

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

W.P. (C) No. 925 of 2021

- 1. *Smt. Wahengbam Prava Devi***, aged about 64 years, W/o Oinam Kunjakeshor Singh, resident of Wangkhei Hijam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795005.

Mobile No.: 9856169424.

- 2. Nongthombam Bhanu Devi**, aged about 62 years, W/o Sougaijam Ranjit Singh, resident of Naoremthong khulem Leikai, P.O. & P.S. Lamphelpat, Imphal West District, Manipur – 795001.

Mobile. No.: 9862270492.

... Petitioners

-Versus-

1. The State of Manipur represented by the Commissioner (Transport), Government of Manipur, Old Secretariat, Babupara, Imphal West District – 795005, Manipur.
2. The Director (Transport), Government of Manipur, Manipur State Transport (MST) Complex, Moirangkhom, Imphal West District – 795001, Manipur.

... Respondents

B E F O R E

HON'BLEMR. JUSTICE AHANTHEMBIMOL SINGH

For the Petitioners :: Ms. Ph. Sarvodaya Lakshmi, Advocate

For the respondents :: Mr. A. Vashum, Govt. Advocate

Date of Hearing :: **01-02-2023**

Date of Judgment & Order :: **17-02-2023**

JUDGMENT & ORDER

[1] Heard Ms. Ph. Sarvodaya Lakshmi, learned counsel appearing for the petitioner and Mr. A. Vashum, learned GA appearing for the respondents.

[2]

The present writ petition had been filed with the prayer for directing the respondents to release the salaries due payable to the petitioners along with interest w.e.f. the date of their engagement on contract basis as Office Assistant and Machine Operator in the Office of the Passenger Reservation System (PRS) Location, Imphal, Moirangkhom till the shutdown of the said office w.e.f. February, 2020.

[2] The case of the petitioners is that they were engaged on contract basis as Office Assistant and Machine Operator respectively in the Office of the PRS Location, Imphal, Moirangkhom w.e.f. 28-08-2012 and 23-12-2011 respectively and until further orders vide orders dated 28-08-2012 and 23-12-2011 issued by the Director of Transport, Manipur. After their engagement, the petitioners discharged their official duties sincerely and without any break until they were prevented from attending office due to global disruption caused by the outbreak of Covid-19 pandemic in the month of March, 2020. The grievance of the petitioners is that even though their service were utilized by the authorities, their monthly salaries were not paid to them from the date of their engagement till the shutdown of their office in the month of February, 2020 without any valid and justifiable reason. Having been aggrieved by the non-payment of their salaries, the petitioners made several representations to the concerned authorities demanding to release their monthly salaries due payable to them, however without any success. Hence the petitioners approached this court by filing the present writ petition for redressing their grievances.

[3] The stand taken by the respondents in their counter affidavit is that the PRS at Imphal and Churachandpur were manned by 14 (fourteen) contractual staff of MSRTC and staff engaged for PRS and that the salary

[3]

components and all other outstanding/anticipated expenditures pertaining to operation and maintenance of the PRS was booked under the 4% commission on sale proceeds receivable from the railway. It has also been submitted that in the year 2012, five contractual staff of PRS Imphal and Churachandpur, namely (i) W. Ranjit Singh (ii) W. Gyaneshor Singh (iii) O. Jadumani Singh (iv) I. Dorendro Singh and (v) Y. Kennedy Singh misappropriated the money for sale of railway tickets amounting to ₹ 69,82,824/- (Rupees sixty nine lakh eighty two thousand eight hundred and twenty four) and that a vigilance case was registered by the State Vigilance Commission, Director of Vigilance & Anti-Corruption, Manipur and FIRs were registered against the defaulters for misappropriation of Government money. It has also been submitted that the authorities have filed Original (Money) Suit against the aforesaid defaulting persons for recovery of the said money.

[4] In the counter affidavit, it has also been stated that the Government conveyed its approval to shutdown the PRS Offices as the Transport Department was not in a position to sustain the PRS Offices and after considering all the circumstances involving PRS matters, the Transport Department issued an order dated 04-02-2021 informing all the PRS staff that the PRS Offices at Imphal and Churachandpur are shutdown w.e.f. February, 2020. The respondents also take the stand that a proposal was submitted by the Directorate Office of Transport to the Administrative Department showing the detailed statement of the total outstanding salaries of all PRS staff and the required additional fund to be borne by the Government for payment of outstanding salaries of all PRS and that the Administrative Department directed that the proposal for release of

[4]

additional fund for payment of outstanding salaries to the PRS staff may be submitted only after the recovery of the misappropriated Government money from the aforesaid defaulter staffs. It has also been stated that the current available PO charges are not sufficient to pay the outstanding salaries of all the staff of PRS and that the payment of the outstanding salaries of the present petitioners from the available fund of PO charges may rise complications if other staff of PRS request for the same. The respondents also stated that the Transport Department never intended to withhold the salary of the PRS staff and that the registration of vigilance case by the Vigilance Department against the aforesaid defaulting staff for misappropriation of Government money led to the delay in payment of salary/ remuneration of the petitioners and other contractual PRS staff.

[5] In connection with the RTI application filed by the present petitioners, the Deputy Director of Transport, Manipur wrote a letter dated 18-02-2021 addressed to the Deputy Registrar (Judl.-I), Manipur Information Commission stating, inter alia, that as per order dated 04-02-2021, the remuneration/ salary of the contractual staff of the PRS will be calculated upto the month of February, 2020, however in respect of the present petitioners their remuneration/ salary were calculated only upto the date of their attaining the age of superannuation. As per the said letter, the outstanding salary/ remuneration of the petitioners were estimated as ₹. 4,34,000/- (Rupees four lakh thirty four thousand) in respect of petitioner No. 1 and ₹. 5,67,000/- (Rupees five lakh sixty seven thousand) in respect of petitioner No. 2 by calculating their salary/ remuneration at the rate of Rs. 7,000/- per month.

[5]

In their counter affidavit, the respondents took the stand that the request of the petitioners for payment of their outstanding salaries till the time of closure of the PRS Offices despite of exceeding their superannuation ages and without issuing re-engagement order by the Government cannot be entertained. It has been stated that the retirement of Government servant or employee or staff on ad-hoc or contract basis cannot be allowed to continue in their service beyond the age of their superannuation. It has further been stated that until and unless there is Government approval, the petitioners cannot go on working beyond 60 years even if their engagement order mentioned that their service will be effective immediately till further order and that they will be treated to be terminated automatically on attaining the age of superannuation. The learned Government Advocate accordingly submitted that the petitioners are entitled to get their salaries only upto the date of their superannuation and not upto the date of shutdown of their office.

[6] The learned counsel for the petitioners strenuously submitted that after their engagement as Office Assistant and Machine Operator, the petitioners have been discharging their official duties sincerely and without any break and the authorities utilized their service until they were prevented from attending their office due to lockdown imposed by the Government on account of the outbreak of Covid-19 pandemic in the month of March, 2020. The learned counsel also submitted that the petitioners were not involved in misappropriation of the Government money and that without any valid and justifiable reason, the authorities withhold the entire salary due payable to the petitioners from the date of their engagement till the date of shutdown of their office in a most arbitrary, illegal and inhuman manner thereby

depriving their means of livelihood guaranteed by Article 21 of the Constitution of India. The learned counsel vehemently submitted that non-payment of the salary of the petitioners is in contravention of their right guaranteed by Article 300A of the Constitution of India and it also amounts to depriving their livelihood guaranteed by Article 21 of the Constitution of India.

It has also been submitted by the learned counsel for the petitioners that the authorities have wrongly calculated the salary due payable to the petitioners only from the date of their engagement till their attaining the age of superannuation whereas, the petitioners are entitled to get their salaries till the date their office was shutdown and specially when the petitioners were made to work beyond the age of superannuation and no order effecting termination of their service had been issued.

[7] The learned counsel also submitted that the petitioners have been denied their salaries since their engagement for more than 10 years and thus they have been subjected to harassment and that the petitioners have been made to suffer grievous financial crises throughout their service period since their engagement till date and their rights to earn livelihood had been denied. The learned counsel accordingly submitted that the petitioners are entitled to get their salaries due payable to them along with interest for the delay in payment of their salaries. In support of her contentions, the learned counsel cited the following judgments:-

- (i) Judgment dated 15-01-2015 passed by a Division Bench of Allahabad High Court in the case of “**Shiv Shankar Mishra**

Vs. State of U.P. & ors.” reported in **(2015) 3 ADJ 302: (2015) 3 AILLJ 551**, wherein it has been held as under:-

“6. In the case of State of Kerala and Others Vs. M. Padmanabhan Nair, the Supreme Court held as follows:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

“7. In a more recent decision in D.D. Tewari Vs. Uttar Haryana Bijli Vitran Nigam Ltd., the Supreme Court observed that any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest. Hence, interest @ 9% on delayed payment was awarded to be paid within six weeks failing which interest @ 18% p.a. would need to be paid. An erroneous withholding of gratuity amount to which the employee is legally entitled, entails penalty on the delayed payment.

“8. We, therefore, have come to the conclusion that the learned Single Judge was not justified in declining the prayer for the payment of interest. Insofar as the payment which was made to the appellant on 18 March 2014 is concerned, the appellant was clearly entitled to the payment of interest from the date of the filing of the writ petition in 2010 (Writ -A No. 47141 of 2010). The appellant would also be entitled to the payment of interest on the pensionary payment which was unlawfully withheld from March 2014 until actual payment is made. We direct that interest shall be admissible to the appellant at the rate of 9% per annum from the date on which the respective payments on account of arrears of salary, or as the case may be, towards pensionary dues became due and payable as directed earlier. Interest shall be computed in terms of the aforesaid directions within a period of three months from the date of receipt of a certified copy of this order. The order of the learned Single Judge declining interest shall to that extent stand set aside and be substituted by the aforesaid directions. The appeal is, accordingly, disposed of. There shall be no order as to costs.

(ii) Judgment and order dated 11-08-2020 passed by a Division Bench of the Andhra Pradesh High Court in the case of **“Dinavahi Lakshmi Kameswari Vs. State of Andhra Pradesh”** reported in **(2020) 5 ALT;(2020) 3 SCT 154**, wherein it has been held as under:-

- “46. *Payment of salary or pension to the employees is only to eke out their livelihood during their service by way of salary and after retirement by way of pension. If, whole or part of the salary or pension is deferred, it amounts to denial of right to life guaranteed under Article 21 of the Constitution of India. Initially, right to livelihood was not recognized as fundamental right under Article 21 of the Constitution of India. But, later it was recognized as Fundamental Right by judicial interpretation to Article 21 of the Constitution of India.*”
- “47. *Article 21 of the Constitution of India guarantees right to life. The right to life includes the right to livelihood. Time and again the Courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Article 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.*”
- “53. *Thus, in view of the law laid down by the Apex Court in various judgments (referred supra), widening the meaning of word 'right to life' includes 'right to livelihood', right to livelihood is a fundamental right, and it is an integral part of right to life guaranteed under Article 21 of the Constitution of India. Therefore, non-payment of part of eligible salary and pension to the employees in service and to the employees retired from service by issuing G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 is violative of Article 21 of the Constitution of India.*”
- “54. *The major contention of the petitioner from the beginning is that, deferment of part of salary and non-payment of pension as stated above, is contravention of Article 300 of the Constitution of India. No doubt, as per Article 300-A of the Constitution of India, no citizen of India be deprived of his/her right to property, except by authority of law. As salary and pension form part of property of an individual to attract Article 300-A of the*

Constitution of India, such right cannot be taken away except by authority of law.”

- “55. On a bare look at Article 300-A of the Constitution of India, any citizen of India cannot be deprived of their right to property, except by authority under law. That means a property of any citizen of India cannot be taken unless the State is authorized to do so. In **Shapoor M. Mehra v Allahabad Bank, (2012) 3 MhLJ 126**, wherein Bombay High Court opined that retiral benefits including pension and gratuity constitute a valuable right in property.”*
- “57. Thus, both salary and pension payable to the employees in service or retired from service falls within the definition of property under in Article 300-A of the Constitution of India.”*
- “58. Though the Constitution of India permits the State to deprive any person's right in property by authority of law, the respondents were unable to show any provision which authorized the State to defer payment of part of salary/pension to the employees in service or retired from service. In the absence of any statute governing deferment of salary or pension, deprivation of right to property by employees in service or retired employees would amount to violation of constitutional right guaranteed under Article 300-A of the Constitution of India. In this regard, it is profitable to mention few judgments of the Apex Court and other Courts with regard to right of the state to defer payment of salary, pension etc.”*
- “66. No doubt, as discussed above, right to livelihood of a person can be deprived by authority of law. Article 300-A of the Constitution of India, protects right of an individual, but such right in the property can be deprived of save by authority of law.”*
- “67. The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension (Vide: **Tukaram Kanna Joshi Vs. M.I.D.C., (2013) AIR SC 565.**”*
- “70. In the instant case on hand, except reduction of pensionary benefits under Rule 9 of the Andhra Pradesh Revised Pension Rules and reduction of salary in terms of C.C.A Rules, if the government servant is found guilty of misconduct after conducting necessary enquiry, no other procedure is available in any statute to defer payment of salary, pension or defect of salary or pension in part or in full. But the question of all the employees in the state guilty of any misconduct to defer payment of salary or pension in the present case does not arise.*

Therefore, deferring payment of part of salary to employees in service and pension to retired employees is deprivation of a citizen in right to property. Such deprivation is violative of fundamental rights guaranteed under Article 21 and Constitutional Right to property under Article 300-A of the Constitution of India and Human Rights of livelihood as per Article 25(1) of Universal Declaration of Human Rights, since the government servants after retirement being pensioners would be deprived of their livelihood, though they are under obligation to meet different expenses, including maintaining their health condition for the rest of their life. Similarly, the employees in service are bound to face certain difficulties, if salary payment is deferred either in full or part for the reason that sometimes most of the employees would be under obligation to repay housing loans and would be having other financial commitments, their regular maintenance, besides deduction of income tax and other tax liabilities. If, part of the amount is appropriated toward those liabilities, hardly the balance amount which the employees would be receiving would not be sufficient for their livelihood. While deciding such an issue, the Court has to take into consideration the common man's and middle class employee's lifestyle and decide the case in a proper perspective. If, an ordinary employee is maintaining minimum standard of life, he is bound to incur different expenses towards education of his/her children, discharging different liabilities etc. In those circumstances, it is difficult for any ordinary employee to maintain himself/herself. Therefore, such deferment of part of salary or pension creates dent on the financial condition of an ordinary employee or a pensioner who is getting meagre income as a salary or pension. That would temporarily deprive right to property, though not authorized by law, certainly violates the fundamental rights guaranteed under Article 21 and Constitutional Right to property under Article 300-A of the Constitution of India and Human Rights of livelihood as per Article 25(1) of Universal Declaration of Human Rights and such deprivation is illegal and impermissible.”

“80. No doubt, on account of lockdown, there was no business activity in the State, as a matter of fact, in the Country as well as State's generation of income or taxes by the Government is reduced to minimum extent. Merely because the Government is without any resources to meet the liability to pay full salary or pension to the employees, the State employees cannot be deprived of their right to property in the absence of any authority of law. But, when the State is under any obligation to pay the salary to employees and pension to retired employees, the financial constraints is not relevant for disowning the liability to pay the full salary and pensions to the employees of the State and retired employees.”

“81. Justice Krishna Iyer in **Municipal Council Ratlam v. Shri Vardichand**, (1980) AIR SC 1622, while rejecting the plea of

financial difficulty of the Municipal Council in effectively protecting the Right to Health of the citizens, had observed as follows:

"Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights". Of course, I agree that law is realistic and not idealistic. What cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle, the progressive taxation system of the country gives enough powers to the government to make its revenue systems workable. However, in a Constitutional Democracy, it cannot be accepted that the financial difficulties of the government can override the rights of the citizens."

- "82. Applying the principle laid down in the above judgment to the present facts of the case, the State's dried up financial resources to meet the liability to pay salaries and pensions is not a ground and the State cannot run away from discharging its duty to pay salaries having extracted work from the employees and such act is violative of the fundamental right guaranteed under Articles 21 and 300-A of the Constitution of India and Human Right under Article 25(1) of Universal Declaration of Human Rights. Hence, the plea of lack of financial resources to meet the liability is not a ground to defer payment of salary or pension."
- "83. The deferred salaries for the month of March and April, 2020 are not yet paid to the State Government employees on the ground of lack of financial resources. As discussed above, it is not a ground to defer the salaries, pensions and for the delay in payment of salary or pension, the respondent-State Government is liable to pay interest on deferred part of salary and pension, as held by the Apex Court in **Union of India v. Justice S.S. Sandhawalia (Retd.) and others, (1994) 2 SCC 240, D.D. Tewari (dead) through LRs v. Uttar Haryana Bijli Vitran Nigam Limited and others, (2014) 8 SCC 894**. In view of the law declared by the Apex Court in the judgments referred supra, the State employees are entitled to claim interest on the deferred part of salary and pension @ 12%. Though no interest is claimed, since the jurisdiction in public interest litigation is equitable and the Court has to render justice to the public at large. Hence, by examining equity jurisdiction interest @ 12% on the deferred salary or pension is awarded."
- "87. In the result, writ petition is allowed declaring G.O.Ms.No.26 dated 31.03.2020 and G.O.Ms.No.37 dated 26.04.2020 as illegal

and arbitrary and consequently set-aside. The State Government/Respondent Nos. 1 & 2 are directed-

- i) To pay deferred salary/wage/remuneration /Honoraria on gross basis to all cadres of State Government employees, including all PSUs/Government aided Institutions /Organizations/ Universities/ Societies/ Autonomous bodies, semi-autonomous bodies for the months of March and April, 2020, payable in the months of April and May, 2020 respectively, within two months from today, together with interest @ 12% per annum on the deferred salary.*
- ii) To pay deferred pension to the pensioners retired from State Government service for the month of March, 2020 payable in the month of April, 2020, within two months from today, together with interest @ 12% per annum on the deferred pension."*

The above judgement and order dated 11-08-2020 passed by the Andhra Pradesh High Court in the case of Dinavahi Lakshmi Kameswari was challenged by the State of Andhra Pradesh by filing an SLP before the Hon'ble Supreme Court. The challenge in the said SLP was restricted only to the component of interest which had been imposed by the High Court. The said case was disposed of by the Hon'ble Supreme Court by an order dated 08-02-2021 passed by the Hon'ble Supreme Court in the case of **"State of Andhra Pradesh & anr. Vs. Dinavahi Lakshmi Kameswari"** reported in **(2021) 11 SCC 543**, wherein it has been held as under:-

"14. We accordingly order and direct that in substitution of the interest rate of 12% p.a. which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed @ 6% p.a. on account of deferred salaries and pensions within a period of thirty days from today. This direction shall, however in the facts and circumstances, be confined to Categories (iii), (iv), (v) and (vi) of GOMs No. 26 dated 31-3-2020. We clarify that interest shall be paid to all pensioners of the State @ 6% p.a. on the deferred portion, for the period of delay. Having regard to the prevailing bank interest, the rate of 12% p.a. which has been fixed by the High Court, would need to be and in accordingly reduced."

[8] In the present case, there is no dispute with regard to the fact that both the petitioners were engaged as Office Assistant and Machine Operator in the Office of the PRS Location, Imphal, Moirangkhom on contract basis w.e.f. 28-08-2012 and 23-12-2011 respectively and until further orders and that after their engagement, the petitioners discharged their official duties sincerely and without any break and the authorities utilized their service till the month of February, 2020 when their office was shutdown. The respondents also admitted the fact that the petitioners were not given their remuneration/ salary during the entire period of their contract service only on account of paucity of fund. The only exception taken by the respondents is that the petitioners are only entitled to get their remuneration/ salary w.e.f. the date of their engagement till the date of their attaining the age of superannuation, which falls on 28-02-2017 and 31-05-2019 respectively. There is also no dispute as to the amount of monthly salary of the petitioners which have been fixed at Rs. 7,000/- per month.

[9] In the orders dated 28-08-2012 and 23-12-2011 issued by the Director of Transport, Manipur, it is clearly mentioned that the petitioners were engaged on contract basis with immediate effect and until further orders. It is also an undisputed fact that except for the order dated 04-02-2021 issued by the Director (Transport), Manipur shutting down the PRS at Imphal and Churachandpur w.e.f. February, 2020, there is no other order terminating the service of the petitioners. In view of the above undisputed fact and as the authorities utilized the service of the petitioners till the shutdown of their office w.e.f. the month of February, 2020, the stand taken by the respondents that the petitioners are entitled to get their

remuneration/ salary only for the period w.e.f. the date of their engagement till the date they attain their age of superannuation cannot countenance, specially in view of the stand of the respondents that as per order dated 04-02-2021, the remuneration /salary of all the contractual staff will be calculated upto February, 2020.

[10] After hearing the submissions of the learned counsel appearing for the parties and on careful examination of the materials available on record, this Court is of the considered view that the respondents withhold the entire salary due payable to the petitioners without any authority of law and in complete violation of the constitutional provisions under Articles 21 and 300A of the Constitution of India. The respondents have totally failed to discharge their obligations and they cannot wash off their hands of the responsibility and liability of paying monthly salary to the petitioners on account of paucity of fund and that paucity of fund cannot be a ground for denying payment of salaries to the petitioners, which is the basis of subsistence for them and their dependents. As the petitioners have been denied their salaries since their engagement for more than ten years and as the petitioners have been made to suffer grievous financial crisis throughout their service period since their engagement on contract basis till date and as their right to earn livelihood had been denied by the respondents without any authority of law, this Court is of the considered view that the petitioners are not only entitled to get their salaries due payable to them for the period w.e.f. the date of their engagement till the month of February, 2020 but they are also entitled to get interest for the delay payment of their salaries/ remuneration. Taking into consideration the

judgments cited hereinabove by the learned counsel for the petitioners, the present writ petition is allowed with the following directions:-

- (a) The respondents are directed to release the remuneration/ salaries due payable to the petitioners for the period w.e.f. the date of their engagement i.e., 28-08-2012 in respect of petitioner No. 1 and 23-12-2011 in respect of petitioner No. 2, till the month of February, 2020 along with interest at the rate of 6% per annum from the date the monthly salary of the petitioners are due payable till the actual payment of the entire amount; and
- (b) The payment should be made within a period of two months from the date of receipt of a copy of this order.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda