

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

WA No. 55 of 2023

Ref:- WP(C) No. 304 of 2020

1. The State of Manipur, represented by the Principal Secretary/Secretary, Tribal Affairs and Hills Department, Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Imphal West – 795001.
2. The Director, Tribal Affairs and Hills Department, Government of Manipur, Babupara, Opposite C.M. Bungalow, P.O. & P.S. Imphal, Imphal West – 795001.

.... Appellants

-Versus-

1. Shri Kh. Jilla Singh, aged about 62 years, S/O. (Late) Kh. Angou Singh, a resident of Haobam Marak Irom Leikai, P.O. Imphal, P.S. Singjamei, Imphal West District, Manipur – 795001.

... Respondent/Writ Petitioner

2. The Principal Secretary/Commissioner (Finance), Government of Manipur, Secretariat Building, P.O. & P.S. Imphal, Imphal West – 795001.
3. The Accountant General, Manipur, Babupara, P.O. & P.S. Imphal, Imphal West – 795001.

... Proforma Respondents

For the appellants	::	Mr. Th. Vashum, GA
For the Respondents	::	Mr. L. Raju, Advocate Mr. L. Gunindro, Advocate
Date of Hearing and and Judgment & Order	::	07.08.2023

JUDGMENT AND ORDER

(ORAL)

(M.V. Muralidaran, Acting CJ)

Heard Mr. Th. Vashum, learned Government Advocate for the appellants; Mr. L. Raju, the learned counsel for the first respondent/original writ petitioner and Mr. L. Gunindro, the learned counsel for the respondent Accountant General.

2. This writ appeal has been filed against the order of the learned Single Judge dated 30.8.2022 in W.P.(C) No.304 of 2020.

3. Assailing the impugned order of the learned Single Judge, Mr. Th. Vashum, the learned Government Advocate appearing for the appellants submitted that the learned Single Judge, without properly examining the relevant facts of the case and law, has passed the impugned order. The learned Government Advocate would submit that in the counter-affidavit filed by the State, it has been clearly mentioned that the departmental enquiry against Shri Pheijao Singh (Deputy Director, TAH) and Shri Kaikho Mao (retired Joint Director, TAH) was initiated under

Government Order dated 7.12.2021 in connection with the fraudulent withdrawal of money of the Department and Shri Pheijao Singh has identified the original writ petitioner, a retired Executive Engineer, TA & Hills that he has taken an advance money to the tune of Rs.2,24,90,000/- from the department fraudulently.

4. According to the learned Government Advocate for the appellants, the counter-affidavit specifically states that the original writ petitioner was very much involved in the fraudulent withdrawal of the public money and therefore, the leave encashment/earned leave for 300 days available at his credit cannot be sanctioned till the disposal of the departmental enquiry. However, ignoring the aforesaid averments set out in the counter-affidavit of the appellants, the learned Single Judge disposed of the writ petition whereby directing the appellants to take action for releasing the benefits due payable to the original writ petition for the unutilized earned leave of 300 days as early as possible. According to learned Government Advocate, the learned Single Judge ought not to have passed such direction and, therefore, the same needs interference.

5. Per contra, Mr. L. Raju, the learned counsel for the first respondent/original writ petitioner submitted that the original writ petitioner retired on 31.12.2018 after attaining the superannuation and after retirement, he becomes pensioner with effect from 1.1.2019 and pension payment order was also issued. Only after thorough examination of the

pension papers of the original writ petitioner, the pension payment order was issued on 28.5.2019 to the Accountant General (A&E) and the original writ petitioner was also paid pension commuted amounting to Rs.6,14,550/-. In fact, the Accountant General (A&E) has issued an order on 18.7.2019 to the Under Secretary (TA & Hills) for necessary sanction and release of unutilised earned leave in favour of the original writ petitioner. However, the appellants have failed to release the leave encashment/unutilised earned leave for 300 days in favour of the original petitioner, which necessitated the original writ petitioner in filing the writ petition.

6. Mr. L. Raju, the learned counsel for the first respondent/original writ petitioner further submitted that the learned Single Judge, only after examination of the material papers on record, has rightly directed release of the benefits due to the original petitioner for the unutilised earned leave for 300 days. Since the said finding of the learned Single Judge is based on record, the same need not be interfered with. Thus, prayed for dismissal of the appeal.

7. Heard the submissions of learned counsel for the respondent Accountant General (A&E).

8. We have considered the rival submissions and also perused the materials available on record.

9. It is not in dispute that the first respondent/original writ petitioner was serving as Executive Engineer of TA & Hills Department and retired on superannuation on 31.12.2018. After retirement, pension payment order was also issued in favour of the original writ petitioner. The fact remains that the pension book, particularly at Part-I of PPO No.111915749 was also signed by the Senior Accounts Officer (Pension) of the Account General, Manipur and endorsed by the Deputy Director/DDO of Tribal Affairs & Hills, Manipur. After the process of pension papers, the original writ petitioner was also paid pension commuted amount to the tune of Rs.6,14,550/- and gratuity of Rs.10.00 lakh. He was also paid monthly pension. On 18.7.2019, the Accountant General had issued a letter to the Under Secretary (TA & Hills) for necessary sanction and release benefits of unutilised earned leave.

10. The appellants now contended that despite the plea of the appellants in the counter-affidavit that the first respondent/original writ petitioner has taken the advance money to the tune of Rs.2,24,90,000/- from the department fraudulently, the learned Single Judge erred in directing the appellants to release the benefits for the unutilised earned leave for 300 days. According to the learned Government Advocate, the said finding/direction of the learned Single Judge is erroneous.

11. We have gone through the order of the learned Single Judge, impugned herein. In paragraph (5), the learned Single Judge observed as under:

“[5] It is submitted at the bar by the learned counsel for the petitioner as well as by the learned Government Advocate that as on today, no Departmental Enquiry is pending against the petitioner. Mr. L. Raju, learned counsel for the petitioner submitted that in the judgment and order dated 29-03-2022 passed by a Division Bench of this court in W.A. No. 17 of 2020, similar issue had been decided and that the said judgment and order squarely covers the issue raised in the present case. The learned counsel, accordingly, submitted that the present writ petition can be disposed of in terms of the directions and observations given by the Division Bench in the aforesaid judgment. The relevant portion of the judgment and order reads as under:-

"[22] In the light of statutory scheme obtaining under the State's Pension Rules and the case law set out supra, it is clear that the authorities have no power to withhold gratuity and pension even during the pendency of disciplinary/judicial proceedings in the event the Government servant is allowed to retire as there is no provision in the rules extant akin to Rule 43(c) of the Bihar Pension Rules or Rule 34.2 of the Conduct, Discipline and Appeal Rules. As per Rule 9, which is applicable presently, it is only after the conclusion of disciplinary/ judicial proceedings and the rendering of a finding of guilt

therein against a Government servant that the question of withholding his/her gratuity and pension would arise. As already noted supra, it cannot even be deemed at this stage that any department or judicial proceedings have been instituted against respondent No. 1. However, serious the allegation or misconduct may be, without the sanction of law and a legal foundation for such punitive action, it is not open to the authorities to withhold the lawful benefits due and payable to a retired employee on the ground that he or she may, thereafter, be found guilty of causing pecuniary loss to the Government, Bereft of such legal sanction, the action of the authorities in withholding pension and gratuity cannot be countenanced."

"[23] Further, as noted hereinbefore, it would be open to the State to recover the amount of loss determined as payable by a public servant after a finding of guilt, even after retirement, be it from the salary and entitlements payable to the public servant or from his/ her other incomes, either through institution of a civil suit or by any other means available in law. Therefore, it is not as if the Government would be remediless if the proceedings culminate in such a finding notwithstanding the retirement of respondent No. 1 and payment of her retirement benefits."

"[24] On the above analysis, this Court finds that, as on date, no department or judicial proceedings

even exist or can be deemed to exist against respondent No. 1, whereby recourse, however shaky, can at least be attempted to some basis for withholding her pension and gratuity. In the absence of legal sanction, the action of the State authorities in resorting to withholding her pension and gratuity cannot be said to be lawful. The direction of the learned Judge to release such benefits therefore does not warrant interference. In the event judicial proceedings initiated against respondent No. 1, if any, culminate in a sustainable finding of her guilt in relation to the missing Rs.1. 21 Crore, it would be open to the authorities to take recourse to the remedies available to them in law for recovering such financial loss from respondent No. 1.

Subject to this observation, the writ appeal is dismissed.

The appellants shall implement the order under appeal within one month from the date of receipt of this judgment and order."

12. After observing so, the learned Single Judge, in paragraph (6), has stated as under:

"[6] Mr. A. Vashum, learned Government Advocate fairly submitted that he has received instruction from the concerned authorities that as on today, no Departmental Enquiry is pending against the petitioner

and the learned Government Advocate submitted that any appropriate order may be passed by this court.”

13. When the learned Government Advocate himself who appeared before the learned Single Judge fairly submitted that he has received instruction from the concerned authorities that as on that date, no departmental enquiry is pending against the original writ petitioner and the Court may pass appropriate orders, the question of challenging the impugned order of the learned Single Judge is highly misconceived. Therefore, we are of the view that the argument of the learned Government Advocate that the learned Single Judge has misinterpreted the counter-affidavit of the appellant State cannot be appreciated.

14. Further, in paragraph (5) of the impugned order, the learned Single Judge recorded that *“it is submitted at the bar by the learned counsel for the petitioner as well as by the learned Government Advocate that as on today, no Departmental Enquiry is pending against the petitioner”*. When the learned Government Advocate appeared in the writ petition himself, on instructions, conceded that no departmental enquiry is pending against the original writ petitioner, now the appellants cannot do a volte-face and state that the original writ petitioner was very much involved in the fraudulent withdrawal of the public money. The argument of the learned Government Advocate that departmental enquiry is pending against the first respondent/ original writ petitioner cannot be appreciated.

15. From the pleadings of the parties and the arguments advanced by the respective counsels, it is clear that as on date, no departmental proceedings exists or can be deemed to exist against the original writ petitioner. As stated supra, under the communication dated 18.7.2019, sanction was accorded to release the unutilised earned leave in favour of the original writ petitioner.

16. After recording the arguments of the learned counsel for the respective parties and having gone through the entire materials placed on record, the learned Single Judge, in paragraphs (7) and (8), held as under:

“[7] After hearing the submissions of the learned counsel appearing for the parties and on perusal of the record of the present case, this court is of the considered view that as no Departmental Enquiry is pending against the petitioner, the State Government is not justified in withholding the leave encashment/ unutilized earned leave of 300 days due payable to the petitioner. This court is also of the considered view that the judgment and order dated 29-03-2022 passed by a Division Bench of this court in W.A. No. 17 of 2022 squarely covers the issue raised in the present writ petition.

[8] In view of the above, the present writ petition is disposed of by directing the respondents to take necessary action for releasing the benefits due payable to the petitioner for the unutilized earned leave of 300

days as early as possible preferably within a period of three months from today.

With the aforesaid directions, the present writ petition is disposed of.”

17. The findings and the direction of the learned Single Judge to release the benefits due payable to the original writ petitioner for the unutilised earned leave of 300 days do not warrant interference, in view of the acceptance made by the learned Government Advocate before the learned Single Judge that no departmental enquiry is pending against the first respondent/original writ petitioner. At the bar when the learned Government Advocate, on instructions, submitted that no departmental enquiry is pending against the original writ petitioner, it is unfair on the part of the appellants now to question the correctness of the order of the learned Single Judge. Moreover, withholding of the benefits payable to the original writ petitioner for the unutilised earned leave of 300 days is contrary to the statement made across the bar before the learned Single Judge. The present appeal has been filed only for statistical purpose and no valid grounds have been made out to interfere with the order of the learned Single Judge.

18. Since the order of the learned Single Judge is well considered and based on the submissions made by the respective counsels, particularly, the learned Government Advocate appearing for the

appellants, coupled with the materials produced, we find no infirmity in the order of the learned Single Judge. The writ appeal fails and the same is liable to be dismissed as there is no merit in it.

19. In the result, the writ appeal is dismissed. The respondents in the writ petitions are directed to comply with the order of the learned Single Judge expeditiously, preferably within a period of three months from the date of receipt of a copy of this judgment. There will be no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil