that as on today, the authorities have not taken up any rectification process and as such, the authorities could not finalized the payment of pension and other retiral benefits of the petitioner.

[7] I have heard the rival submissions advanced by the counsel appearing for the parties and also carefully examined the materials

available on record. On examination of the record, it is found that the petitioner was appointed on regular basis by an order dated 21-07-1992 with immediate effect and the period of service rendered by her on substitute basis was also regularized by an order dated 16-02-2005, nearly two decades back and that the said order has not been modified or revoked by the authorities till date. Even assuming that any irregularities have been committed by the authorities in fixation of her pay and allowances and assuming that excess payment of pay and allowances have been given to the petitioner, the same had been done nearly two decades back. Moverover, the petitioner has already retired from service w.e.f. 31-10-2019 on attaining the age of superannuation. In such a situation, this court is of the considered view that at this point of time, no recovery can be made by the authorities from the retiral benefits and other service benefits of the petitioner in view of the settled principle of law laid down by the Hon'ble Apex Court as well as by this court.

[8] In this regard, we can gainfully rely on the judgment rendered by the Hon'ble Apex Court in the case of “**State of Punjab & ors. Vs. Rafique Masih (White Washer) & ors.**” reported in **(2015) 4 SCC 334** wherein after referring to a number of its earlier judgments, it has been held by the Hon'ble Apex Court as under:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

[9] In the case of **Rafique Masih (White Washer) (supra)**, the Hon'ble Apex Court laid down few situations/ exceptions wherein recoveries by the employers would be impermissible in law. Some of such situations where recovery is impermissible in law are:- (i) recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service); (ii) recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery; and (iii) recovery from the employees, when excess payment has been made for a period in excess of five years, before the order of recovery is issued.

[10] In the present case, since the petitioner holds a Class – III post before her retirement and since any alleged excess payment has been made nearly two decades back, this court is of the considered view that it is not permissible to make any recovery from the retirement benefits of the petitioner on ground of excess payment of pay and allowances, in view of the principle of law laid down by the Hon'ble Apex Court referred to hereinabove.

[11] In the result, the present writ petition is allowed by quashing and setting aside the letter dated 01-05-2020 of the Office of the Senior Accounts Officer (Pension) addressed to the Under Secretary (Pension Cell), Government of Manipur. The respondents No. 1 to 3 are directed to

furnish all the necessary pension papers of the petitioner to the Office of the Principal Accountant General (A & E), Manipur within a period of two months, if the same has not already submitted. The Office of the Principal Accountant General (A & E), Manipur is directed to expedite the process and to release the pension and other retiral benefits of the petitioner within a period of two months from the date of receipt of all the pension papers. It is further made clear that if the Office of the Principal Accountant General (A & E), Manipur have already received the pension papers of the petitioner, the process of payment of pension shall be completed within a period of two months from the date of receipt of a certified copy of this order.

With the aforesaid direction, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

Devananda