

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 745 of 2019

Shri Ahanthem Kunjo Singh, aged about 67 years, S/o Late A. Iboton Singh, resident of Ningthoukhong Awang Ward No. 14, P.O., P.S. & District Bishnupur, Manipur, Pin – 795126.

... Petitioner

-Versus-

1. The State of Manipur through the Principal Secretary/ Commissioner/ Secretary, Education (S), Govt. of Manipur, Secretariat, Imphal, Manipur, Pin – 795001.
2. The Director of Education (S), Govt. of Manipur, Lamphelpat, Imphal West, Manipur, Pin-795004.
3. The Principal Accountant General, Manipur.

(...impleaded as respondent No. 3 as per order dated 02-08-2022 in MC(WP(C)) No. 202 of 2022)

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. Sh. Athoi Singh, Advocate
For the respondent	::	Mr. Th. Vashum, GA and Mr. S. Samarjeet, Sr. panel counsel.
Date of hearing	::	21-08-2024
Date of judgment & order	::	21-10-2024

JUDGMENT & ORDER

[1] Heard Mr. Sh. Athoi Singh, learned counsel appearing for the petitioner; Mr. Th. Vashum, learned GA appearing for the respondents No. 1 and 2 and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondent No. 3.

In the present writ petition, the petitioner is praying for issuing a direction to the respondents to allow the petitioner to enjoy pension and other pensionary benefits for the service rendered by him as Hindi Graduate Teacher in the Department of Education (S), Government of Manipur, along with interest at the rate 18% per annum.

[2] There is no dispute with regard to the facts of the present case. The petitioner was initially appointed as Hindi Graduate Teacher on adhoc basis for a period of six months in the Department of Education (S), Government of Manipur. The period of adhoc service of the petitioner was extended by the Government from time to time by issuing various orders and the petitioner continued to render service as a Hindi Graduate Teacher. While the petitioner was rendering service as a Hindi Graduate Teacher on adhoc basis, the Government of Manipur formulated a scheme for regularization of all the adhoc services of the employees under the Manipur Government by issuing an Office Memorandum dated 31-05-1986. In the said Office Memorandum, it is, inter alia, provided that those adhoc employees who were appointed upto 31-12-1984 and continued to work in their respective posts till the issuance of the said Office Memorandum and who fulfilled the requisite qualifications should be regularized w.e.f. 24-05-1986.

[3] Pursuant to the issuance of the said Office Memorandum, the then Director of Education (S), Government of Manipur, issued an order

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dated 30-08-1986 appointing the petitioner along with other persons temporarily on regular basis to the posts of Hindi Graduate Teacher with effect from 24-05-1986.

After rendering about 17 years of regular service as a Hindi Graduate Teacher, the petitioner submitted an application dated 01-01-2004 to the Zonal Education Officer, Zone-IV, Bishnupur, Government of Manipur, requesting to allow him to take voluntary retirement from service w.e.f. 01-01-2004. After submitting the said application for taking voluntary retirement, the petitioner came to know that he has not completed 20 years of regular service for taking voluntary retirement from service unless the period of adhoc service rendered by him prior to his regular appointment is counted. Accordingly, the petitioner submitted a representation dated 30-01-2004 to the Director of Education (S), Government of Manipur, requesting to link up the period of adhoc service rendered by him as regular service and the request made by the petitioner was allowed by the Director of Education (S) by issuing an order dated 02-03-2004 thereby regularizing the period of adhoc service of the petitioner w.e.f. 26-10-1983 to 23-05-1986 for pensionary and other service benefits.

[4] After regularizing the period of adhoc service rendered by the petitioner prior to his regular appointment, the Director of Education (S) allowed the petitioner to retire voluntarily from service w.e.f. 01-04-2004

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by issuing an order dated 23-03-2004. Thereafter, the authorities of the Government allowed the petitioner to withdraw a sum of Rs. 66,482/- as unutilized Earned Leave salary, Rs. 9,828/- as Group Insurance and also the General Provident Fund credited to the petitioner's account.

When the proposal along with relevant documents for allowing the petitioner to enjoy pension and other pensionary benefits were furnished by the Government to the Office of the Accountant General (A&E), Manipur, the Senior Accounts Officer/ Pension, Office of the Accountant General (A&E), Manipur, wrote a letter dated 09-02-2005 to the Special Secretary (DP), Government of Manipur, requesting to clarify about the acceptability of regularisation of the adhoc service of the petitioner. In response to the said letter, the Under Secretary (DP), Government of Manipur, wrote a letter dated 29-12-2005 to the Accountant General (A&E) stating that the Director of Education (S) is not competent to regularize the adhoc service of the petitioner and that the adhoc service of the petitioner from 26-10-1983 to 23-05-1986 does not count towards qualifying service for pensionary benefits.

[5] Having been aggrieved, the petitioner filed a writ petition being WP(C) No. 296 of 2006 in the Guwahati High Court, Imphal Bench, with a prayer to direct the respondents to release the pension and other pensionary benefits of the petitioner. The said writ petition was disposed of by a Judgement and Order dated 08-05-2006 by giving directions to

the State respondents to take appropriate decision on the question or query made by the Senior Accounts Officer/ Pension under his letter dated 09-02-2005 within a period of two months from the date of receipt of a certified copy of the said Judgment and Order and thereafter, to take up prompt and expeditious steps for payment of retirement benefits, if entitled to the petitioner.

[6] On receiving a copy of the aforesaid Judgement and Order, the Office of the Senior Deputy Accountant General (A&E), Manipur, wrote a letter dated 15-06-2006 to the Joint Secretary (PC), Government of Manipur, stating that as the Government has clarified that the Director of Education (S) is not competent to regularize the adhoc service of the petitioner and that as the adhoc service of the petitioner from 26-10-1983 to 23-05-1986 does not count towards qualifying service for pensionary benefits, the length of qualifying service of the petitioner is less than 20 years and as such, allowing the petitioner to retire on voluntary grounds under Rules 48-A of the Manipur Civil Services (Pension) Rules, 1977 was not acceptable. Accordingly, the pension papers and related documents along with Service Book of the petitioner were returned to the Government.

[7] On having knowledge about returning of his Service Book as well as the papers relating to payment of his pension by the Office of the Accountant General, Manipur, on ground of non-completion of 20

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years qualifying service, the petitioner submitted a representation dated 10-01-2007 to the Director of Education (S), Government of Manipur, requesting for cancelling/ reviewing/ recalling the order dated 23-03-2004, by which the petitioner was allowed to retire from service voluntarily, so that the petitioner can resume his duties as Hindi Graduate Teacher till he attained the age of superannuation.

Instead of considering and disposing of the above representation submitted by the petitioner, the Commissioner (Education/S), Government of Manipur, issued an order dated 30-03-2007 cancelling the order dated 02-03-2004 issued by the Director of Education (S) allowing the regularization of adhoc service of the petitioner w.e.f 26-10-2023 to 23-05-1986.

[8] Consequent upon issuance of the aforesaid cancellation order dated 30-03-2007, the petitioner submitted an application dated 18-04-2007 to the Commissioner/ Secretary, Education (S), Government of Manipur, requesting for cancelling the order dated 23-03-2004 issued by the Director of Education (S) allowing the petitioner to retire voluntarily from service so as to enable the petitioner to continue his service as Hindi Graduate Teacher till he attained the age of superannuation. In connection with the said application submitted by the petitioner, the Director of Education (S) wrote a letter dated 16-11-2007 to the Secretary Education (S), Government of Manipur, suggesting for

cancelling the irregular order dated 23-03-2004 allowing the petitioner to retire voluntarily from service and to allow the petitioner to rejoin service as Hindi Graduate Teacher. The Director also suggested that the period of petitioner's absence from 01-04-2004 till the date of his joining his service may be treated as being on EOL and the period of service thereafter may be counted for considering his qualifying service.

[9] When no action was forthcoming from the authorities of the Government in connection with his request for cancelling the irregular order allowing him to retire voluntarily from service, the petitioner again submitted an application dated 14-05-2013 to the authorities of the Government reiterating his earlier request and in connection with the subsequent application, the Direction of Education (S) again wrote a letter dated 10-06-2013 to the Deputy Secretary Education (S), Government of Manipur, requesting to consider the request made by the petitioner and to convey the decision of the Government on humanitarian ground as the petitioner's date of retirement on superannuation falls in the month of February, 2017.

Despite the repeated request made by the petitioner to cancel his voluntary retirement order dated 23-03-2004 and to allow him to continue to render his service as a Hindi Graduate Teacher and despite the repeated recommendations made by the Director of Education (S) to the Government of Manipur for cancelling the voluntary retirement order

of the petitioner and to allow him to rejoin service as a Graduate Teacher, the competent authorities of the Government refused to take up any action for cancelling the aforesaid voluntary retirement order of the petitioner dated 23-03-2004 and to allow the petitioner to rejoin his service. In the meantime, the date of retirement of the petitioner on attaining the age of superannuation has already lapsed after the end of February, 2017 and as such, there is no possibility of allowing the petitioner to rejoin his service at this point of time.

[10] The stand taken by the respondents in their counter affidavit is that the period of regular service rendered by the petitioner w.e.f. 24-05-1986 upto 23-03-2004, i.e., the date of order for voluntary retirement issued by the Director of Education (S), Government of Manipur, is less than 20 years and as such, the said voluntary retirement order is contrary to the provisions of Rule 48-A of the Central Civil Services (Pension) Rules, 1972. The further stand taken by the respondents is that the Administrative Department consulted the Department of Personnel two times with regard to the proposal for cancellation of the voluntary retirement order of the petitioner and that the Department of Personnel did not agree with such proposals on the ground that there is no specific rules/O.M. which allow for revocation of voluntary retirement order and the reinstatement of already retired Government employee and that the Finance Department also agreed with the views taken by the Department of Personnel and as such,

the writ petitioner has no legal right to claim for payment of pensionary benefits.

[11] The admitted position of fact in the present case is that the petitioner submitted an application dated 30-01-2004 to the Director of Education (S), Government of Manipur, requesting for linking up the period of his adhoc services w.e.f. 26-10-1983 to 23-05-1986 as regular service so as to enable him to retire voluntarily from service on completion of 20 years of service. Acting on the said application, the Director of Education (S), Manipur, issued an order dated 02-03-2004 regularising the period of adhoc service rendered by the petitioner w.e.f. 26-10-1983 to 23-05-1986 so that the petitioner can take voluntary retirement from service on completion of 20 years of regular service. Thereafter, the Director of Education (S) issued another order dated 23-04-2004 allowing the petitioner to retire voluntarily from service w.e.f. 01-04-2004. Subsequently, on an objection being raised by the Office of the Accountant General, the Commissioner of Education (S), Government of Manipur, issued an order dated 30-03-2007 cancelling the order dated 02-03-2004 issued by the Director of Education (S) allowing the regularisation of adhoc services of the petitioner thereby rendering the period of regular service of the petitioner to less than 20 years.

[12] It is on record that even before the issuance of the aforesaid cancellation order dated 30-03-2007, the petitioner requested the authorities of the Government to recall/ review/ cancel his voluntary retirement order so as to enable him to continue as Hindi Graduate Teacher and even though the petitioner repeatedly requested the Government to cancel his voluntary retirement order, the authorities of the Government refused to cancel the petitioner's voluntary retirement order only on the ground that there is no specific rule/ O.M. which allows for revocation of voluntary retirement order and reinstatement of an already retired Government employee, that too, despite having knowledge that the petitioner's voluntary retirement order was contrary to the provisions of Rules 48-A of the Central Civil Services (Pension) Rules, 1972.

[13] Under Rule 48-A(1) of the CCS(Pension) Rules, it is, inter alia, provided that at any time after the Government servant has completed 20 years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. In the present case, at the time of taking the decision for issuing the order for cancelling the regularization order issued by the Director of Education (S), the Commissioner of Education (S) had already knowledge about the fact that after issuing the said cancellation order, the length of service rendered by the petitioner on regular basis will be less than 20 years and as such, the voluntary retirement order of the petitioner issued by the

Director of Education (S) cannot be sustained as the same is contrary to the provisions of Rule 48-A of the CCS (Pension) Rules. Despite having such knowledge and despite the repeated request made by the petitioner and the recommendations made by the Director of Education (S) for cancelling the petitioner's voluntary retirement order so as to enable the petitioner to continue in service till he attained the age of superannuation, the Commissioner/ Secretary of Education (S) quite surprisingly refused to cancel the said voluntary retirement order. In my considered view, such action of the authorities is a classic example of callousness and total non-application of mind.

[14] Since the Government has refused to revoke or cancel the voluntary retirement order of the petitioner, it shall be deemed that the Government has allowed the petitioner to retire from service voluntarily and the petitioner cannot be deprived or denied from receiving his pensionary benefits especially when the petitioner has rendered more than seventeen years regular service.

In view of the above factual position, this court did not find any reason for refusing to grant the relief claimed by the petitioner in the present petition. Accordingly, the respondents are directed to complete the process for payment of petitioner's pensionary benefits and to pay the same to the petitioner as early as possible. It is made clear that the whole process including the payment of pensionary benefits to the

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petitioner should be completed within a period of three months from today. In the event of failure to comply with the directions given by this court within the stipulated period, the total amount of pension due payable to the petitioner shall carry an interest @ 12 per cent per annum from the date the said pension was due payable to the petitioner till the actual date of payment.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own cost.

JUDGE

FR / NFR

Devananda