

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 736 of 2019

Dr. Usham Dharmaraj Meetei, aged about 49 years,
S/o U. Dhananjoy Singh, a resident of Khurai Laishram
Leikai, P.O. Lamlong, P.S. Porompat, Imphal East District,
Manipur - 795010

... Petitioner

-Versus-

1. The State of Manipur, represented by the Commissioner/
Secretary (Health), Government of Manipur, New
Secretariat, Babupara, P.O. & P.S. Imphal, Imphal West
District, Manipur, Pin – 795001.
2. The Director of Health Services, Government of Manipur,
Lamphelpat, P.O. & P.S. Lamphel, Imphal West District,
Manipur – 795004.
3. The Commissioner (Finance), Government of Manipur, New
Secretariat Building, P.O. & P.S. Imphal, Imphal West
District, Manipur – 79001.
4. The Accountant General, Manipur.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. Y. Nirmolchand, Sr. Advocate asstd. by Mr. L. Raju, Advocate
For the respondents	::	Mr. Phungyo Zingkhai, Deputy GA & Mr. S. Suresh, Advocate
Date of hearing	::	17-09-2024
Date of judgment & order	::	21-10-2024

JUDGMENT & ORDER

[1] Heard Mr. Y. Nirmolchand, learned senior counsel assisted by Mr. L. Raju, learned counsel appearing for the petitioner; Mr. Phungyo Zingkhai, learned Deputy GA appearing for the respondents No. 1, 2 and 3 and Mr. S. Suresh, learned counsel appearing for the respondent No. 4.

The present writ petition has been filed challenging the validity and legality of the order dated 09-08-2016 issued by the Commissioner, (Health & FW), Government of Manipur, for recovery of an amount of Rs. 5,70,475/- (Rupees five lakh seventy thousand four hundred and seventy five) from the petitioner as provided under Rule 63(1)(i) of the Manipur Civil Services (Leave) Rules, 1979 on the ground that he did not rendered three years mandatory service under the State Government after returning from his PG studies coupled with a prayer for directing the respondents to release the Pro-rata (Pension) liability of the petitioner for the service period from 16-03-1996 to 22-03-2007.

[2] The facts of the present case, in a nutshell, is that the petitioner was initially appointed as Manipur Health Services (MHS) Grade - IV Medical Officer on adhoc basis by an order dated 11-03-1996. Subsequently, by an order dated 21-12-1998 issued by the Secretariat, Health Department, the adhoc service of the petitioner was regularised retrospectively w.e.f. the date of his initial adhoc appointment, i.e., 11-03-1996. While the petitioner was serving as Medical Officer

Grade -IV, he was selected for undergoing Post-Graduate course at the Regional Institute of Medical Sciences (RIMS), Imphal and the Director of Health Services, Government of Manipur, nominated the petitioner as a Government nominee for admission to the Post-Graduate course in Pharmacology for the academic session 2001-2002. The petitioner successfully completed his Post-Graduate course in the month of August, 2004 and thereafter, he continued to serve as a Medical Officer Grade-IV in the Health Department upto 22-03-2007, for about two years and seven months after completion of his Post-Graduate course.

[3] While the petitioner was serving as a Medical Officer Grade-IV in the Health Department, Manipur, he obtained a 'No-Objection Certificate' from the competent authority for appearing in a selection test for appointment as a Demonstrator in RIMS. On being selected, the Director of RIMS issued an order dated 01-02-2007 appointing the petitioner as a Demonstrator in the Department of Pharmacology, RIMS in a temporary capacity w.e.f. the date he joined for duty. On receiving a copy of the said appointment order, the petitioner submitted an application dated 26-02-2007 to the Secretary (Health), Government of Manipur, requesting to issue release order so as to enable him to join in RIMS. The request made by the petitioner was allowed by the Government by issuing an order dated 22-03-2007 and released the petitioner from Manipur Health Services with immediate effect for joining as Demonstrator in the Department of Pharmacology, RIMS, Imphal. In the said order, it is also mentioned that the petitioner's past service in

Manipur Health Services can be counted as qualifying service in RIMS under the provisions of Rule 14 of the CCS (Pension) Rules, 1972 as he applied for the post of Demonstrator with due permission from the State Government.

[4] While the petitioner was serving as a Demonstrator in RIMS, the Office of the Senior Deputy Accountant General (A&E), Manipur, wrote a letter dated 11-02-2010 to the Deputy Secretary (Health & FW), Government of Manipur, requesting the latter to arrange for discharging the petitioner's Pro-rata (Pension) liability amounting to Rs. 4,97,706/- (Rupees four lakh ninety seven thousand seven hundred and six) only for the period of service from 16-03-1996 to 22-03-2007 rendered to the Government of Manipur to RIMS debiting to MH-207: Pension and other Retirement benefits.

When there was inordinate delay in releasing the petitioner's Pro-rata (Pension) liability, he filed a writ petition being WP(C) 777 of 2015 in this High Court and during the pendency of the said writ petition, the Secretariat, Health Department issued the impugned order dated 09-08-2016. In para. 1 and 2 of the said impugned order, the Government accorded Administrative Approval and Expenditure Sanction to an amount of Rs. 4,97,706/- as Pro-rata (Pension) of the petitioner, however in para. 3 and 4 of the said impugned order, it is stated that the sanctioned amount of Rs. 4,97,706/- will be adjusted against the amount of Rs. 5,70,475/- (Rupees five lakh seventy thousand four hundred and seventy five) only recoverable from the petitioner under

Rule 63(1)(i) of the Manipur Civil Services (Leave) Rules, 1979 as the petitioner did not rendered three years mandatory service under the State Government after returning from his PG studies and that the shortfall amount of Rs. 72,769/- (Rupees seventy two thousand seven hundred and sixty nine) shall be recovered from the petitioner. Having been aggrieved, the petitioner filed the present writ petition assailing the offending portion of the said impugned order.

[5] The stand of the Government is that under Rule 63(1) of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as "the Leave Rules", for short) which have been adopted as Manipur Civil Services Leave Rules, 1979, it has been laid down that if a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificates as required under sub-rule (5) and Rule 53, he shall be required to refund – (i) the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government together with interest thereon at rates for the time being in force on Government loans, from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise.

When the petitioner leave his service as a Medical Officer Grade-IV under the State Government and joined as a Demonstrator of Pharmacology in RIMS, he had rendered service under the State

Government for only about two years and seven months after returning from his PG studies and as such, he did not fulfill the requirements to serve the mandatory period of three years as provided under Rule 63(1) of the Leave Rules. Hence, the petitioner is liable to refund the leave salary as per rules.

[6] Under the proviso to Rule 63(1) of the Leave Rules, it is, inter alia, provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply – (b) to a Government servant who, after return to duty from study leave, is deputed to serve in any Statutory or Autonomous Body or Institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said statutory or Autonomous Body or Institution in the public interest.

[7] In the present case, after successfully completing his Post-Graduate studies in the month of August, 2004, the petitioner rejoined his service and continue to serve as a Medical Officer Grade-IV in the Health Department, Government of Manipur, for about two years and seven months. Thereafter, after obtaining prior approval from the competent authorities, the petitioner participated in the selection process for recruitment of a Demonstrator (Pharmacology) in RIMS. On being selected, the Director, RIMS, issued an order dated 01-02-2007 appointing the petitioner as a Demonstrator in the Department of Pharmacology, RIMS w.e.f. the date of joining duty. In view of the said appointment order, the petitioner submitted an application dated

26-02-2007 to the Government of Manipur requesting for issuing a Release Order so as to enable him to join in RIMS and the said request was allowed by the Government by issuing an order dated 22-03-2007. By the said order, the petitioner was not only released from Manipur Health Services with immediate effect for joining as Demonstrator in the Department of Pharmacology, RIMS but also allowing to count his past service in Manipur Health Services as qualifying service in RIMS under the provisions of Rule 14 of the CCS (Pension) Rules, 1972, as the petitioner applied for the post of Demonstrator with due permission from the State Government.

[8] Taking into consideration the above factual position, this court is of the considered view that the Government of Manipur released the petitioner from Manipur Health Services so as to enable him to join as a Demonstrator (Pharmacology) in RIMS and also allowing to count his past service in the Manipur Health Services as qualifying service in RIMS. Accordingly, this court is of the considered view that there were continuity of service of the petitioner from Manipur Health Services to RIMS without any break. Accordingly, this court is of the considered view that the provisions of Rule 63(1) of the Leave Rules will not be applicable in the case of the petitioner in view of the proviso (b) to Rule 63(1) of the said rules. Moreover, taking into consideration the totality of facts and circumstances of the present case, this court is also of the considered view that the application of the provisions of Rule 63(1) of the Leave Rules to the petitioner without considering the proviso appended thereto

is too harsh and inhuman and this court cannot give its countenance to such action of the State authorities. In the result, the present writ petition is allowed with the following directions:-

- (i) The impugned para. No. 3 and 4 of the order dated 09-08-2016 issued by the Commissioner (Health & FW), Government of Manipur is hereby quashed and set aside; and
- (ii) The respondents are directed to release the Pro-rata (Pension) of the petitioner as mentioned in para. No. 1 and 2 of the aforesaid order dated 09-08-2016 to RIMS as early as possible but not later than two months from today.

With the aforesaid directions, the present writ petition is disposed of. There will be no order as to cost.

JUDGE

FR / NFR

Devananda