

GAHC030000422022



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

Case No. : WP(C)/10/2022

Selthangi and 9 Ors.
Chaltlang, Aizawl, Mizoram 2: Zahmingthangi
Ramhlun North
Aizawl
Mizoram

3: Lalmuanpuui
Zemabawk
Aizawl
Mizoram

4: Vanlalmuani
Zemabawk
Aizawl
Mizoram

5: Lalremruata
Kulikawn
Aizawl
Mizora

VERSUS

Mizoram Khadi and Village Industries Board and 2 Ors.
r/b its Chairman, MINECO, Khatla, Aizawl 2: Chief Executive Officer
Mizoram Khadi and Village Industries Board
MINECO
Aizawl

3: Commissioner and Secretary

Commerce and Industries Dept.
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA, Mizoram) for R3

Linked Case : WP(C)/11/2022

Tinkhandala and 6 Ors.

Ramhlun North
Aizawl
Mizoram

2: Lalzidinga Sailo

Khatla
Aizawl
Mizoram

3: Sangkamlova

Ramhlun North
Aizawl
Mizoram

4: H.Lalropuia

Zemabawk
Aizawl

5: Ramthanmawii

Mission Vengthlang
Aizawl
Mizoram
VERSUS

Mizoram Khadi and Village Industries Board and 2 Ors.

r/b its Chairman
MINECO
Aizawl
Mizoram

2:Chief Executive Officer

Mizoram Khadi and Village Industries Board
MINECO
Khatla
Aizawl

3:Commissioner and Secretary
Commerce and Industries Dept.
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Ms Abigail Hmingthanpari
Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA
Mizoram) for R3

BEFORE

HONOURABLE MR. JUSTICE NELSON SAILO

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. A. R. Malhotra, Advocate.

For the Respondents : Mr. Lalruatpuia Sailo, Advocate.
Mrs. H. Lalmalsawmi, Govt. Adv.

Date of Hearing : 25.09.2023.

Date of Judgement : 06.10.2023

JUDGMENT & ORDER (CAV)

(A.D. Choudhury, J)

1. Heard Mr. A. R. Malhotra, learned counsel for the petitioners, Mr. Lalruatpuia Sailo, learned counsel for respondent Nos. 1 & 2 and Mrs. H. Lalmalsawmi, learned Government Advocate for respondent No. 3.

As agreed to by the learned counsel for the parties, both the writ petitions are taken up together for final disposal as the ground of challenge made in these writ petitions are similar and arises out of the same cause of action.

2. **The challenges:**

- I. **Writ Petition (C) No.:10/2022:** The Writ Petition under Article 226 of the Constitution of India is filed challenging the amendment made to Mizoram Khadi & Village Industries Board Employees (Pension) Regulations, 2002, more particularly, the Regulation 4 (2) (4) (iii) and (iv) of the Mizoram Khadi & Village Industries Board Employees (Pension) (Amendment) Regulation, 2019 being violative of Articles 14 and 16 of the Constitution of India.
- II. **Writ Petition (C) No. 11/2022:** The Writ Petition under Article 226 of the Constitution of India is filed challenging the amendment made to Mizoram Khadi & Village Industries Board Employees (Pension) Regulations, 2002, more particularly, the Regulation 4 (2) (5) (i) of the Mizoram Khadi & Village Industries Board Employees (Pension) (Amendment) Regulation, 2019 being violative of Articles 14 and 16 of the Constitution of India.

3. **The case of the petitioners:-**

- I. **Writ Petition (C) No. 10/2022:** The spouses/father of the petitioners, ten in numbers, were serving under Mizoram Khadi & Village Industries Board (for short KVIB) under different capacities and after their death, the petitioners were getting family pension in terms of Mizoram Khadi & Village Industries Board Employees (Pension) Regulation, 2002 (in Short Regulation 2002). The said Regulation 2002 was amended by an enactment namely Mizoram Khadi & Village Industries Board Employees (Pension) (Amendment) Regulation, 2019 (in Short Amended Regulation 2019) and by

amending Regulation 4 (2) (4) (iii) and (iv) of the Amended Regulation 2019, their vested and concluded right to get regular family pension has been withdrawn resulting in the infringement of their right under Articles 14 and 16 of the Constitution of India.

II. **Writ Petition (C) No. 11/2022:** The petitioners seven in numbers were serving under Mizoram Khadi & Village Industries Board (for short KVIB) under different capacities and superannuated from service and were getting monthly pension in terms of Mizoram Khadi & Village Industries Board Employees (Pension) Regulation, 2002 (in Short Regulation 2002) and by amending Regulation 4 (2) (5) (i) of the Amended Regulation 2019, their vested and concluded right to get regular pension has been withdrawn thereby infringing their right under Articles 14 and 16 of the Constitution of India.

4. **Argument advanced by the learned counsel for the petitioners:-**

Mr. A. R. Malhotra, learned counsel for the petitioners while assailing the offending amendment raises the following arguments:-

- I. The petitioners being retired employees/dependant of the deceased employees of KVIB were entitled for pension and pensionary benefits in terms of the Regulation 2002, and accordingly, they are having vested and concluded right to get the pension/family pension and they continued to receive such pension in terms of Regulation 2002.
- II. By way of the amendment, such vested and concluded right are sought to be taken away in a manner which is not permissible under law inasmuch as vested and concluded right granted under service

regulation/pension rules cannot be given retrospective operation, when such amendment is having the effect of taking away the vested and concluded right of petitioners. In support of such contention, Mr. Malhotra, learned counsel relies upon the decision of the Hon'ble Apex Court rendered in ***Punjab State Co-operative Agricultural Development Bank Limited -Vs- Registrar of Co-operative Societies and Another*** reported in ***(2022) 4 SCC 363***.

5. **Arguments advanced on behalf of the respondent Nos. 1 and 2.**

Mr. Lalruatpuia Sailo, learned counsel for respondent No. 1&2 argues the following:-

- I. The learned counsel for the respondent Nos. 1 and 2 relying on the affidavit filed on behalf of the respondent Nos. 1 and 2 argues that due to paucity of fund, the KVIB will not be in a position to pay pension/family pension to the retired employees/dependents, accordingly, the KVIB proposed to make amendment to the Regulation 2002. Accordingly, the amendment was made by way of the Amended Regulation, 2019.
- II. In the affidavit, the explanations were given regarding payment of pensionary benefits and it is also shown that in some cases, pensions were overdrawn and it is also shown that in some cases, overdrawn pensions were exempted in terms of Amended Rule 4 (3) (vi).
- III. However, regarding the validity of such amendment, so far the same relates to the retired employees/their dependents who are getting their monthly pension in terms of the Regulation 2002, the

same is not answered in the affidavit and no arguments are also made on the contention of the petitioner's that their vested and concluded right could not have been taken away by way of the Amending Act, 2019.

6. **Argument advanced on behalf of the respondent No. 3.**

Mrs. H. Lalmalsawmi, learned Government Advocate for respondent No. 3 raises the following arguments:-

- I. Relying on the affidavit filed, the respondent No. 3 also took a similar stand with that of the respondent Nos. 1 and 2. In fact their averments made in the affidavit are similar to that of the respondent Nos. 1 and 2.
- II. The learned counsel for the respondent No. 3 relied on the argument advanced by the learned Advocate General, which is recorded in order dated 13.07.2023, wherein and whereby the learned Advocate General of the State relying on the decision rendered by the Hon'ble Apex Court in ***State of Odisha and Another -Vs- Odisha Khadi and Village Industries Board Karmasari Sangha and Another*** reported in ***2023 SCOnline SC 281*** , urged that the KVIB being an autonomous body, the State Government cannot be burdened with the liability of pensionary benefit being availed by the employees of the Board. To buttress such argument, the learned Advocate General further placed reliance on the provision of the Regulation 2002, which provided that the Regulation, 2002 was given effect to subject to a condition that the Board is to manage themselves without causing any financial and

administrative liability to the State Government. The learned counsel for the respondent State also adopts such arguments advanced by the learned Advocate General on 13.07.2023.

7. Decision and determination of this Court.

- I. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties. We have also perused the materials available on record.
- II. No dispute has been raised by the respondent State as well as the respondent KVIB regarding the fact that the petitioners were paid regular pension/ family pension in terms of the Regulation, 2002, though certain dispute regarding overdrawal/excess payment are being raised.
- III. This Court in the aforesaid backdrop, more particularly on the backdrop of undisputed fact that the spouses/father of the petitioners in WP(C) No. 10/2022, were employees under KVIB and were getting pensions in terms of Regulation 2002 and they retired/expired prior to coming into effect of the Amended Regulation 2019 and that the petitioners in WP(C) No. 11/2022 are retired employees of KVIB and are getting pension in terms of the Regulation 2002, is of the view that the following are the basic issues that are to be determined and answered in the present case:-
 - a. Whether the petitioners are having vested and concluded right to continue to receive pension/ pensionary benefits in terms of Regulation 2002?
 - b. Whether the right of the petitioners if any to get the

pension/pensionary benefits under the Regulation 2002 can be taken away by giving retrospective operation of the Regulation 2002?

- IV. The Regulation 2002 was enacted in exercise of power under Sub-Section 1 of Section 40 of the Mizoram Khadi and Village Industries Board Act, 1982 read with KVIB Regulation, 1988.
- V. The pension fund is defined under Regulation 3 (g) as pension fund of the Mizoram KVIB.
- VI. Regulation 4 (1) mandates that with commencement of the Regulation 2002, the pensionary benefit shall be payable to all the employees of the Board.
- VII. Regulation 4 (2) provides that such pension shall cover and include all the retirement benefits such service gratuity, terminal gratuity, DCRG, including family pension etc. as provided under CCS (Pension) Rules, 1972 and as amended from time to time.
- VIII. Regulation 5 provides for general condition of such payment.
- IX. The Hon'ble Apex Court in the case of ***Punjab State Co-operative Agricultural Development Bank Limited (supra)***, while dealing with a similar issue on retrospective amendment of pension regulation by relying upon its earlier pronouncements laid down the following proposition of law:-
 - a) A rule which seeks to reverse from an anterior date a benefit, which has been granted or availed can be assailed as being violative of Articles 14 and 16 of the Constitution of India.

b) In many decisions, the expression “vested rights” or “accrued right” has been used while striking down the provision of law, which had been given retrospective operation and having an adverse effect in the service matters of employees. Such expression has been used in the context of right, flowing under the relevant rule, which was sought to be altered with effect from an anterior date and thereby, taking away the benefits available under the rule in force at that time.

c) Amendment having retrospective operation, which has the effect of taking away a benefit already made available to the employee under existing rule is arbitrary, discriminatory and the same violates the rights guaranteed under Articles 14 and 16 of the Constitution of India.

d) An amendment having retrospective operation which has the effect of taking away the benefit already made available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it is to be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution of India.

X. Now, coming to the present case, the Regulation (2) (i) of the Amended Regulation 2019, whereby Regulation 4 of the Regulation, 2002 was amended, mandated that under no circumstance, commutation of pension shall be made applicable as pension benefit. Regulation 4 (iii) of the Amended Regulation 2019 provided that the superannuation pensioners shall be entitled for compensatory pension for their life time and in the event of death, compensatory pension

will be passed over to the legal dependents for a period of 12 months only. Thus, those families of the deceased pensioners who were getting compensatory pension in terms of Regulation 2002, shall now be entitled for such pension only for the next 12 months.

- XI. Amended Regulation (5) (i), mandated that amendment to the Regulation, 2002 shall abide all the employees and pensioners who opted the Regulation 2002. Thus the amendment has been made applicable to those pensioners who are getting pension in terms of Regulation, 2002.
- XII. Further, by way of the amendment of Regulation 4 (ii), a minimum compensatory pension was fixed at Rs. 5,000/- and a ceiling of Rs. 15,000/- was provided for compensatory payment and in the terms of Amended Rule 5 (i), the same shall be applicable to the petitioners also.
- XIII. As regards, the family pensioner, amendment was made to the effect that the family pensioner who had already drawn family pension shall be entitled for compensatory pension for a period of 12 months only with effect from the date of amendment of the Regulation 2002.
- XIV. Thus the entitlement of pensioners under Regulation 4 (1) and 4 (2) of the Regulation 2002 are sought to be taken away and the same is made payable for 12 months only, while they were otherwise enjoying pension in terms of Regulation 2002.
- XV. In the case in hand, the Mizoram Khadi and Village Industries Board Act, 1982 (for short Act, 1982) was enacted and received the

accent of the President on 20.03.1985 and was given effect from 29.04.1985. Section 40 of the Act, 1982 empowers the Board to make regulation with the previous sanction of the Government. Accordingly, Regulation 1988 was enacted in exercise of power Section 40 of the Act, 1982.

- XVI. Subsequently, the Pension Regulation, 2002, was enacted in exercise of power under Section 40 of the Act, 1982 and read with Regulation 9 and 22 of the Regulation 1988.
- XVII. The Pension Regulation 2002 under general condition enumerated under Regulation 5 (2) mandates that an employee who opts to come under the Pension Regulation 2002 shall cease to participate in the Contributory Provident Fund scheme and the accumulated amount under CPF shall be transferred to GPF.
- XVIII. Establishment of a separate fund of pension is mandated under Regulation 6 (1) of the Regulation, 2002.
- XIX. As discussed hereinabove, Regulation 4(1) of the Regulation, 2002 creates a right upon the employees to have pensionary benefits and in terms of Regulation 4(2), such pension shall cover and include all the retirement benefits such as Service Gratuity, Terminal Gratuity, Death-cum-retirement Gratuity, all different kinds of pension, including family pension, commutation of pension and encashment of leave, as provided in the Central Civil Services (Pension) Rules, 1972 and as amended from time to time or any other such rules framed in replacement of its by the Government of Mizoram and the said rules shall be applicable, mutatis mutandis, to the employees of the Board.

- XX. Regulation 4(3) of the Regulation 2002 further stipulates that all other issues and aspects relating to pensionary benefits and other connected issues, which are not specially provided in the Regulation, shall be settled and decided on the basis of provisions under Central Civil Service (Pension) Rules 1972.
- XXI. Regulation 5 (1) of the Regulation 2002, provides that no pension shall be liable to seizure, attachment or sequestration by process of court in India at the instance of the creditor that is the Board including creditors to the Board for any demand against the pensioner except as provided in Regulation 8.
- XXII. Thus, from the discussion made hereinabove, it is abundantly clear that the petitioners have the vested and accrued right to receive pension and pensionary benefits in terms of the mandate of Regulation 2002. The amendment made to the pension Regulation 2002 by way of Regulation 2019 only has the effect of taking away their vested and concluded right with retrospective operation and the same is violative of Articles 14, 16 and 21 of the Constitution of India.
- XXIII. Coming to the financial liability of the State and the argument that the State cannot be fastened with the financial liability of the KVIB, this Court is of the considered opinion is that the same is not at all the subject matter of the present writ petition inasmuch as endeavoring such issue will be beyond the subject and scope of the present writ petition and same shall definitely be adjudicated when occasion arises.
- XXIV. In view of the aforesaid reasons and discussion, this Court is of

the view that the offending amendments namely the Regulation 4 (2) (4) (iii) and (iv) of the Mizoram Khadi & Village Industries Board Employees (Pension) (Amendment) Regulation, 2019 and amending Regulation 4 (2) (5) (i) of the Amended Regulation 2019 cannot be made applicable retrospectively in respect of the petitioners,/ legal heirs/ dependents of the deceased employees and they cannot be deprived of their vested and concluded right and entitlement under the Pension Regulation 2002. Accordingly, the offending amendments are interfered with in the terms of the discussion, reason and conclusion made hereinabove. The writ petitions are therefore disposed of as allowed. Parties to bear their own cost.

JUDGE

JUDGE

Comparing Assistant