

GAHC030005132023



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

Case No. : WP(C)/118/2023

Sh. H. Lalhriatkima
S/o H. Thankunga (Late)
R/o Bairabi South, Kolasib District, Mizoram

VERSUS

The State of Mizoram and 6 Ors.
R/b Chief Secretary
Aizawl
Mizoram 2:The Principal Secretary
Finance Department

3:The Director
Office of the Chief Controller of Accounts
Accounts and Treasuries

4:The Assistant Director (Pension)
Accounts and Treasuries

5:The Deputy Director (Pension)
Accounts and Treasuries

6:The Superintendent of Police
Office of Superintendent of Police

7:The Addl. Superintendent of Police
Office of the Superintendent of Polic

Advocate for the Petitioner : Saihmingthanga Sailo

Advocate for the Respondent : Addl. AG/GA, Mizoram (Linda L. Fambawl) for R1 to R7

B E F O R E
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

09.11.2023

Heard Mr. Saihmingthanga Sailo, learned counsel for the petitioner. Also heard Mrs. H. Lalmalsawmi, learned Government Advocate for all the respondents.

2. The petitioner's counsel submits that the petitioner's father died in harness on 15.12.1995, while serving as a Constable in the Police Department, Government of Mizoram. Thereafter, the petitioner's mother was given family pension and all other service benefits. The petitioner's mother, Smt. P.C. Lalneihkimi expired on 24.10.2019.

3. The petitioner's counsel submits that the petitioner was born after the death of his father, i.e., on 07.05.1996. At the time of the death of his father, his mother was 4 (four) months pregnant with him.

4. The petitioner's grievance is that despite praying for grant of family pension for the period from 24.10.2019 till 06.05.2021, i.e., the 18 months period in which the petitioner was entitled to family pension in terms of Rule 54(6)(ii) of the CCS Pension Rules, 1972, as he had attained the age of 25 years on 07.05.2021, the petitioner has not been given family pension for the said period.

5. In the case of *Deokinandan Prasad Vs. State of Bihar*, reported in 1971 2 SCC 330, the Constitution Bench of the Supreme Court has held that pension is

a right and the payment of it does not depend upon the discretion of the Government, but it govern by the Rules and the Government Servant coming within those Rules is entitled to claim pension. It further held that the grant of pension does not depend upon any one's discretion.

6. In view of the decision of the Supreme Court in *Deokinandan Prasad (supra)* read with Rule 54(6)(ii) of the CCS Pension Rules, 1972, Rule 54(6)(i), (ii) & (iii) of the CCS Pension Rules, 1972 states as follows:-

“6.(i) in the case of a widow or widower, up to the date of death of re-marriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of twenty five years; and

(iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier”.

7. A perusal of the said Rules clearly provides that a child is entitled to payment of family pension till he attains the age of 25 years.

8. The Court of the Civil Judge-I, Kolasib has, vide Order & Decree dated 29.01.2021, declared the petitioner Sh. H. Lalhriatkima as the biological son of Sh. H. Thanghluna (L) and Smt. P.C. Lalneihkimi (L), R/o Bairabi, Kolasib District.

9. In view of the above, it becomes clear that the provisions of Rule 54(6)(ii) of the CCS Pension Rules, 1972 would have to be applied to the case of the

petitioner for grant of family pension from the period of his mother's death, i.e. on 24.10.2019, till the day the petitioner attained the age of 25 years, i.e. till 06.05.2021, in terms of the Birth Certificate issued to the petitioner. Just because the petitioner was born after the death of his father, which would have made it impossible for the petitioner's father to enter the details of the petitioner in Form-3 with regard to the members of his family, this Court is of the view that the benefit of family pension cannot be denied to the petitioner.

10. In this regard, it is also noticed that the office of the Superintendent of Police, Aizawl District had written letter No.AZL/DEF/B-12/2021 dated 15.02.2021 to the Deputy Director (Pen), Accounts & Treasuries, Government of Mizoram, stating that the family pension should be paid to the petitioner as he was born after the death of his father.

11. In the case of D.S. Nakara and Others Vs. Union of India, reported in 1983 1 SCC 305, the Supreme Court has held that *(i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch."*

12. In view of the reasons stated above, the respondent No. 6 shall ascertain the veracity of the petitioner's claim and conclude the exercise within a period of

1 month from the date of receipt of a copy of this order. In the event that the respondent No. 6 comes to a finding that the petitioner is entitled to family pension, the respondent No. 6 shall make a proposal for payment of family pension to the petitioner for the period from 24.10.2019 till 06.05.2021 and send the same for approval to the other respondents. The exercise for approval to be given by the other respondents for payment of family pension and the payment of family pension should then be concluded within a further period of 1 month.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant