

IN THE HIGH COURT OF MANIPUR : AT IMPHAL

W.P.(C) No. 731 of 2019

1. Mr.Kh. Donshu Chothe, aged about 60 years,
S/o (Late) Kh.Thambou Chothe, resident of Purum
Chungbam, P.O., P.S. & District – Chandel,
Manipur.

2. Mr. KL. Angshung Anal, aged about 60 years,
S/o (Late) KL. Khelcho Anal, resident of
Phungchong, P.O., P.S. & District –Chandel,
Manipur.

... Petitioner/s

-Versus-

- 1.** The State of Manipur, represented by the
Commissioner/Secretary (PHED), Government of
Manipur, P.O. and P.S. Imphal, Imphal West District,
Manipur, Secretariat South Block-795001.
- 2.** The Chief Engineer, Public Health Engineering
Department (P.H.E.D), Govt. of Manipur, P.O.-
Imphal, P.S.-City Police, Imphal West District, P.W.D.
Complex at Khuyathong, Manipur-795001.
- 3.** The Principal Secretary (Finance,)), Govt. of Manipur,
P.O. & P.S. – Imphal, Chief Minister's Secretariat at
Babupara, Imphal West District, Manipur-795001.
- 4.** The Joint Secretary/Under Secretary (Pension Cell),
Department of Personnel, Govt. of Manipur, P.O. &
P.S. Imphal, Imphal West District, Manipur-795001
(Secretariat North Block).

... Respondent/s

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner :: Mr.Ch. Robinchandra, Advocate
For the respondents :: Mr. Th. Vashum, Government Advocate
Date of Hearing :: **26-02-2024**
Date of Judgment & :: **29-05-2024**
Order

JUDGMENT & ORDER

Heard Mr.Ch. Robinchandra, learned counsel appearing for the petitioners and Mr. Th. Vashum, learned Government Advocate appearing for the respondents.

2] The present writ petition had been filed with a prayer for directing the respondents to confirm the Work-charged services of the petitioners in terms of the guidelines as contained in the Office Memorandum dated 22-01-2001 issued by the Finance Department, Government of Manipur, so as to enable the petitioners to avail pension and other retirement benefits as provided under the Terminal Benefits for Work Charged Staffs of PWD/IFCD/PHED/MI and Electricity (Manipur) Rules, 1978 (hereinafter referred to as Terminal Benefit Rules).

[3] The case of the petitioners is that they were initially engaged as Muster Roll workers in the capacity of Technical Jugali and Chowkidar respectively. The State Government framed a policy regarding the service condition of the Casual/Muster Roll workers and Work charged staffs of the Engineering Departments and published the same on 16-04-

1997. Under the said policy, casual and muster roll workers who have completed 10(ten) years' service as on 16-04-1997 shall be converted into Work Charged establishments and those Work Charged employees who have completed 10(ten) years as on 16-04-1997 shall be converted to regular employees. Pursuant to the said policy, altogether 888 Muster Roll workers in the PHED including the present petitioners who have completed 10(ten) years continuous service as Muster Roll workers were converted to Work Charged Establishment with immediate effect by an order dated 11-01-1999 issued by the Chief Engineer (Rural), PHED, Manipur. After the said conversion, the petitioners rendered their services as Work Charged Technical Jugali and Chowkidar respectively in the PHED for more than 20 (twenty) years till they retired from service on attaining the age of superannuation w.e.f. 28-02-2019 and 31-03-2019 respectively. After their retirement from service, the petitioners submitted representation dated 17-05-2019 to the Chief Engineers, PHED, Government of Manipur requesting to grant their pension as provided under the Terminal Benefits Rule, however the said representation remains pending without any consideration by the authorities.

[4] Under Rule 6(i)(a) of the Terminal Benefits Rule, it is provided that the permanent Work Charged staffs will be entitled to get pension only calculated under the Central Civil Service Regulation under Article 474 of the Government of India if the permanent Work Charged employee who retired at the age of 55 years and at least 30 years' service to his credit.

By an order dated 24-05-1982 issued by the Secretary, Works Department, the aforesaid Rule 6(i)(a) of the Terminal Benefits Rules were amended and as per the amended Rules, permanent Work Charged staff will be entitled to get pension only calculated under the Manipur Civil Services (Pension) Rules, 1977 and amended from time to time if the permanent Work Charged employee who retire at the age of 55 years and at least 30 years' service to his credit.

[5] It is also the case of the petitioners that under the Office Memorandum dated 22-01-2001 issued by the Secretary, Finance Department (Pay Implementation Cell), Government of Manipur containing guidelines for confirmation of Work Charged employees, it is inter alia provided that –

(i) Confirmation of Work Charged employees should be made against the permanent posts in the Work Charged establishment.

(ii) Confirmation of Work Charged employees may be made only when they have put in 10 years' service as Work Charged with the effect of confirmation from the date, they have completed 5 years' service in the Work Charged establishment.

(iii) No, confirmation of those Work Charged employees who have been brought to the regular establishment, with retrospective effect, should be made.

[6] According to the petitioners, as they have completed more than 20(twenty) years' service in the Work Charged establishment, they are entitled to get confirmation of their services with effect from the date they have completed 5 years' service in the Work Charged establishment in terms of

the aforesaid Office Memorandum, However, only because of the negligence and failure on the part of the authorities to consider their cases for such confirmation, the petitioners have been deprived of their services being confirmed as provided under the aforesaid memorandum, thereby resulting in non payment of their entitled pensionary benefits as provided under Terminal Benefits Rule.

[7] The further case of the petitioners is that in Rule No. 5 of the Terminal Benefits Rule, it is mentioned that at the time of publication of the Terminal Benefits Rule, there are 413 permanent Work Charged posts in the PWD, IFCD, PHED, MI, Electricity Department and that some more permanent posts at various departments are to be created for confirmation of Work Charged employees and that by an order dated 10-03-1988, issued by the Chief Engineer (PHED), Manipur, altogether 57 different permanent Work Charged posts, including 16 posts of Technical Jugali and 5 posts of Chowkidar were created. In view of the above, the stand taken by the respondents that the Work Charged services of the petitioners could not be confirmed as there is no permanent posts in the PHED is not tenable and deserves to be rejected.

[8] It has been submitted on behalf of the petitioners that the issues raised in the present writ petition are squarely covered by the judgment and order dated 10-08-2016 passed by this Court in WP© No. 639 of 2015, judgment and order dated 03-05-2023 passed by this Court and W.A. No. 48 of

2018 and judgment and order dated 12-08-2010 passed by the Hon'ble Gauhati High Court, Imphal Bench in WA No. 29 of 2009 and as such, the present writ petition can be allowed by granting similar reliefs as has been granted in the aforesaid judgments.

[9] The stand taken by the respondents in their counter affidavit is that –

(i) There is no permanent Work Charged establishment post in the PHED and as such, no confirmation can be made;

(ii) Guidelines under para 2(3) of the Office Memorandum dated 28-08-2007 prescribes that no retrospective confirmation shall be made after retirement or expiry of the employee. Since both the petitioners have already retired from service in the year 2019, their services cannot be confirmed now in view of the aforesaid guidelines under para 2(3) of the Office Memorandum dated 28-08-2007;

(iii) Under Rule 6(i)(a) of the Terminal Benefits rules as amended from time to time, only the permanent Work Charged employee who retired at the age of 55 years and at least 30 years' service to his credit is entitled to avail pension. Since, the petitioners are not confirmed or permanent Work Charged employees, they are not entitled to get pension as provided under the aforesaid amended rule 6(i)(a) of the Terminal Benefits Rule.

[10] It has been submitted on behalf of the respondents that there is infirmity in the judgment relied on by the petitioners and that in the said judgment, some benefits have been given inadvertently or by mistake and as such, the petitioners are not entitled to get similar reliefs, inasmuch as, it will amounts to perpetuate the same mistake. In support of the said contention, learned counsel for the respondents cited the

case law reported in **2011 (3) SCC 436 "State of Orissa & anr. –Vrs.- Mamata Mohanty"** wherein it has been held as under :

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.(Vide Chandigarh Admn. V. Jagjit Singh, Yogesh Kumar v. Govt. of NCT of Delhi, Anand Buttons Ltd. V. State of Haryana, K.K. Bhalla v. State of M.P., Krishan Bhatt v. State of J&K, Upendra Narayan Singh and Union of Inai v. Kartick Chandra Mondal).

"57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. observed as under: (SCC p. 551, para 12)

"12....'2....To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter AT P. 18:

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors". '"*

[11] In the present case, the Muster Roll service of the present petitioners were converted to Work Charged Establishment by the order dated 11-01-1999 issued by the Chief Engineer (Rural) PHED, Manipur with immediate effect. After such conversion to Work Charged establishment, the petitioners rendered their services as a Work Charged

employee in the PHED for more than 20(twenty) years till they retired from their service on attaining the age of superannuation w.e.f. 28-02-2019 and 31-03-2019 respectively. The guidelines contained in paragraph 4 of the Office Memorandum dated 22-01-2001 prescribes that confirmation of Work Charged employee should be made against the permanent posts in the Work Charged establishment and that confirmation of Work Charged employees may be made only when they have put in 10(ten) years' service as Work Charged with the effect of confirmation from the date, they have completed 5 (five) years' service in the Work Charged establishment.

[12] On examination of the record, it is found that the petitioners have put in 10(ten) years' service as Work Charged employee in the year 2009, more than a decade before the date of their retirement, and as such, this Court is of the considered view that the petitioners were entitled to have their cases considered by the authorities for confirmation of their Work Charged services in terms of the aforesaid Office Memorandum dated 22-01-2001 well before their retirement. Only because of the failure or negligence on the part of the concerned authorities, the petitioners have been deprived of their Work Charged services being confirmed as provided under the said Office Memorandum dated 22-01-2001 and they have been made to suffer on account of the failure and negligence on the part of the respondents and for no fault on their part.

[13] With regard to the first stand taken by the respondents, it is to be pointed out that such stand of the respondents is contrary to the materials available on record. As submitted by the petitioners, 412 permanent Work Charged posts in the Engineering Departments of the Manipur Government were available at the time of publication of the Terminal Benefits Rule and such factum is clearly mentioned at Rule 5 of the said Terminal Benefits Rule. In the said Rule 5, it is also mentioned that some more permanent posts at various departments are to be created for confirmation of Work Charged staffs. Moreover by an order dated 10-03-1988 issued by the Chief Engineer (PHED), Manipur, altogether 57 various categories of permanent Work Charged posts, including 16 posts of Technical Jugali and 5 posts of Chowkidar were created. In view of such undisputed factual positions, this Court is not inclined to accept the bold stand taken by the respondents that the Work Charged services of the petitioners cannot be confirmed as there is no permanent post in the PHED.

[14] With regard to the second stand taken by the respondents, it is to be pointed out that the Office Memorandum dated 28-08-2007 containing guidelines for confirmation of Work Charged employees and relied on by the respondents was given immediate effect, i.e., w.e.f. 28-08-2007. In my considered view, the said Office Memorandum having no retrospective effect cannot be made applicable in the case of the present petitioners, who are entitled to have their

cases considered for confirmation of their Work Charged services under the Office Memorandum dated 22-01-2001 and before the publication of the aforesaid subsequent Office Memorandum dated 28-08-2007. In such view of the matter, this Court is of the considered view that there is no force or merit in the second stand taken by the respondents. Guidelines contained in para 2(3) of the Office Memorandum dated 28-08-2007 cannot stand in the way or deprived the petitioners of their valuable rights to have their cases considered for confirmation of their Work Charged services as provided under the Office Memorandum dated 22-01-2001 specially when large number of Work Charged staffs/employees similarly situated with the petitioners have been given the benefit of confirmation under the said Office Memorandum.

[15] In so far as the 3rd stand taken by the respondents is concerned, this Court is of the considered view that the issue raised by the respondents is no longer res integra. The issue as to whether the Work Charged employee, who is not yet confirmed or made permanent, is entitled to get pension or not under the Terminal Benefits rule had been already considered and decided by the judgment and order dated 12-08-2010 passed by a Division Bench of the Gauhati High Court, Imphal Bench in WA No. 29 of 2009. The said writ appeal was filed by the State of Manipur challenging the judgment and order dated 20-11-2007 passed by the learned Single Bench in WP(C)No. 899 of 2006 extending the benefit of family pension to the

widow of the Work Charged employee whose service was yet to be confirmed.

[16] In the said judgment and order, it has been held, inter alia, that confirmation of service and/or permanency in service by issuance of specific order is always an uncertainty and that in normal circumstances, employee after rendering a particular length of service is entitled to get his service confirmed or made permanent. It has further been held that for availing pension/family pension, if confirmation of service is required, the authorities may do so by passing appropriate order and thereafter, the Division Bench dismissed the writ appeal and refused to interfere with the impugned judgment and order passed by the learned Single Judge. The relevant portion of the aforesaid judgment and order are reproduced herein for ready reference :-

"10. Rule 6B which has been quoted above having not made any distinction between confirmed and permanent work-charged employees and those who are not confirmed work-charge employees, we are of the considered opinion that upon a reference to some other provisions, the expression 'confirmation and permanent' cannot be brought into the said provisions. Be that as it may, on perusal of the chart which forms part of the Division Bench judgment what we find is that, there are many work-charged employees whose services were confirmed retrospectively. In many cases, work-charged employees were confirmed after their expiry. Thus, it cannot be said that the benefits to which the families of the said work-charged employees were provided by way of family pension would require confirmation of service of the deceased husband of the petitioner for said benefits to the petitioner. If for family pension to the petitioner confirmation of her husband's service is required, the authority may do so by

passing appropriate order as was done in case of the persons which we find mention in the Division Bench judgment.

"11. Needless to say confirmation of service and/or permanency in service by issuance of specific order is always an uncertainty. In the normal circumstances, an employee after rendering a particular length of service is entitled to get his service confirmed or permanent. In the instant case, husband of the petitioner rendered sufficient length of service so as to earn confirmation. The chart which formed part of the Division Bench judgment shows that a work-charged employee who was appointed on 03-08-1979 was confirmed w.e.f. 01-03-1986. Likewise, another employee who was appointed on 21-03-1978 was confirmed by order dated 25-02-1992 w.e.f. 12-08-1996. Another employee who was appointed on 01-08-1959 was confirmed w.e.f. 05-03-1968 by order dated 09-01-1974 after expiry on 15-08-1968. There is another employee who was appointed on 28-03-1962 was confirmed on 06-03-1968 by order dated 09-01-1994 after his expiry on 08-01-1983.

"12. Above being the position, we see no reason as to why the petitioner who has filed the writ petition should be deprived of similar treatment. Situated thus, we see no reason to interfere with the impugned judgment and order passed by the learned single Judge dated 20-11-2007 in WP(C) No. 899 of 2006."

[17] The SLP being SLP C No. 218/2011 filed by the State of Manipur assailing the aforesaid judgment and order dated 12-08-2010 passed in WA No. 29 of 2009 had already been dismissed by the Hon'ble Apex Court by an order dated 17-01-2011 and as such, the matter has attained finality.

[18] In my considered view, the corollary of the aforesaid judgment and order dated 12-08-2010 passed in WA No. 29 of 2009 is that confirmation/permanency of the Work Charged service of an employee is not sine qua non for availing

pension / family pension under the Terminal Benefits Rule if it is found that the Work Charged employee is entitled to get confirmation/permanency in terms of applicable guidelines and if the said employee is otherwise found to have rendered the qualifying service as prescribed under Rule 6 of the Terminal Benefits Rule.

[19] I have also perused the judgment cited by the learned Government Advocate in the case of “Mamata Mohanty” (Supra) and this Court is of the view that the ratio laid down therein are not applicable in the facts and circumstances of the present case and that the said judgment is of no help to the respondents.

[20] Taking into consideration the fact and circumstances of the present case and in view of the findings and reasons given therein above, this Court is of the considered view that the petitioners are entitled to the relief sought for in the present petition. In the result, the present petition is allowed. The respondents are directed to consider the cases of the petitioners for confirmation of their Work Charged service in terms of the Office Memorandum dated 22-01-2001 and to issue necessary orders for confirmation of their Work Charged services, if the same is considered necessary. The whole process should be completed within a period of 2(two) months from today. Thereafter the respondents are further directed to expedite the process for payment of the pension of the petitioners in terms of Rule 6 of the Terminal Benefits Rule as

amended on 24-05-1982 as expeditiously as possible preferably within a period of 5(five) months from today.

[21] With the aforesaid directions, the present writ petition is disposed of. There will be no order as to costs.

JUDGE

FR/NFR

Dhakshori