

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 633 of 2023

K. Boni Mao, aged about 65 years, W/o S. Chandrakumar Sharma of Uripok Tourangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Chief Secretary (Finance), Government of Manipur, Old Secretariat Block, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
2. The District Treasury Officer, Imphal West, Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. The Accountant General (A & E), Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

.....**Respondent/s**

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner :: Mr. N. Ibotombi, Sr. Adv. assisted by
Ms. Babina, Adv.

For the respondents :: Mr. Shyam Sharma, G.A. and Mr. S. Samarjeet, Sr. PCCG.

Date of Hearing :: 30.10.2023

Date of Judgment and Order :: **29.11.2023**

ORDER (CAV)

[1] Heard Mr. N. Ibotombi, learned senior counsel assisted by Ms. Babina, learned counsel for the petitioner, Mr. Shyam Sharma, learned G.A. for the State respondents and Mr. S. Samarjeet, learned Sr. PCCG for respondent No. 3.

[2] The petitioner who was working as UDA in the establishment of District and Sessions Judge, Thoubal retired from service on 28.02.2018 (AN) on attaining the age of superannuation. The office of Accountant General (A & E), Manipur issued the Revised Authority of pension in respect of the petitioner and the State respondents has to pay a sum of Rs. 1,44,787/- (Rupees one lakhs forty four thousand seven hundred and eighty seven) to the petitioner as enhanced Gratuity amount and the arrear Commutation amounting to Rs. 6,46,998/- (Rupees six lakhs forty six thousand nine hundred and ninety eight) vide Revised Authority dated 11.02.2022. The petitioner also made a representation dated 01.08.2023 to the District Treasury Officer, Imphal West for payment of the enhanced commutation and gratuity amount to her at the earliest. Since the said amounts have not released by the State Authority, the petitioner approaches this Court by way of the present writ petition with the following prayers:

- “(i) to admit this Writ Petition;
- (ii) to issue a rule nisi;
- (iii) to issue a writ in the nature of Mandamus directing the respondents to pay the enhanced Gratuity amount

amounting to Rs. 1,44,787/- (Rupees one lakhs forty four thousand seven hundred and eighty seven) and the arrear Commutation amounting to RS. 6,46,998/- (Rupees six lakhs fourty six thousand nine hundred and ninety eight) to the petitioner as per the Revised Authority dated 11.02.2022 issued by the respondent No. 3; and

(iv) to pass any order/direction which the Hon'ble Court may deem fit and proper."

[3] It is stated that no reason has been given by the State respondents for not releasing the enhanced Gratuity and the arrear Commutation to the petitioner.

[4] Vide order dated 12.09.2023, this Court issued notice. However, the respondents have not filed any counter affidavit. When the matter was taken up on 30.10.2023, Mr. Shyam Sharma, learned G.A. for the State respondents, produced a copy of the letter dated 24.10.2023 written by the Treasury Officer, Imphal West to the Dy. G.A. (High Court), Manipur stating that the Treasury Office is not in a position to make payment of the above mentioned Gratuity and the Commutation as it has not received instruction from the higher authority. It is further stated that due to financial constraint of the State, payment of any kinds are restricted and the payment is made only when instruction is received from the Financial Department, Government of Manipur.

[5] The contents of the letter dated 24.10.2023 are reproduced herein below:

"GOVERNMENT OF MANIPUR
OFFICE OF THE TREASURY OFFICER, IMPHAL WEST
No. 18/85/Try/Imp/90 **Imphal, 24th October, 2023-11-27**

To,

The Deputy Government Advocate
(High Court), Manipur

Subject: Writ Petition (C) No. 633 of 2023
Smt. K. Boni Mao
Vs.
The State of Manipur & 2 Ors.

Sir,

In reference to the above subject, vide No. 102/450(K)/2023-GA(C)/1569-F dated 12th September, 2023, I am hereby furnishing comment on relevant paras.

Para 6. I acknowledge that this office received revised authority in respect of Smt. K. Boni Mao from Accountant General (A & E), Manipur, Imphal in the month of March, 2022. The details was entered in Pension Manipur portal and excepting Gratuity amounting to Rs. 1,44,787/- and Commutation amounting to Rs. 6,46,998/- payment of other pensionary benefit arising out of revised pay was made in the month of April, 2022. Her gratuity & commutation is entered in April, 2022 month batch.

Para 7. I acknowledge that this office received application/representation from the pensioner, but I am not in the position to make payment of the above mentioned gratuity and commutation as I have not received instruction from higher authority. In this regard I would like to inform you that, due to financial constraint of the state, payment of any kinds are restricted and payment is made only when instruction is received from Finance Department, Government of Manipur.

Further, I would like to mention that gratuity and commutation has been released upto the month of January, 2022 batch for revised pensioner, thereafter this office has not received any instruction. Since her batch is April, 2022, we are unable to make her gratuity and commutation payment.

Therefore, this office performed its duty as per order and instruction received from higher authority and I believe there were no lapses.

Your's faithfully

(Sushil Kumar Ningombam)
Treasury Officer,
Treasury, Imphal West.

[6] Mr. N. Ibotombi, learned senior counsel for the petitioner, submits that the stand of the State Government is that the pensionary benefit cannot be released due to financial constraint. It is further submitted that pension is an entitlement of an employee for the past service done by him or her and it cannot be withheld without any reason. It is also stated that financial constraint of the State is not a ground for denying pensionary benefit to the retired employee. He prays that the respondents be directed to release due amount to the petitioner.

[7] Mr. Shyam Sharma, learned G.A. for the State respondent, submits that the State Government has not withheld the pensionary benefits on any extraneous ground, but it is compelled by the poor financial condition of the State. He submits that the amount will be released as soon as necessary instruction has been received from the higher authority. Mr. S. Samarjeet, Sr. PCCG has clarified that respondent No.3 has already issued revised Authority and it is for the State authority to release the due amount.

[8] This Court has considered the submissions made by the learned counsel for the parties, perused the materials on record and discussed the relevant law in this regard.

[9] It is settled proposition of law that pension is not a bounty from the state authority to the retired employee. It is the compensation for the past service rendered by the employee and is a means of subsistence in the post retired. The pension cannot be withheld without assigning any reason.

[10] In the case of **Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.** reported as **MANU/SC/0801/2013 : (2013) 12 SCC 210** Hon'ble Supreme Court held that the right to pensionary benefit is a constitutional right as as such cannot be taken away without proper justification. Further, in the case of **Dr. Uma Agarwal v. State of U.P.** reported as **MANU/SC/0184/1999 : (1999) 3 SCC 438**, it was held that grant of pensionary benefits is not a bounty, but a right of the employee, and as such cannot be denied without proper jurisdiction. In the case of **D.S. Nakara & Ors. v. Union of India** reported as **MANU/SC/0237/1982 : (1983) 1 SCC 3005**, a 5 Judge Bench of the Hon'ble Apex Court held that "31.....(i) *that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (ii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme, Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of*

service and that it can be reduced or withdrawn as a disciplinary measure”.

In the case of **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.** reported as **MANU/SC/0208/1984 : (1984) 3 SCC 369**, it was held that “18. *For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer.*”

[11] Poor financial condition of the State and non-receiving of the instruction from the higher authority is not a ground to deny pensionary benefit and other entitlement to the pensioner. The contention of the State Government for releasing the pensionary benefit of the petitioner is without any substance and perverse on the face of it.

[12] Reference may be made to Rule 9 of CCS (Pension) Rules, 1972 which empowers withholding of pension or gratuity or both, if the pensioner is found guilty of grave misconduct or negligence during the period of service in a departmental or judicial proceeding. Apart from Rule 9, there is no other provisions which stipulate withholding of pension or gratuity or any other pensionary benefit. In the present case, the reason cited for not releasing the pensionary benefit is the poor financial condition

of the State and non-clearance for the payment from higher authority. The contents of the letter dated 24.10.2023 sent by the Treasury Officer, Imphal West to the Office of Govt. Advocate, High Court are not within the scope of Rule 9 of CCS (Pension) Rules, 1972 for the simple reason that there was no departmental or judicial proceeding against the petitioner holding her of guilty of grave misconduct. This Court is of firmed opinion that withholding the pensionary benefit of the petitioner by the State authority is without any substance and the same is in violation of aforesaid Rule 9 and also against the law laid down by the Hon'ble Supreme Court. Such illegal action cannot be sustained in a welfare State.

[13] Accordingly, writ petition is allowed. The respondents are directed to release the enhanced amount of Gratuity and arrear of Commutation as calculated and authorised by the office of the Principal Accountant General within a period of 2 (two) months from the date of receipt of a copy of this order, failing which it shall carry an interest @ 6% per annum from 11.02.2022, the date on which the office of Principal Accountant General issued the revised authority of pension.

[14] With the above observation, writ petition is disposed of.

[15] Send a copy of this order to the Chief Secretary, Manipur for information.

JUDGE

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