

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 123 of 2022

Date of Decision: 16.03.2023

Smti. Jongtina Umiong

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.P.Mahanta, Sr. Adv./Legal Aid
Counsel with
Mr. L.R. Sangma, Adv.

For the Respondent(s) : Ms. S. Bhattacharjee, GA (For R 1-4)
Mr. N. Syngkon, Adv. (For R 5).

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The writ petitioner who is stated to be the legally married wife of one (L) Hospring Lyngkhoi, who died on 22nd July, 2021, is before this Court being aggrieved with the letter dated 30th July 2019, issued by

the respondent No. 4, whereby the application of her late husband dated 18th March, 2019, for change in the name of nominee for grant of family pension has been rejected.

2. Mr. S.P. Mahanta, learned Senior counsel who is appearing as Legal Aid Counsel in the instant matter, submits that the impugned order has been passed by the respondent No. 4, on a totally wrong premise, inasmuch as, the amendment to Rule 48 specifically at Note 2 provides that Post-retiral spouses/children born after retirement are admissible for grant of family pension. He submits that, the impugned letter stating that the change of nominee in the pension book is applicable only for those who had retired from government services w.e.f. 1st January, 2007, is misplaced and incorrect.

3. Ms. S. Bhattacharjee, learned GA appearing on behalf of the respondents No. 1-4, in her submissions has not sought to defend the impugned order, but has only read out Para – 9 of the affidavit filed on behalf of the respondents, that any change of name of the nominee is to be done by the Accountant General Office, who have not been impleaded in the instant writ petition.

4. Mr. N. Syngkon, learned counsel appearing on behalf of the respondent No. 5, has raised vehement objections, with regard to the entitlements of the petitioner to claim the family pension and disputes

the factum of marriage, by contending that though a Court order has been annexed showing the dissolution of marriage between the respondent No. 5 and the deceased employee, the same was obtained on 11th September, 2018, whereas the marriage register reflects that the marriage was contracted between the deceased employee and the writ petitioner, before that, that is on 18th June, 2017, which makes it a void marriage.

5. In view of these circumstances, he submits that disputed facts have arisen, the petitioner cannot sustain her claim for entry of her name as the new nominee. He however, has not advanced any submissions on the merits of the case, and has limited the submissions only to the maintainability of the writ petition and entitlements of the writ petitioner.

6. I have heard learned counsels for the parties.

7. As noted earlier, the petitioner is before this Court only for rejection of her late husband's application for putting her name as the nominee for family pension, by the respondent No. 4. An examination of the impugned order, affirms the submissions of the learned Senior counsel, inasmuch as, the same has been passed on a wrong premise and misinterpretation of the amendment of the Meghalaya Civil Services

(Pension) (Fifth Amendment) Rules, 2010, more specifically Note 2. The relevant Amendment Rule is reproduced hereinbelow and reads as follows;

THE MEGHALAYA CIVIL SERVICES (PENSION)
(FIFTH AMENDMENT) RULES, 2010

7. Amendment of Rule 48:- (1) Rule 48 (i) of the Principal Rules shall be renumbered as “48(1)” and substituted by the following:-

“48 (1). For the purpose of this rule, family shall include the following relatives of the Government servants:-

(a) First Category:-

- (i) Widow or widower, up to the date of death or re-marriage, whichever is earlier;***
- (ii) Son/daughter including widowed daughter up to the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of twenty five years, whichever is earlier.***

Note 1 :

Note 2 : Post-retiral spouses/children born after retirement:- The family pension is admissible to post-retiral spouses and children born/adopted legally after retirement.”

8. In view of the clear provisions quoted above, the impugned letter dated 30th July, 2019 is set aside and the respondents are directed to take a fresh call on the prayer of the late deceased employee for entering the name of the writ petitioner as nominee for family pension and pass necessary orders in accordance with law therein.

9. With the above noted directions, this writ petition stands closed
and disposed of.

Judge

Meghalaya
16.03.2023
"D.Thabab-PS"

