

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 577 of 2022

Thounaojam Mema Devi

.....Petitioner/s

- Versus -

State of Manipur & 2 Ors.

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

Order (Oral)

05.09.2024

[1] Present Mr. N. Umakanta, learned counsel for the petitioner, Mrs. Ch. Sundari, learned G.A. for the State respondent and Mr. L. Gunindro, learned counsel for respondent No. 3.

[2] Vide order dated 24.03.1982, the husband of the petitioner and others were appointed as Teacher in Government School. On the basis of the vigilance report dated 24.05.2007 regarding fake certificate for class 10th and 12th submitted by the husband of the petitioner, the Zonal Education Officer, Government of Manipur issued an O.M. dated 10.07.2007 informing the husband of the petitioner not to attend school and he was debarred from drawing any pay and allowance and he should be deemed to be ceased in the service. In fact, the OM dated 10.07.2007 is the termination order of the service of the petitioner's husband.

[3] Being aggrieved, the husband of the petitioner challenged the said O.M. dated 10.07.2007 by a writ petition being WP(C) No. 585 of 2007 before this Court and vide order dated 21.01.2008, this Court directed the State respondent to issue a notice and consider reply to the show cause notice before issuing the O.M. terminating the service of the petitioner's husband. It was held that the same was in violation of the principle of natural justice and directed to give the show cause notice. If the same was not considered within 4 weeks, the service of the petitioner's husband would be deemed to be re-instated.

[4] In pursuance to the direction of this Court, vide letter dated 26.09.2021 issued by the Deputy Secretary (Education), Government of Manipur to the Director of (Education-S), the service of the petitioner's husband was re-instated from the date of his joining and vide order dated 23.11.2011 issued by the Zonal Education Officer, Government of Manipur, the ban from attending the school was lifted and he was re-instated and the husband of the petitioner continued service till his superannuation on 28.02.2014. Since no pensionary benefit was granted to him, the petitioner's husband approached this Court by way of the writ petition being WP(C) No. 27 of 2017 and vide order dated 16.01.2017, this Court directed the State respondent to grant provisional pension to the petitioner during the pendency of the criminal case.

[5] It may be noted that on the recommendation of the vigilance report dated 24.05.2007, FIR case No. 8(5) 2005-VPS U/S 420/468/471/120-B IPC was registered against the husband of the

petitioner and cognizance was taken in the case being Cril.(P) Case No. 13/2010/202/2013. Vide order dated 04.06.2022 passed in Cril.Misc.Case No. 41 of 2022, the criminal case was closed as the husband of the petitioner died on 17.05.2022 during the pendency of the criminal case.

[6] The admitted fact before this Court is that in pursuance to the recommendation of the vigilance report dated 24.05.2007, the service of the petitioner was terminated by the State respondent and he was subsequently re-instated in compliance of the order passed by this Court and also a criminal proceeding was initiated against the petitioner in compliance of the said vigilance report. Subsequently, the FIR case was closed on the death of the husband of the petitioner. As on date, there is no departmental proceeding against the husband of the petitioner nor any criminal proceeding. There is no order that the husband of the petitioner was found to be guilty in a departmental proceeding or in a criminal proceeding.

[7] Mr. N. Umakanta, learned counsel for the petitioner, draws the attention of this Court to the provisions of CCS Pension Rule, 1977 especially rule 9 where it is stated that the authority could withhold the pensionary benefit of a retired employee, if he was found to be guilty in departmental or judicial proceeding. Learned counsel for the petitioner submits that there is no any other provisions for denying of the pensionary benefit. In the present case, the pensionary benefit to the husband of the petitioner as well as family pension entitled to her has been denied on the basis of the recommendation of the vigilance report. Learned counsel for the petitioner further submits that as none

of the conditions laid down in Rule 9 of CCS Pension Rule, 1977 has been satisfied in the present case, the pension and other retiral benefit cannot be withheld.

[8] On the other hand, Mrs. Ch. Sundari, learned G.A. for the State respondent, submits that in the vigilance enquiry, there is clear finding that the certificate of the husband of the petitioner for passing class 10th and 12th were not genuine and hence, a recommendation was made for termination of his service. The husband of the petitioner failed to challenge the finding of the vigilance report regarding status of the genuineness of the certificate and hence, the appointment of the petitioner's husband was on the basis of the fake document and he is not entitled to any pensionary benefit. Learned G.A. draws the attention of this Court to the decision of the Hon'ble Supreme Court in the case of **Union of India vs. Dattatray S/O Namdeo Mendhekar & Ors.** reported as **(2008) 4 SCC 612** wherein it was held that once the caste certificate of the appointee was to be found fake, the appointment would be cancelled.

[9] Mr. L. Gunindro, learned counsel for respondent No. 3, submits that the Office of the Accountant General, Manipur did not receive any information from the administrative department and the process for granting pension or family pension to the husband of the petitioner and the petitioner cannot be initiated.

[10] This Court has perused the materials on record and considered the submissions made the bar.

[11] The short question involved in the present case is whether the pensionary benefit of a retired Government Employee can

be withheld under the provisions of Rule 9 of the CCS Pension Rule only on the ground that his appointment was purportedly on the basis of fake certificates. In the present case, the admitted fact is that the service of the petitioner was terminated on the basis of the vigilance report to the effect that his class 10th and 12th certificates were not genuine. The termination of the petitioner's husband was re-instated on the direction of this Court and he continued his service till his superannuation. It is also admitted fact that there is no departmental proceeding against the husband of the petitioner with respect to the allegation of fake certificates. However, the criminal case against the petitioner for producing fake certificate was closed on the death of the husband of the petitioner. As on date, there is no departmental proceeding against the husband of the petitioner nor any criminal case against him.

[12] It may be noted that there is no order of verdict of guilty to the husband of the petitioner in any departmental or criminal proceeding for the alleged offence of submitting fake certificates.

[13] On mere perusal of Rule 9 of the CCS Pension Rule, 1977, the only ground for enabling the employer to withhold the pension of a retired Government Employee is verdict of guilty in a departmental proceeding or in a criminal proceeding.

[14] This Court is of the opinion that in the present case, there is no such finding by a competent authority and any other ground is not stipulated in Rule 9 for confiscating the pension. The plea of the State Government that pension cannot be granted as the husband of the petitioner submitted the fake certificates at the time of his appointment

is not sustainable, being in violation of the contemplation of Rule 9 of CCS (Pension) Rule.

[15] In view of the above, this Court is of the opinion that the husband of the petitioner is entitled to the pensionary benefit and the same cannot be denied on the basis of the fake certificates as recorded in the vigilance report. Consequently, the petitioner is also entitled to family pensionary benefit as per law. The State Government is directed to process the necessary paper for preparation of the pensionary benefit as well as family pension of the petitioner and forwarded the same to the office of the Principal Accountant General, Manipur. The said process of processing paper shall be completed within a period of 2 (two) months from the date of receipt of a copy of this order and the office of the Principal Accountant General shall issue necessary pension payment order and others within a further period of 2 (two) months from the date of receipt of necessary papers from the administrative department.

[16] Writ petition is allowed and disposed of. No cost.

[17] Send a copy of this order to the respondent No. 1 for information and necessary compliance.

JUDGE

Kh. Joshua Maring

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