

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.A. No. 62 of 2023**

State of Manipur; & Anr.

Appellants

Vs.

Kh. Chaoba Singh; & Ors.

Respondents

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI**

02.11.2023

Siddharth Mridul, C.J.:

[1] Mr. M. Devananda, learned Additional Advocate General, Manipur, appears on behalf of the appellants; and Mr. S. Samarjeet, learned counsel, appears on behalf of the respondents.

[2] The present writ appeal, under Chapter-VII of the Manipur High Court Rules, 2019, instituted on behalf of the State of Manipur, assails the judgment and order dated 14.06.2022 rendered by the learned Single Judge in W.P. (C) No. 406 of 2016, whereby Office Memorandum dated 24.12.2011 assailed therein, was quashed and the appellant/State was directed to pay the increased family pension to the writ petitioners on account of revision of pay from 01.11.2010, as earlier directed by the State.

[3] The solitary issue that arises for consideration in the present writ appeal – as enunciated by the appellants themselves – is that the respondents herein (the original writ petitioners) are not similarly situated persons *qua* the writ petitioners in an earlier writ petition being W.P. (C) No. 145 of 2013, and therefore, are not entitled to the benefit granted to the latter by the Hon'ble Supreme Court of India in Civil Appeal No. 2681 of 2022.

[4] We have heard the learned counsel appearing on behalf of the parties at length and perused the impugned judgment dated 14.06.2022 as well as all the relevant material available on the record of the appeal; and find ourselves unable to agree with the solitary contention urged on behalf of the appellants.

[5] At the outset, it is relevant to consider that the learned Single Judge in paragraphs 9 & 10 of the said impugned judgment, observed as follows:

"9. The respondents have not filed any counter. However, Mr. Y. Ashang, the learned Government Advocate submitted that the petitioners are not similarly situated persons and that the benefit given in W.P.(C) No.145 of 2013, affirmed by the Hon'ble Supreme Court in Civil Appeal No.2681 of 2022, cannot be extended to the petitioners.

10. Admittedly, nothing has been produced by the respondents to show that the petitioners are not similarly situated persons. On the other hand, the petitioners have proved that they are the similarly situated persons. In fact, the impugned Office Memorandum was assailed in W.P.(C) No.145 of 2013 and the learned Single Judge of this Court observed that when the issue arose for giving retirement benefits, the authorities had issued the Office Memorandum dated 24.12.2011 depriving certain retiral benefits which are mentioned in the Office Memorandum dated 5.5.2010 and, accordingly, the petitioners therein are entitled to the cash payment/actual benefits from 1.4.2010. More particularly, in view of the specific stipulation in the order for revision of pay dated 12.8.2011 in which it has been clearly mentioned that rules relating to family pension, gratuity and encashment of leave, ex-gratia compensation, provident fund and new pension scheme now in force etc. as applicable to other State Government employees shall be applicable to the teachers/non-teaching staff whose pay scales are fixed under the said order dated 12.8.2011."

A plain reading of the afore extracted paragraphs, which is uncontroverted on the record, clearly and unequivocally, permits only but one conclusion that, no material whatsoever, was produced or placed on the record by the appellants before us, in support of their bald assertion that, the respondents in the present writ appeal were not persons similarly situated as the writ petitioners in W.P. (C) No. 145 of 2013. On the other hand, the respondents herein

demonstrated from the official record that rules relating to family pension, gratuity and encashment of leave, ex-gratia compensation, provident fund and new pension scheme, as applicable to other similarly situated employees, were *ex debito justitiae* applicable to them.

[6] Furthermore, the learned Single Judge observed in paragraphs 11, 12, 13, 14 & 15 of the impugned judgment as follows:

"11. The petitioners contended that since the revision of pay scale dated 12.8.2011 stipulates that insofar as the pensionary benefits, same will be as enjoyed by other employees of the State Government and since the Office Memorandum dated 5.5.2010 specifically mentioned the effective dates of the benefits to be enjoyed by the employees of the State Government, the same should also be made applicable to the petitioners, which, however, has not been done by the respondent authorities while issuing the Office Memorandum dated 24.12.2011.

12. While restoring and affirming the order of the learned Single Judge dated 30.10.2015 passed in W.P.(C) No.145 of 2013, the Hon'ble Supreme Court held as under:

"16. We are unable to agree with the main reasoning of the Division bench that by giving the appellants the benefit of revised pension with effect from 1st April 2010 an anomalous situation would arise as serving staffs of higher educational institutions could be getting the benefit of such revision from 1st November 2010. The State has made conscious decision to delink the retirees from the service conditions guiding the serving staffs of the concerned institutions and placed them in the retirement rules meant for those in the Manipur State Service. In such a situation, we do not think the anomaly pointed out in the judgment under appeal could be the guiding factor for fixing the date of entitlement to revised pension benefits specified by the Service Rules. The Office Memorandum of 24th December 2011 though projected as an instrument to clarify a subsisting anomaly to an Office Memorandum having statutory strength, in reality encroaches upon acquired or vested right of the retirees to get such benefit from 1st April 2010. Such "clarificatory order" cannot be permitted to override an Order having statutory strength. We accordingly hold that the appellants shall be entitled to receive revised pension with effect from 1st April 2010, considering the provisions of Clause 7 of the order dated 12th August 2011. The Office Memorandum of 24th December 2011

would not have any binding effect so far as entitlement of the appellants to receive revised pension from 1st April 2010 is concerned.

17. Under the circumstances, the judgment under appeal is set aside. We restore and affirm the judgment of the Single Judge dated 30th October 2015.

18. The appeal is accordingly allowed."

13. As stated supra, the challenge in the instant writ petition is to quash the Office Memorandum dated 24.12.2011 and to direct the respondents to pay the revised pension with effect from 1.10.2009 instead of 1.11.2010 in case of the petitioners 1 to 3 and with effect from 1.3.2010 in case of the petitioners 14 to 16 and with effect from 1.7.2010 in case of the petitioner No.17 and with effect from 1.10.2009 to the petitioners 18 and 19 instead of 1.11.2020.

14. Since the Hon'ble Supreme Court in its judgment in Civil Appeal No.2681 of 2022 dated 31.3.2022 held that the impugned Office Memorandum dated 24.12.2011 would not have any binding effect so far as entitlement of the appellants in that case to receive the revised pension from 1.4.2010, the decision of the Hon'ble Supreme Court would squarely applies to the case on hand. That apart, no more discussion in regard to the impugned Office Memorandum dated 24.12.2011 is required as the Hon'ble Supreme Court held that the said Office Memorandum cannot be permitted to override an order having statutory strength.

15. Applying the judgment of the Hon'ble Supreme Court in Civil Appeal No.2681 of 2022 dated 31.03.2022 to this case as the petitioners are similarly situated persons as that of the appellants in the said Civil Appeal, the impugned Office Memorandum dated 24.12.2011 is liable to be set aside."

A plain reading of the above extracted paragraphs considered in conjunction with the judgment and order dated 31.03.2022 rendered by the Hon'ble Supreme Court of India in Civil Appeal No. 2681 of 2022; and in particular, paragraphs 10, 11, 12, 13, 14, 15 & 16 thereof, leads to but one inescapable conclusion that, in so far as the writ petitioners therein were concerned, once their migration to the regime of 2010 Rules was accepted, their entitlement to revised pension from the date applicable to the State Government employees, i.e., the date on which they were entitled, could not have been excluded by the order of

12.08.2011, strongly relied upon by the appellants. As a result, the respondents in the present appeal, who are similarly situated are *a fortiori* entitled to receive revised pension on the ground of parity.

[7] In view of the foregoing discussion and having regard to the binding judgment of the Hon'ble Supreme Court dated 31.03.2022, we find ourselves in complete agreement with the conclusion arrived at by the learned Single Judge *vide* the order dated 14.06.2022 impugned before us, and find no warrant to interfere with the same.

[8] The writ appeal is accordingly dismissed.

[9] The appellants are directed to comply with the directions issued by the learned Single Judge in paragraph 16 of the impugned judgment and order dated 14.06.2022 forthwith.

Pending applications, if there are any, stand disposed of accordingly.

Sandeep

JUDGE

CHIEF JUSTICE