

IN THE HIGH COURT OF MANIPUR : AT IMPHAL**W.P.(C) No. 698 of 2019**

Smt. JahedaBibi, aged about 56 years, W/o (L) Md. GulAhamad, a resident of KeiraoMakhaLeikai, P.O. Singjamei& P.S. Irilbung, District–Imphal East, Manipur.

... Petitioner

-Versus-

1. The State of Manipur represented by the Principal Secretary/Commissioner (MID), Government of Manipur, P.O& P.S. Imphal, Imphal West District, Manipur (Secretariat Old) – 795001.
2. The Chief Engineer, Minor Irrigation Department, Government of Manipur at Lamphelpat, P.O& P.S. Lamphel, District – Imphal West, Manipur-795004.
3. The Principal Secretary (Finance), Government of Manipur, P.O& P.S. Imphal, Chief Minister's Secretariat at Babupara, Imphal West District, Manipur – 795001.

... Respondents

B E F O R E

HON'BLEMR. JUSTICE AHANTHEMBIMOL SINGH

For the petitioner	:: Mr.Ch. Robinchandra, Advocate
For the respondents	:: Mr.Th. Sukumar, Government Advocate
Date of Hearing	:: 20-10-2022
Date of Judgment & Order	:: <u>10-01-2023</u>

JUDGMENT & ORDER

Heard Mr.Ch.Robinchandra, learned counsel appearing for the petitioner and Mr.Th. Sukumar, learned GA appearing for the respondents.

[2] The present writ petition had been filed with a prayer for directing the respondents to confirm the Work-charged service of the petitioner's husband (L) Md. GulAhamad, who was serving as Work-charged Khalasi in the Minor Irrigation Department (MI), Manipur so as to enable the petitioner to avail family pension as provided under the **Terminal Benefit for Work-charged Staffs of PWD/IFCD/PHED/MI and Electricity Rules, 1978.**

[3] By an order dated 01-12-1989 issued by the Superintending Engineer, Minor Irrigation Department, Manipur, the petitioner's husband (L) Md. GulAhamad was appointed as Work-charged Khalasi along with 29 other persons in the Minor Irrigation Department, Government of Manipur. The petitioner's husband expired on 24-02-2003 while serving as a Work-charged Khalasi in the Minor Irrigation Department, Government of Manipur and at the time of his death, the petitioner's husband had rendered more than 13 years service as a Work-charged Khalasi. After the death of her husband, the petitioner approached the concerned authorities to grant family pension and other retirement benefits due payable to her under the relevant Rules. However, the authorities did not consider the claim of the petitioner for payment of family pension and other retirement benefits to the family members of the deceased work-charged employee.

[4] Under the amended Rules 6(A) of the Terminal Benefits for Work-Charged Staffs of PWD/IFCD/PHED/MI and Electricity Rules, 1978 (herein referred to as 'Terminal Benefit Rules' for short), it is provided as under :-

“6(A) – Family Pension as calculated under the Manipur Civil Services (Pension) Rules, 1977, as amended from time to time, shall also be applicable to the family of the deceased of the Work-charged employee subject to the following conditions :-

- (i)** The benefit shall be available to the family of any permanent work-charged employee who died on or after 21-06-1990 after rendering not less than 1(one) year of service after confirmation.
- (ii)** The payment of Family Pension shall be effective from 21-05-1993 and no arrears in cash or otherwise for the period from 21-06-1990 to 21-05-1993 shall be paid”.

[5] On 22-01-2001, the Principal Secretary (Finance), Government of Manipur issued an Office Memorandum laying down the criteria for confirmation of Work-charged employees. In the said Office Memorandum dated 22-01-2001, it is provided that –

- (i)**confirmation of Work-charged employees should be made against the permanent posts in the Work-charged Establishment.
- (ii)** Confirmation of Work-charged employees may be made only when they have put in 10 years service as Work-charged with the effect of confirmation from the date, they have completed 5 years service in the Work-charged Establishment and

(iii) No, confirmation of those Work-charged employees who have been brought to the regular Establishment, with Retrospective effect, should be made.

[6] As the petitioner's husband had already rendered more than 10 years service as Work-charged Khalasi in the Minor Irrigation Department, Manipur before his expiry, he was entitled to have his Work-charged service confirmed by the authorities as provided under the aforesaid Office Memorandum dated 22-01-2001 issued by the Finance Department. As the authorities have failed to consider the case of the petitioner's husband for confirmation of his Work-charged service during his lifetime, the petitioner is approaching this Court by filing the present writ petition with a prayer for directing the respondents to confirm the work-charged service of her late husband so as to enable the petitioner to avail family pension and other retirement benefits under the Terminal Benefit Rules.

[7] Mr. Ch. Robinchandra, learned counsel appearing for the petitioner submitted that the services of many work-charged employees, who were similarly situated as the petitioner's husband, including some work-charged employees of the Minor Irrigation Department, who were appointed along with the petitioner's husband by the same order as work-charged employees, have been confirmed by the authorities in terms of the Office Memorandum dated 22-01-2001 issued by the Finance Department, Government of Manipur after their expiry or retirement. It has also been submitted that as the

petitioner's husband is qualified and entitled to have his work-charged service confirmed in terms of the said Office Memorandum dated 22-01-2001 and as the case of the petitioner's husband is similarly situated with those other work-charged employees, whose services have been confirmed by the authorities, the petitioner is entitled to get the relief sought for in the present writ petition.

[8] Mr. Th. Sukumar, learned Government Advocate appearing for the respondents submitted that the Secretariat, Finance Department issued an Office Memorandum dated 28-08-2007 laying down certain procedures for confirmation of work-charged employees, which are as under :-

“(1) Departments will notify the actual number of permanent posts in the Work-charged establishment in consultation with Finance Department (PIC)

“(2) Having regard to Para 9.01 of the CPWD Manual Vol. III, confirmation of a serving work-charged employee for all purposes shall be made against an available vacant permanent post in the Work-charged Establishment only in respect of those who have put into 10 years' service in the Work-charged Establishment. The confirmation shall be effective from the date of completion of 5 years' service in the Work-charged Establishment or from the date of vacancy of the permanent post, whichever is later. The procedure for confirmation as outlined in Office Memorandum No. 17/1/2003-FD(PIC)Pt., dated 13-04-2006 shall compulsorily be followed.

“(3) No retrospective confirmation shall be made after retirement or expiry of the employee.

“(4)DPC for confirmation of Work-charged employee shall meet twice in a year, say, January and July and orders for confirmation shall be issued at six months intervals after fulfilment of all necessary conditions.”

[9] It has been submitted by the learned Government Advocate that under the new Office Memorandum, it has been clearly laid down that no retrospective confirmation shall be made after retirement or expiry of the employee. It has also been submitted that all the Government orders by which the services of many work-charged employees had been confirmed retrospectively after their retirement or expiry have been issued before issuance of the aforesaid new Office Memorandum dated 28-8-2007 and since the work-charged service of the petitioner's husband was not confirmed earlier before issuance of the new Office Memorandum dated 28-08-2007, the claim of parity made by the petitioner is unfounded and not sustainable, inasmuch as, under the new Office Memorandum dated 28-08-2007, it has been clearly provided that no retrospective confirmation shall be made after retirement or expiry of the employee. Learned Government Advocate, accordingly, submitted that the present writ petition is without any merit and the same is liable to be dismissed.

[10] I have heard the contentions of the learned counsel appearing for the parties and carefully examined the materials available on record. In the present case, the husband of the petitioner was appointed as work-charged Khalasi along with 29 other incumbents in

the Minor Irrigation Department, Government of Manipur, by an order dated 01-12-1989 and the petitioner's husband expired on 24-02-2003 while serving as work-charged Khalasi. At the time his death, the petitioner's husband had rendered more than 13 years service as a work-charged employee and accordingly, he was qualified, eligible and entitled to have his work-charged service confirmed as provided under Office Memorandum dated 22-01-2001. The respondents have not denied the fact that the services of many work-charged employees, who were appointed along with the petitioner's husband on the same date and who were similarly situated with the petitioner's husband, have been confirmed retrospectively either after their retirement or expiry by issuing various orders and even by creating supernumerary posts.

[11] In view of the above, this Court did not find any ground or reason for holding that the case of the petitioner's husband is different and that the petitioner is not entitled to the relief claimed by her in the present writ petition.

[12] The only objection raised by the respondents to the claim made by the petitioner in the present case is that since there is a prohibition under the new Office Memorandum dated 28-08-2007 to the retrospective confirmation of the work-charged employee after his retirement or expiry and since the petitioner's husband had already expire on 24-02-2003 before confirmation of his work-charged service,

the claim made by the petitioner in the present writ petition cannot be granted.

[13] In this regard, it is to be pointed out that the new Office Memorandum dated 28-08-2007 which prohibits retrospective confirmation of the services of a work-charged employee after his retirement or expiry took effect from the date of the said office memorandum and accordingly, any provisions therein cannot operate retrospectively. Moreover, the earlier Office Memorandum dated 22-01-2001, under which the petitioner is claiming for confirmation of her late husband's work-charged services, has not been cancelled or superseded till today. Accordingly, this Court is of the considered view that any right or benefit accrued to the petitioner's husband under the earlier office memorandum cannot be denied or curtailed by the respondents specially when the respondents failed to consider the case of the petitioner's husband for confirmation of his service during his lifetime or prior to the issuance of the new office memorandum dated 28-08-2007. In short, the petitioner's husband or the petitioner, as the case may be, cannot be victimised for the fault of the respondents.

[14] As held herein above, this Court did not find any ground or reason to hold that the case of the petitioner's husband is different from the other work-charged employees whose services have been confirmed in terms of the earlier office memorandum dated 22-01-2001 retrospectively after their retirement or expiry, hence, this Court is of

the considered view that the acts of the respondents in refusing to grant the relief sought for by the petitioner in the present writ petition, specially only on the ground mentioned herein above, is very much arbitrary, unreasonable and discriminatory, accordingly, this Court is of the considered view that petitioner is entitled to the relief sought for in the present writ petition. In the result, the writ petition is allowed by directing the respondents to consider the case of the petitioner's husband for confirmation of his work-charged services as provided under the office memorandum dated 22-01-2001 and to issue necessary orders within a period of 2(two) months from the date of receipt of a copy of this order.

[15] The respondents are further directed to consider the claim of the petitioner for granting family pension and other retirement benefits due payable to her under the Terminal Benefit Rules as early as possible but not later than 4(four) months from today.

[16] With the aforesaid directions, the present writ petition is disposed of. In the facts and circumstances of the present case, parties are directed to bear their own costs.

JUDGE

Dhakeshori

FR/NFR