

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

W.A. No. 64 of 2017

1. The State of Manipur, represented by the Principal Secretary, Education (S), Government of Manipur.
2. The Director, Education (S), Government of Manipur, Imphal.

Appellants

Vs.

1. Shri K.S. Standhope, aged about 66 years, Retd. Head Master, Chadong Jr. High School, S/o (L) K.S. Hopetam and a resident of Chadong Village P.O. & P.S. Chadong in Ukhrul District, Manipur.

Respondent/writ petitioner

2. The Principal Secretary, Finance, Government of Manipur at Imphal.
3. The Accountant General, Manipur, at Imphal.

Proforma Respondents

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the appellants : Mr. S. Nepolean, Government Advocate
For Respondent No. 1 : Mr. N. Umakanta, Advocate
Date of Order : 01.02.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The State of Manipur and its Director of School Education are in appeal against the judgment and order dated 03.05.2016 passed by a learned Judge of this Court allowing W.P. (C) No. 626 of 2014. The said writ petition was

filed by respondent No. 1 herein assailing the decision of the State Government not to extend his services from 01.09.2010 to 28.07.2011. This decision was reflected in the letter dated 31.10.2013, impugned in the writ petition. He also sought a consequential direction to the authorities to refund the sum of ₹.3,14,186/- deducted from his pensionary benefits.

[2] Heard Mr. S. Nepolean, learned Government Advocate, appearing for the appellants; and Mr. N. Umakanta, learned counsel, appearing for respondent No. 1, viz., the writ petitioner.

[3] Respondent No. 1 was appointed as a Matriculate Teacher in the year 1971. The school that he was working in was taken over by the Government of Manipur and he was absorbed and appointed as a regular Assistant Teacher in the service of the Government. He was thereafter promoted as a Head Master in February, 2003. As per his date of birth in the service records, he was to retire on 31.08.2010 upon attaining the age of superannuation, viz., 59 years. However, termination of his services on that ground was never effected and he was continued in service in anticipation of the Government's proposal to enhance the age of superannuation from 59 to 60 years. He was accordingly permitted to render service till 28.07.2011. It is an admitted fact that the order of the Government extending the age of superannuation to 60 years was issued on 29.11.2010 and it is also admitted that respondent No. 1 was rendering service as a Headmaster on that date. It was only on 28.07.2011 that an order was issued by the Director of School Education, Government of Manipur, terminating his services w.e.f. 31.08.2010. By letter dated 31.10.2013, the Director of School Education, Government of Manipur, informed the Accounts Officer/Pension, office of the

Accountant General, Manipur, that the overdrawal amount by respondent No.1, as reported by the Zonal Education Officer, was ₹.3,14,186/- and that the same required to be deducted from his pensionary benefits. Thereafter, while processing his pensionary benefits, the salary drawn by respondent No. 1 after 31.08.2010 was deducted, viz., ₹.3,14,186/-.

[4] Aggrieved by this action on the part of the authorities, respondent No. 1 approached this Court and was granted relief by the learned Judge by the judgment and order under appeal. Hence, this appeal.

[5] It is an admitted fact that respondent No. 1 was permitted to continue in service even after 31.08.2010 though superannuation was to be effected at the age of 59 years. In this regard, it may be noted that he applied to the State Public Information Officer, Directorate of Education (School), Government of Manipur, under the Right to Information Act, 2005, seeking the file-notings in connection with his service and he was provided the Extract of File No. 1/7/2007-ED(AD/Hills)Pt-1(UKL) with Note No. 43. The file-notings reflect the following entry:

‘With the extension of service superannuation age, this particular pension case need not be processed.’

As it is the admitted factual position that respondent No. 1 was never served with any order effecting termination of his service upon his attaining the age of superannuation on 31.08.2010 and as the above file-noting clearly indicated that the authorities themselves were of the opinion that his services needed to be extended in terms of the Government’s proposal to enhance the age of superannuation, this Court passed an order on 11.08.2022 in this appeal directing that that Original File in relation to the aforesaid file-noting should be produced.

[6] Mr. S. Nepolean, learned Government Advocate, thereafter took several adjournments but now informs this Court that the Original File is not traceable. When an extract therefrom was furnished to respondent No. 1 upon his query under the Right to Information Act, 2005, this Court is at a loss to understand as to how the said file could be misplaced. An adverse inference would therefore have to be drawn against the authorities for non-production of the file. Obviously, the contents of the file speak against them and that is the reason why the authorities are reluctant to place the same before this Court.

[7] That apart, the ineluctable fact remains that respondent No.1 was never served with an order terminating his services upon retirement. In this regard reference may be made to Rule 56 of the Central Civil Services (Pension) Rules, 1972, which provides that every Head of Department shall have a list prepared every 3 months, that is, on 1st January, 1st April, 1st July and 1st October, each year, of all Government servants who are due to retire within the next 12-15 months of that date. A copy of the said list is to be supplied to the Accounts Officer concerned. Mr. S. Nepolean, learned Government Advocate, fairly concedes that there is no such list available reflecting the name of respondent No.1. It is therefore clear that no steps were taken by the authorities at any point of time to effect termination of respondent No. 1's services on the ground that he was to attain the age of superannuation on 31.08.2010. To compound matters further, the authorities utilized his services till 28.07.2011 without any protest and paid him his salary. This fact is sufficient in itself to set at naught the claim of the appellants that respondent No. 1 is deemed to have retired from service on 31.08.2010. Having utilized his services all through, it is not open to them to now seek to deny him the just benefits therefor.

[8] Reference in this regard may be made to the judgment of the Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others {(2015) 4 SCC 334}**. Therein, the Supreme Court held that recoveries cannot be effected from retired employees in the situations enumerated, one of which is that recoveries cannot be effected from employees belonging to class-III and class-IV service or group-C and group D service. Admittedly, respondent No. 1 falls within this category. Further, this Court is informed that the deducted amount of ₹.3,14,186/- has already been refunded to respondent No. 1. That being so, this Court finds no reason to reverse the same at this stage.

On the above analysis, no grounds are made out to interfere with the judgment and order dated 03.05.2016 passed in W.P. (C) No. 626 of 2014.

The writ appeal is accordingly dismissed.

In the circumstances, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Sapana