



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 266/2022

1:Khamow Chakap Chetia
W/o Late Deba Jyoti Chetia,
C.R.Building, East Milan Nagar, Ratanpur, Dibrugarh (MB), Assam 786003, Mobile
No. 7002270978

VERSUS

1:THE STATE OF AP and 2 Ors.
Represented by the Registrar of Cooperative Societies, Govt. of Arunachal Pradesh,
Sakhharita Bhawan, Court Street, D Sector, Naharlagun.

2:The Arunachal Pradesh State Cooperative Union
Represented by the Chief Executive Officer (CEO)
Polo Colony
Naharlagun.

3:The Chief Executive Officer (CEO)
Arunachal Pradesh State Cooperative Union
Polo Colony
Naharlagun

Advocate for the Petitioner : Tony Pertin

Advocate for the Respondent : GA (AP)

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing : 07.06.2023.

Date of judgment : 12.06.2023.

JUDGEMENT AND ORDER (CAV)

Heard Mr. T. Pertin, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing for the State/respondents.

2. This petition, under Article 226 of the Constitution of India, is preferred by Smti Khamow Chakap Chetia for following reliefs:

(i) to issue direction to the respondent authorities, more particularly, to the respondent No.2, for releasing a sum of Rs.2,63,150/-, being the monthly salary for the period of May, 2021 to 09th August, 2021, of her deceased husband, Late Deba Jyoti Chetia; and

(ii) to issue direction to the respondent authorities, more particularly, to the respondent No.3, for depositing the corresponding amount which is required to be deposited by the organization in the EPF account of Late Deba Jyoti Chetia for the period of May, 2021 to 09th August, 2021, so that the complete EPF amount could be released.

3. The factual background leading to filing of the present petition is briefly stated as under:-

“The husband of the writ petitioner, namely, Late Deba Jyoti Chetia was serving as Junior Engineer under the Technical Wing of Arunachal Pradesh State Cooperative Union, Govt. of Arunachal Pradesh. While he was in service, he was diagnosed with “Decompensated Cirrhosis of Liver” and due to his health condition as well as prevailing Covid-19 pandemic lockdown etc., he could not able to attend the office regularly between the year 2020 and 2021. And accordingly, he was granted leave

upto 30.04.2021. But, due to prevailing situation due to Covid-19 pandemic and lockdown etc., he was unable to travel to Naharlagun and on 06.05.2021, he submitted his joining report through WhatsApp. But, the respondent No.3, through the letter No.ACU/20/99, dated 28.06.2021 conveyed the husband of the petitioner regarding non-acceptance of the joining report sent through WhatsApp and directed him to physically join in the office. By the said letter, it was also intimated that the husband of the petitioner was granted leave upto 30.04.2021 and all his leaves had exhausted. In the meantime, the husband of the petitioner applied for VRS and vide order No.ACU/20/99/634-42, his application for VRS was duly accepted w.e.f. 10.08.2021, Thereafter, the respondent No.3, vide order No. ACU/20/99, dated 18.08.2021, ordered for encashment of leave salary of the petitioner's husband. However, his monthly salary w.e.f. May, 2021 to 9th August, 2021 was not released by the respondent No.3. Since the deceased husband of the petitioner had leave balance of 18 days, as per the release order No.ACU/20/99, dated 18.08.2021, as such the contention of the respondent No.3, in his letter No.ACU/20/99, dated 28.06.2021, that all the leave has been exhausted was not correct and the same may be one of the reasons to refuse payment of monthly salary from May, 2021 to 9th August, 2021.

Thereafter, unfortunately, the husband of the petitioner died on 26.11.2021, due to prolong illness. After the death of her husband, the petitioner filed a representation, dated 18.01.2021, (SIC) before the respondent authorities, praying for releasing of the monthly salary of her late husband for the period of May, 2021 to 9th August, 2021 and in the said representation, the petitioner reiterated the circumstances under which, her late husband could not resume his duty. In response to the said representation, the respondent authorities, vide letter No.ACU/20/99/765, dated

11.02.2022, rejected the claim for release of the monthly salary, stating that her late husband was absent from duty during that period, for which a letter on 26.11.2020 was issued to him. It was further stated that her husband was again on leave upto April, 2021 and had not joined on his duty, but, sent a joining report on 06.05.2021, through WhatsApp, which was rejected by the authority and it was informed to the petitioner's husband on 28.06.2021, through the letter No.ACU/20/99."

4. Then being aggrieved by the aforesaid response of the respondent authorities, the petitioner has approached this Court, by filing the present Writ Petition, seeking the relief, as stated above.

5. It is to be noted here that the respondent Nos.2 and 3 never turned up, though notice upon them was served properly, as indicated by the Office Note dated 24.11.2022. However, the respondent No.1 was duly represented by the learned Addl. Senior Govt. Advocate, but had not filed any affidavit-in-opposition.

6. Mr. T. Pertin, learned counsel for the petitioner submits that the husband of the petitioner was serving as Junior Engineer under the Technical Wing of Arunachal Pradesh State Cooperative Union, Govt. of Arunachal Pradesh and that he was suffering from "Decompensated Cirrhosis of Liver", and thereafter, his health condition deteriorated and on such count and also on account of prevailing Covid-19 pandemic, lockdown etc., he could not attend office regularly in the year 2020—2021. Mr. Pertin further submits that the husband of the petitioner was granted leave upto 30.04.2021 on medical ground. Thereafter, he submitted his joining report through WhatsApp on 06.05.2021, but the respondent No.3, has not accepted the joining report sent through WhatsApp and informed the same by his letter dated 28.06.2021, vide No.ACU/20/99, and asked the husband of the petitioner to join the office physically. Thereafter, the husband of the petitioner could not attend the office

physically due to prevailing Covid-19 pandemic, lockdown etc., and thereafter he sent one letter opting for voluntary retirement from service on 10.08.2021 and the respondent authorities have accepted the same and leave salary of the petitioner's husband for 18 days was granted but the monthly salary from the month of May, 2021 to 9th August, 2021 was never released by the respondent authorities. Mr. Pertin further submits that owing to refusal to grant monthly salary from the month of May, 2021 till 9th August, 2021 and the corresponding amount required to be deposited by the organization in the EPF Account, his EPF dues could not be settled till date and the petitioner being the widow, with two minor children, has been suffering a lot on account of the same. Mr. Pertin, referring to the reply of his notice under Section 80 of the Civil Procedure Code, issued to the respondent authorities, submits that the respondent authorities have taken a stand that their financial condition is not good and they are not in a position to pay salary and to bear other administrative expenditures, and such a stand of the respondent authorities are not at all acceptable and therefore, it is contended to allow the petition.

7. On the other hand, Mr. I. Riram, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh, appearing for the State/respondent No.1, fairly submits that he has nothing to submit in respect of the prayers being made in this writ petition.

8. Since the respondent Nos.2 & 3 failed to turn up in spite of receipt of notice and to contest the petition, whatever contention is being made in the petition remain un-disputed and the same is to be presumed as true and correct.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record.

10. A cursory perusal of the letter of the respondent No.3, dated 28.06.2021, indicates

that the husband of the petitioner was granted medical leave upto 30.04.2021, on account of his illness and thereafter, the husband of the petitioner had to report in the office of the respondents but he had not reported and submitted joining report. But, a stand is being taken that at the relevant time, the Covid-19 pandemic, lockdown etc. was going on and therefore, and also owing to his poor health condition, the husband of the petitioner could not turn up to join physically and therefore, he has sent a joining report through WhatsApp on 06.05.2021. But, the respondent authorities refused to accept the same, for the reason best known to them. It is, ofcourse, a fact that sending joining report by WhatsApp is not a proper course. But at the same time, the extra ordinary situation, prevailing at that point of time, when all normal activities were suspended has also to be kept in mind.

11. The Annexure-2 coli, a series of orders passed by the Deputy Commissioner cum District Magistrate, Itanagar Capital Region and also by the Chief Secretary, Arunachal Pradesh left no doubt in the mind of this Court that at the relevant time, owing to Covid-19 pandemic, normal functioning of the offices and public transport and other means of transport were suspended in the Itanagar Capital region. And as such, it was not possible on the part of husband of the petitioner to physically remain present in the office with his failing health. In such extraordinary situation, justice and equity requires that due to such extraordinary situation and failing health. the joining report of the husband of the petitioner ought to have been accepted. Though the respondent authority, in the reply to the notice under Section 80 of the Civil Procedure Code has taken a stand that the financial condition of the organization of the respondent authorities is not sound and they are not in a position to pay the salary to employees and to bear the other administrative expenditures, yet the same cannot be a just ground to deny the entitlement of the husband of the petitioner who has rendered long years of service to the respondent No.1.

12. In this context, reference to an order dated 29.03,2020, No.40-3/2020-DM-I(A), issued by the Ministry of Home Affairs, Government of India, is necessary wherein it is stated that all the employers, be it in the Industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction, for the period of their establishments are under closure during the lockdown. And as such, the principle of 'no work, no pay' cannot be invoked during the lockdown period. Moreover, there was another order issued by the Ministry of Home Affairs, Government of India, on 17.05.2020, No.40-3/2020-DM-I(A), by which it has been directed to follow the guidelines issued by the Home Ministry. In Clause-7 of the said guidelines provides for protection of vulnerable persons. As per Clause-7, persons above 65 years of age, persons with co-morbidities, pregnant women and children below the age of 10 years, shall stay at home, except for essential and health purposes.

13. In the instant case, the husband of the petitioner was suffering from "Decompensated Cirrhosis of Liver", and in view of the above, the husband of the petitioner with such a serious health condition, cannot be expected to attend office at Itanagar, where Covid-19 pandemic was prevalent at that time.

14. Annexure-4, which is enclosed at page-58 of the writ petition indicates that for the month of May, June and July and upto 9th of August, 2021, the husband of the petitioner was entitled to a sum of Rs.2,85,790/- and after deduction of Rs.32,640/-, being the EPF contribution, the net amount of salary, which the husband of the petitioner is entitled is to Rs.2,53,150/- (Rupees two lac fifty three thousand one hundred and fifty) only.

15. In view of above and by a mandamus of the Court, the respondent Nos.2 & 3 are directed to pay the net salary of the husband of the petitioner, amounting to Rs.2,53,150/- (Rupees two lac fifty three thousand one hundred and fifty) only and to release the

corresponding amount, required to be deposited by the organization in the EPF account of late husband of the petitioner, amounting to Rs.32,640/- (Rupees thirty two thousand six hundred and forty) only, within a period of three months from today.

16. In terms of above, this writ petition stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant