

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

WP(C) No. 809 of 2018

Shri Ksh. Ranjit Singh, aged about 65 years, S/o (Late) Ksh.
Jugeshor Singh, a resident of Kangjabi Leirak, Meinam Leikai,
P.O. Lamphel, Imphal West District, Manipur – 795001.

... PETITIONER

-VERSUS-

1. The State of Manipur, represented by the
Commissioner/Secretary (Finance), Government of Manipur,
Old Secretariat Complex, Babupara, Imphal- 795001.
2. The Director, Treasuries & Accounts, Government of Manipur,
Imphal, D.C. Complex, Lamphel, Pin No. 795004.
3. The Joint Secretary (Pension Cell), Government of Manipur,
Imphal, New Secretariat Building, Babupara, Pin No. – 795001.
4. The Accountant General, Manipur, P.O. & P.S. Imphal, District
Imphal West, Manipur, Babupara, Pin No. 795001.

... RESPONDENTS

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN**

For the Petitioner	::	Mr. A. Mohendro, Adv.
For the Respondents	::	Mr. Sh. Shyam Sharma, GA Mr. S. Suresh, Advocate
Date of Hearing and reserving Judgment & Order	::	14.08.2023
Date of Judgment & Order	::	23.08.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. A. Mohendro, learned counsel for the petitioner; Mr. Sh. Shyam Sharma, the learned Government Advocate for the respondent State and Mr. S. Suresh, the learned counsel for the fourth respondent.

2. This writ petition has been filed by the petitioner to quash the impugned memorandum dated 4.4.2017 and to direct the respondents to give effect the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 for cash payment from 1.9.2011 to the petitioner at par with the date of cash payment for the Head Clerk.

3. Mr. A. Mohendro, the learned counsel for the petitioner submitted that the petitioner was initially appointed as Lower Division Clerk on 12.11.1976 and further appointed to the post of Upper Division Clerk in the Directorate of Treasuries and Accounts, Government of Manipur. From the post of Upper Division Clerk, he was further appointed on promotion as Senior Accountant on 3.1.1991. On recommendation of the DPC, the petitioner was appointed on promotion to the post of Senior Accountant vide order dated 13.3.1995. After rendering more

than 33 years of service, the petitioner retired from service on attaining the age of superannuation on 28.2.2010.

4. The learned counsel further submitted that the petitioner's pay from Rs.5000-150-8000/- was revised to Rs.5200-20200+GP 2800 with effect from 1.1.2006. In the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 pertaining to the post of Senior Accountant, the scale of Rs.5200-20200 with GP 2800 has been revised to Rs.9300-34800 with GP 4200. The third amendment further stipulates that the said rules shall be deemed to have come into force on 1.1.2006 notionally with cash payment from 1.3.2016.

5. The learned counsel submits that while adopting the 6th Pay Commission through the Manipur Services (Revised Pay) (2nd Amendment) Rules, 2011, the Government had revised the pay scale of Head Clerk in the scale of Rs.9300-34800 with GP 4200 notionally given effect from 1.1.2006 with cash payment from 1.9.2011, whereas for the promotional post i.e. Senior Accountant, the pay is revised to Rs.9300-34800 with GP 4200/- given effect notionally from 1.1.2006 and cash payment from 1.3.2016. According to the learned counsel, the same is not tenable in the eyes of law and malafide and also derogates the

departmental hierarchy between the feeder and the promotional post.

6. The learned counsel for the petitioner submits that similar post like Head Clerk for which the nature of works and duties were similar with that of the Senior Accountant has already been revised to the pay scale of Rs.9300-34800 with GP 4200 giving effect from 1.1.2006 with cash payment from 1.9.2011. But in the case of the petitioner's post of Senior Accountant, the respondents have adopted a different yard stick in giving effect and benefit of assigning the revised pay at a much later period i.e. 1.1.2016, thereby curbing 4 years and 7 months of arrears receivable by the petitioner.

7. Mr. Sh. Shyam Sharma, the learned Government Advocate appearing for the respondent State submitted that in the Recruitment Rules of 1981 for Senior Accountant, the post of Head Clerk/Accountant/Junior Accountant/UDC were feeder. However, under ROP, 1982, the pay scale of Senior Accountant and Head Clerk is same pay scale of Rs.640-1410/- which means both feeder post and promotion post were placed in the identical pay scale. In the Recruitment Rules of 1994 for Head Clerk, the post of UDC/Accountant were feeder.

8. The learned Government Advocate further submitted that the Sub-Committee of Officers of Pay Anomaly submitted a report dated 18.12.2010, in which it recommended for upgradation of pay scale of both Head Clerk and Senior Accountant to the Grade Pay of Rs.4200 and the report of the Committee was placed before the Cabinet. The Cabinet accepted the recommendation with regard to those posts which do not require any change in the Recruitment Rules like Head Clerk and for those which require changes in Recruitment Rules like Senior Accountant, the Finance Department was to coordinate with the Department of Personnel and the concerned Administrative Department to amend the Recruitment Rules. Accordingly, for all such posts that does not require any changes in the Recruitment Rules like Head Clerk, the Finance Department issued Manipur Services (Revised Pay) (2nd Amendment) Rules, 2011 which was made effective notionally with effect from 1.1.2006 and cash payment from 1.9.2011.

9. The learned Government Advocate further submitted that in regard to the post of Senior Accountant, it was considered to keep the post of Senior Accountant equivalent to the post of Head Clerk and to merge the post of Accountants as Senior Accountant. The same was approved by policy decision

of the State Cabinet in its sitting held on 8.5.2014. The amendment of Recruitment Rules in regard to Senior Accountant was notified on 16.2.2016 and in Column 4 of the said notification, it has been stated that such pay scale shall be in force as and when the Finance Department prescribes the same under the Manipur Services (Revised Pay) Rules, 2010. Accordingly, the Finance Department notified the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 on 28.3.2016, which was made effective notionally with effect from 1.1.2006 and cash payment from 1.3.2016 in regard to the upgradation of pay scale of Senior Accountant from Rs.5200-20200+GP2800 to Rs.9300-34800+GP4200/-. The rectified pay scale of Rs.9300-34800 of Senior Accountant was conditional upon suitable amendment of Recruitment Rules of the said post and it is well given fact that the Recruitment Rules cannot be made effective retrospectively as it will amount to setting back the hands of clock in a past time.

10. The learned Government Advocate further submitted that under the order dated 14.7.1992 issued by the Commissioner (Finance), the post of Head Clerk of Treasuries & Accounts has been redesignated as Senior Accountant. As such, the question of Head Clerk being the feeder post of Senior

Accountant does not arise in the case of Treasuries and Accounts. Further, the writ petition is not maintainable without challenging the notification dated 28.3.2016.

11. Mr. S. Suresh, the learned counsel for the fourth respondent submitted that no cause has been shown against the fourth respondent and the fourth respondent has been wrongly impleaded as party respondent in the writ petition.

12. This Court considered the rival submissions and also perused the materials available on record.

13. The grievance of the petitioner is that similar post like Head Clerk for which the nature of works and duties were similar to that of the Senior Accountant, the pay has already been revised to the pay scale of Rs.9300-34800 with GP 4200 giving effect notionally from 1.1.2006 with cash payment from 1.9.2011. But in the case of the petitioner (Senior Accountant), the authority have adopted a different yardstick in giving effect and benefit of assigning the revised pay at a much later period i.e. 1.3.2016 thereby curbing 4 years and 7 months of arrears receivable by the petitioner.

14. Aggrieved by the said act of the respondent authorities, earlier the petitioner had filed W.P.(C) No.944 of

2016 alleging that the Directorate of Treasuries and Accounts supposed to have revised the pay with effect from 1.3.2016 though in case of others it has been made effective from 1.9.2011 and in case of others with different dates and thereby the persons of Directorate of Treasuries and Accounts have been treated discriminatorily.

15. By the order dated 30.11.2016, this Court disposed of the said writ petition. The operative portion of order reads thus:

“Upon hearing, it appears that the petitioner, with respect to grievance which has been raised here in the writ application, has never moved to the appropriate authority who is supposed to take decision in the matter and thereby this application is disposed of directing the petitioner to represent the matter before the appropriate authority, respondent No.1, within a period of one week so that representation be disposed of within a period of six weeks from the date of receipt of the representation.

Thus, this application stands disposed of.”

16. The petitioner has made a representation on 20.12.2016 pursuant to the order of this Court. Since the

representation of the petitioner was not disposed of, on 27.2.2017, the petitioner sent a legal notice to the Commissioner/Secretary (Finance) for compliance of the order dated 30.11.2016. Due to the non-compliance of the order dated 30.11.2016 passed in W.P.(C) No.944 of 2016, the petitioner had filed Contempt Case No.121 of 2017. Pending Contempt Case, the respondent authorities issued the impugned Memorandum dated 4.4.2017 and recording the Memorandum, the Contempt Case was closed.

17. It would be appropriate to quote the impugned Memorandum dated 4.4.2017:

“No.34/1/2015-FD(PIC)(5): The representation dated 20.12.2016 submitted by Shri Ksh. Ranjit Singh addressed to the Commissioner/Secretary (Finance), Govt. of Manipur requesting for giving effect the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 for cash payment from 1st September, 2011 at par with the date of cash payment for the Head Clerk and to calculate the retirement pension and other benefits was considered and examined by the Government.

The decision of the Government regarding effective dates were indicated in the

Notification No.34/1/2015-FD(PIC)(5) dated 28.3.2016 issued by the Finance Department (PIC).

Accordingly, his representation dated 20.12.2016 is disposed of in compliance of the order dated 30.11.2016 passed in W.P.(C) No.944 of 2016 by the Hon'ble High Court of Manipur."

18. From the impugned Memorandum, it is clear that while disposing of the representation of the petitioner, the authority held that the effective dates were indicated in the Notification dated 28.3.2016 issued by the Finance Department.

19. According to the learned Government Advocate, the writ petition without challenging the Notification dated 28.3.2017 is not maintainable. Admittedly, the petitioner has not challenged the Notification dated 28.3.2017 specifically. In paragraph 6 of the affidavit filed in support of the writ petition, it has been stated that "*the said 3rd amendment further specifies that the said rules shall be deemed to have come into force on the 1st day of January, 2006 notionally with cash payment from 1st March, 2016 which is being challenged in the present writ petition*". However, in the prayer portion, the petitioner sought writ of mandamus directing the respondents to give effect to the

Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 for cash payment from 1.9.2011 to the petitioner at par with the date of cash payment for the Head Clerk coupled with a prayer to quash the impugned Memorandum dated 4.4.2017. Different reliefs in respect of the same order cannot be prayed for.

20. It is the case of the respondent State that the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 vide notification dated 28.3.2016 which was made effective notionally with effect from 1.1.2006 and cash payment from 1.3.2016 in regard to the upgradation of pay scale of Senior Accountant from Rs.5200-20200+GP2800 to Rs.9300-34800+GP 4200 of the Senior Accountant was conditional upon suitable amendment of Recruitment Rules of the said post and that the Recruitment Rules cannot be made effective retrospectively as it will amount to setting back the hands of clock in a past time.

21. On a perusal of the notification dated 28.3.2016, it has been stated that these rules shall be deemed to have come into force on 1.1.2006 notionally with cash payment from 1.3.2016.

22. In the representation dated 20.12.2016, the petitioner made a prayer to give effect to the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 for cash payment from 1st September, 2011 at par with the date of cash payment for the Head Clerk and to calculate the retirement pension and other benefits receivable by the petitioner.

23. According to the respondent State, the post of Head Clerk of Treasuries and Accounts has been redesignated as Senior Accountant way back on 14.7.1992 and, therefore, the question of Head Clerk being the feeder post of Senior Accountant does not arise in the case of Treasuries and Accounts.

24. Admittedly, there is no whisper about the redesignation of the post of Head Clerk of Treasuries and Accounts as Senior Accountant way back in the year 1992 in the impugned Memorandum dated 4.4.2017. The Memorandum impugned simply states that the decision of the Government regarding effective dates were indicated in the notification dated 28.3.2016 issued by the Finance Department. When the petitioner sought to give effect to the Manipur Services (Revised Pay) (3rd Amendment) Rules, 2016 for cash payment from 1.9.2011 at par with the date of cash payment for the Head Clerk,

it is the bounden duty of the respondent authority to discuss about the existence of the alleged order dated 14.7.1992 issued by the Commissioner (Finance) that the post of Head Clerk has been redesignated as Senior Accountant and the question of Head Clerk being the feeder post of Senior Accountant does not arise while disposing of the representation. As stated supra, no such discussion was made while disposing of the representation of the petitioner dated 20.12.2016 and faced with the contempt proceedings, the authority has hurriedly passed the impugned Memorandum dated 4.4.2017. Such an order cannot stand in the eye of law.

25. The respondent authority is bound to dispose of the representation in the backdrop of the allegations set out in the representation. As stated supra, the representation of the petitioner has been disposed of in a hurried manner. Therefore, this is a fit case to remit the matter to respondent authorities for consideration of the issue afresh and pass orders in accordance with law. If the matter is remitted to the respondent authorities, no prejudice would be caused to either of the parties.

26. In the result,

(i) The writ petition is disposed of.

- (ii) The impugned Memorandum dated 4.4.2017 issued by the Under Secretary (FD/PIC-II), Government of Manipur is set aside and the matter is remanded to the respondent authorities for consideration of the issue afresh and pass orders in accordance with law after affording reasonable opportunity to the petitioner.
- (iii) The aforesaid exercise is directed to be completed within a period of twelve weeks from the date of receipt of a copy of this order.
- (iv) No costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil