

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

WP(C) No. 136 of 2022

Smt. Lairenjam Chaobi Devi

... Petitioner/s

Vs.

State of Manipur & 4 ors.

... Respondent/s

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

09-08-2023

Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. Kh. Nirmala, learned counsel appearing for the petitioner ; Mr. A. Vashum, learned GA appearing for respondent Nos. 1 to 4 and Mr. S. Suresh, learned counsel for respondent No. 5.

[2] The present writ petition had been filed with a prayer for directing the respondents to release the pension due payable to the petitioner by calculating the amount of pension on the basis of the scale of pay of the post of Head Mistress of Government Junior High School last held by the petitioner on ad-hoc basis. The case of the petitioner is that the petitioner was appointed substantively to the post of Arts Graduate Teacher and that by an order dated 17-07-1999 issued by the Commissioner (Education/S) Government of Manipur, the petitioner along with other were appointed as Head Masters/Mistress of Junior High School on ad-hoc basis. After her

WP(C) No. 136 of 2022

appointment as Head Mistress on ad-hoc basis the petitioner was allowed to continue as an ad-hoc Head Mistress of Junior High School for about 20 (twenty) years till she retire from service on attaining the age of superannuation w.e.f. 29-02-2020. Mr. Kh. Tarunkumar, learned senior counsel submitted that by virtue of the order dated 17-07-1999 issued by the Government appointing the petitioner as Head Mistress of Junior High School, she was allowed to continue and discharge her duties as Head Mistress of the Junior High School and the petitioner was allowed to enjoy the higher scale of pay attached to the said post for about 20 years till she retire from service on attaining the age of superannuation. It has also been submitted that taking into consideration the long service rendered by the petitioner in the capacity of Head Mistress and allowing her to enjoy the higher scale of pay, the petitioner is entitled to receive her pension by calculating the amount of pension on the basis of the last pay drawn by the petitioner in the capacity of ad-hoc Head Mistress of Junior High School. It has also been submitted by the learned senior counsel appearing for the petitioner that because of the pendency of the present writ petition, the authorities have not released any pension due payable to the petitioner since the date of her retirement and the petitioner is facing a lot of difficulties due to non payment of her pension and other retirement benefits.

[3] Relying on two Supreme Court judgments, in the case of **Arun Kumar Chatterjee –vrs.- South Eastern Railway & ors. Reported in (1985) 2 SCC 451** and **Baleshwar Dass & ors. –vrs.- State of U.P. & ors reported in 1980(4) SCC 226**, it has been submitted by the learned counsel that in view of the law laid down by the Hon’ble Apex Court in the said two cases, the petitioner is entitled to receive her pension in the pay scale of Head Mistress of the Junior High School. For easy reference, the relevant portions of the said two judgments are reproduced hereunder :-

“(1) 1985(2) 451, Arun Kumar Chatterjee –vrs.- South Eastern Railway & ors. wherein at paragraph No. 11 of the said judgment, it is held as under :

“11. Rule 18 prescribes seniority in the different grades as on the appointed day. Sub-rule(1) indicates that relative seniority shall be as already determined on that day and if there had been no such determination the same has to be determined by the Department of Personnel and Administrative Reforms. Sub-rule(2) provides that all permanent officers included in the initial constitution of a grade shall rank senior to all persons substantively appointed to that grade after the appointed day and all temporary officers included in the initial constitution of a grade under Rule 8 shall rank senior to all temporary officers appointed to that grade after the appointed day. Rule 18, sub-rule (3) makes provision for the rule in the matter of fixation of inter se seniority for the Assistants’ Grade. Direct recruits are to rank inter se in

the order of merit in which they are placed in the competitive examination on the result of which recruitment is effected. Recruits of an earlier examination are to rank senior to those of a later examination. Persons appointed substantively to the grade from the select list for that grade shall rank inter se according to the order in which they are so appointed and the inter se seniority between direct recruits and persons substantively appointed to the grade for that grade shall be regulated in accordance with the provision made in the Fourth Schedule.”

(2) 1980(4) SCC 226, Baleshwar Dass & ors. –vrs.- State of U.P. & ors, wherein the Honb’le Apex Court held at paragraph Nos. 31 to 33 as under:

“31. What, in the context, is a substantive capacity vis-a-vis an appointment to a post? In our view, the emphasis imparted by the adjective "substantive" is that a thing is substantive if it is "an essential part or constituent or relating to what is essential". We may describe a capacity as substantive if it has "independent existence" or is of "considerable amount or quantity". What is independent in a substantial measure may reasonably be described as substantive. Therefore, when a post is vacant, however designated in officialese, the capacity in which the person holds the post has to be ascertained by the State. Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. To approximate to the official diction used in this connection, we may well

say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation.

“32. Once we understand 'substantive capacity' in the above sense, we may be able to rationalise the situation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been approved, one may well say that the post was held by the incumbent in a substantive capacity.

“33. Government will ascertain from this angle whether the capacity in which posts have been held was substantive or temporary. If it is not, the further point to notice is as to whether the appointments are regular and not in violation of any rule, whether the Public Service Commission's approval has been obtained and whether probation, medical fitness etc., are complete. Once these formalities are complete the incumbents can be taken as holding posts in substantive capacities and the entire officiating service can be considered for seniority. For other purposes they may remain temporary. It may well be that another interpretation may make Rule 23 vulnerable. If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label

and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations.”

[4] Mr. A. Vashum, learned GA and Mr. S. Suresh, learned counsel appearing for the respondents submitted that under the provisions of the Pension Rules and the FR & SR, the amount of pension of a retired employee is to be calculated only on the basis of the last pay drawn by the said incumbent who is holding a post on substantive or officiating basis. The learned counsel further submitted that there is no provision under the relevant Rules for calculating the amount of pension on the basis of a pay drawn by the incumbent who is holding the said post on ad-hoc basis. The learned counsel, accordingly, submitted that as the petitioner is holding the post of Head Mistress of the Junior High School only on ad-hoc basis, she is not entitled to enjoy the pension in the pay scale of Head Mistress of Junior High School and she is only entitled to enjoy her pension in the pay scale of her substantive post which is Arts Graduate Teacher.

[5] I have heard the rival contentions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In the present case, the petitioner is claiming

for releasing her pension calculated on the pay scale of a Head Mistress of a Junior High School, which the petitioner was holding only on ad-hoc basis. At the time of hearing the present writ petition, the learned senior counsel appearing for the petitioner has failed to point out before this Court any provision of law or authorities which permitted for giving the pension of an employee on the basis of the pay scale of the post which the said incumbent last held on ad-hoc basis. I have also carefully perused the two case laws cited by the learned counsel for the petitioner and on perusal of the same, this Court is of the considered view that the facts and circumstances as well as the provision of law laid down by the Hon'ble Apex Court in the said two judgments are totally different from the facts and circumstances of the present case and the said two case laws are not applicable in the present case, inasmuch as, the said two judgments are not an authority for allowing payment of pension of an employee, who has holding a post of ad-hoc basis.

[6] Taking into consideration the facts and circumstances of the present case as well as the applicable provisions of law, this Court is not inclined to grant the relief sought for by the petitioner in the present case. However, since the petitioner was serving as an Arts Graduate Teacher on regular basis and she has retired from service on attaining the age of

superannuation w.e.f. 29-02-2020 and as the petitioner has not been given any pension and retirement benefits since her retirement for the last about 3(three) years, this Court is of the considered view that in the interest of justice, the present writ petition can be disposed of by directing the respondents to release the pension and other retirement benefits due payable to the petitioner in the capacity of a Graduate Teacher within a period of three months from the date of receipt of a certified copy of this order, if the same have not already released by the authorities.

Ordered accordingly.

With the aforesaid direction, the present writ petition is disposed of.

JUDGE

Dhakeshori