

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 749 of 2022

1. Smt. Aribam Daneshwari Devi, aged about 64 years, W/o Shri I. Kumar Singh, resident of Kairang Meitei, P.O. Mantripukhri, P.S. Heingang, Imphal East District, Manipur-795002.
2. Shri Laishram Siddharaj Singh, S/o late L. Chaoba Singh, aged about 62 years, resident of Nagamapal Singjubung Leirak, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
3. Smt. Yumnam Sunita Devi, aged about 64 years, W/o Shri Shambanduram Raghu Singh, resident of Khongman Mayai Leikai Zone-IV, P.O. & P.S. Porompat, Imphal East District, Manipur-795008.
4. Smt. Mangla Rana, aged about 64 years, W/o Shri Biren Rana, resident of Mantripukhri AT Line, Heingang, P.O. Mantripukhri, P.S. Heingang, Imphal East District, Manipur-795010.
5. Smt. Geetabali Salam, aged about 63 years, W/o Shri Wakambam Hemanta Kumar, resident of Kairang Road, Laipham Khunou Maning Leikai, Laipham Siphai, P.O. Lamlong, P.S. Lamphel, Imphal East District, Manipur-795010.
6. Shri Sanasam Iboyaima Singh, aged about 62 years, S/o late Sanasam Gambhir Singh, resident of Kwakeithel Konjeng Leikai, P.O. Canchipur, Manipur University, P.S. Singjamei and District Imphal West, Manipur-795002.
7. Shri Sanasam Sushilkumar Singh, aged about 64 years, S/o late S. Nandakishor Singh, resident of Singjamei Okram Leikai Sanasam Kolup, P.O. & P.S. Singjamei and District Imphal West, Manipur-795008.
8. Md. Abdul Halim, aged about 63 years, S/o late Md. Abdul Bari, resident of Hafiz Hatta, P.O. & P.S. Porompat and District Imphal East, Manipur-795005.

9. Smt. Laimayum Sabita Devi, aged about 64 years, W/o Shri Phurailatpam Ibomcha Sharma, resident of Khoyathong Polem Leikai, P.O. & P.S. Lamphel and District Imphal West, Manipur-795004.

..... Petitioner/s

- Versus -

The Manipur Public School Society through its Secretary, Manipur Public School, Koirengei, P.O. Mantripukhri, P.S. Heingang and District Imphal East, Manipur-795002.

.....Respondent/s

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners :: Mrs. A. Noutuneshwari, Advocate

For the respondent :: Mr. Dennis Tokpam, Advocate

Date of Hearing :: 16.04.2024

Date of Judgment and Order :: 24.05.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mrs. A. Noutuneshwari, learned counsel for the petitioners and Mr. Dennis Tokpam, learned counsel for the respondent.

[2] The brief facts leading to the present case are that the petitioners are the retired employees of the Manipur Public School Koirengei, Imphal East on attaining the age of superannuation in view of the orders issued by the competent authorities of the Manipur Public School Society as per Rules and Regulation of the Society. The said school is run by a society formed by the officials/officers of the various departments of the

Govt. of Manipur and there are Rules and Regulations for administration, running as well as other activities for running the said school. As such, the said school is a school run by the Govt. of Manipur under the said Rules and Regulations and the amendments made from time to time.

[3] Vide order dated 23.07.1988 issued by the Secretary, Manipur Public School Society, on the recommendation of the DPC, petitioner Nos. 1 & 5 (who are at serial Nos. 14 & 9) along with 14 others were appointed as Assistant Teachers of the school in the scale of pay of Rs. 650-40-1050-EV-1200 plus D.A. and other allowances admissible as per existing rules with retrospective effect from 01.06.1988 with the conditions that they should pass the B.Ed./B.T. or equivalent examination within 24 months from the date of issuance of the order, failing which their services will automatically get terminated. The said order further stated that the appointment is purely temporary and is terminable at short notice without assigning any reason with further conditions that the Sl. Nos. do not reflect seniority and all the appointees will have to face the academic committee (Selection Board) in due course.

[4] Vide order dated 19.09.1989 issued by the Manipur Public School Society, on the recommendation of the DPC, the petitioner No. 6 was appointed as Assistant Teacher for Commerce initially for a period of six months in the scale of pay of Rs. 650-40-1050-50-1200/- per month plus D.A. and other allowances as admissible under Rules with effect from the date of joining his duties with the condition that his performance will be released at the end of six months and the appointment is purely temporary

and is terminable at a notice of one month. The respondent issued an order dated 27.08.1991 whereby petitioner No. 3 (who is at serial No. 3) along with 4 other persons were appointed to the post of UDC/LDC/Grade-IV of the Manipur Public School in the revised scale of pay of 1990 of Govt. of Manipur and she was appointed to the post of LDC.

[5] On 21.11.1991, the Principal, Manipur Public School, Koirengei, Manipur issued an order whereby the petitioner No. 2 along with 3 other persons were appointed as Assistant Teachers of the school on contract basis with the consolidated pay of Rs. 1200/- per month till the post are filled up on regular basis with the condition that they are not entitled to any terminal benefits and vacation pay. Vide order dated 28.05.1992 issued by the Secretary, Manipur Public School, on the recommendation of the DPC held on 21.08.1991, petitioner Nos. 1, 6, 7 & 8 (who are at serial Nos. 15, 19, 21 & 18) along with 18 other persons were appointed to their respective post of senior teachers/assistant teacher on regular basis with effect from the dates indicated against their respective names with the condition that the teachers who could not possess the B.Ed qualification during the stipulated time shall be treated as terminated and they will not be given any future chances of extension for appearing B.Ed., provided seats are arranged for admission in training colleges. In the said order, it is stated that those who passed B.Ed. within a period of three years will be treated as regularized without appearing any interview and that regular service may be counted from the date of passing B.Ed.

[6] Vide order dated 11.02.1999 issued by the Secretary, Manipur Public School Society, on the recommendation of the Academic Committee Meeting held on 03.12.1998, the petitioner No. 2 (who is at serial No. 1) along with 3 other persons were appointed as Assistant Teachers of the Manipur Public School in the scale of pay of Rs. 650-40-1050-1200/- per month + D.A. and other allowances as admissible w.e.f. 03.12.1998 with the condition that the appointment is purely temporary and the same is terminable by giving one month notice without assigning any reason.

[7] Vide orders dated 20.02.2018, 03.05.2018, 03.07.2018, 31.08.2018, 28.01.2019, 07.11.2019, 07.11.2019 & 06.12.2020 issued by the Secretary, Manipur Public School Society, Koirengei, petitioner Nos. 1, 3, 9, 7, 8, 6, 5 & 2 were terminated on attaining the age of superannuation.

[8] A meeting of the Internal Finance Monitoring Committee of the society was held on 24.09.2018 in the office chamber of the Chairman, Internal Finance Monitoring Committee, Manipur Public School at 11:00 a.m. chaired by the Financial Advisor of the society and in the said meeting under agenda No. 9, i.e. payment of retirement benefits in respect of Mangla Rana (petitioner No. 4), A. Daneswari Devi (petitioner No. 1), L. Sabita Devi (petitioner No. 9) and Y. Sunita Devi (petitioner No. 3) were considered in dept under the agenda No. 9 wherein it was resolved to release 1/3 of the payable amount as first instalment etc.

[9] Petitioner Nos. 1, 3, 4, & 9 jointly submitted a representation dated 06.03.2019 to the Chairman, Manipur Public School Society,

Koirengei, Imphal East Manipur for payment of retirement benefits of the superannuated employees of the Manipur Public School and in the said representation, the said petitioners requested for releasing/payment of the remaining retirement benefits.

[10] On 12.11.2019, a meeting of the Internal Financial Monitoring of the Manipur Public School, Koirengei, Imphal East was held in the office chamber of the Chairman, Internal Financial Monitoring Committee discussed about the expenditure structure for the year 2019-2020 and confirmed the resolution of the meeting held on 12.07.2019 and after discussion of agenda No. 3 i.e. payment of retirement benefits to employees, it was resolved and agreed for payment of Rs. 10,000/- per month to the retired officials as recurring payment for the time being for every released of regular staff pay and allowances and the same will be continued till the financial position is sound.

[11] The Principal, Manipur Public School Society, Koirengei, Imphal East wrote a letter on 10.11.2021 to the Commissioner, Education (S), Govt. of Manipur by submitting revised estimate and budget estimate of the school and in the said letter, the principal of the school reflected the facts and circumstances of the school since its establishment till the written of the said letter and also giving instalment and remaining amount may be paid as per the availability of fund.

[12] The respondent filed counter affidavit stating that the Manipur Public School is run by a society namely the Manipur Public School Society

and the society was registered on 28.03.1979 under the Societies Registration Act, 1860 by framing its Rules and Regulations. As the school is run by the MPS Society, the conditions of service of its employees are governed by the Rules and Regulations framed by the society and the conditions of service of the State employees are not automatically applicable to them. It is stated that as per the resolutions taken under Agenda No. 9 in the meeting of the Internal Finance Monitoring Committee (IFMC) held on 24.09.2018, 1/3 of the payable amount is to be released as 1st instalment and remaining amount to be paid as per the availability of funds to Mangla Rana (petitioner No. 4), A. Daneswari Devi (petitioner No. 1), L. Sabita Devi (petitioner No. 9) and Y. Sunita Devi (petitioner No. 3). Further, it is stated that all the retired employees are being paid a sum of Rs. 10,000/- per month on every release of pay and allowances to regular staff as per a decision taken by the IFMC in its meeting held on 12.11.2019 and the sum of Rs. 10,000/- per month has been paid to the petitioners till September, 2022. It is stated that the society is processing for payments of the monthly benefit of Rs. 10,000/- from October, 2022 to March, 2023 payable to the petitioners. It is stated that the IFMC in its meeting held on 12.11.2019 decided under Agenda No. 3 for payment of Rs. 10,000/- per month to the retired officials as recurring payment for the time being on every release of pay and allowances of the regular staff and this will be continued till the financial position of the school is improved. Accordingly, all retired employees were paid a sum of Rs. 10,000/- on every release of pay and allowances to the regular staff. The School is committed to pay salaries etc. to its current staff

and post-retirement benefits to all retired staff as per Rules and Regulations of the society. However, as on date, the school is in deep financial difficulties, incurring a huge deficit estimated to be about Rs. 5 crores. It is further stated that payment of 1/3 of the payment due to retired employees, payment of an amount of Rs. 10,000/- per month each to the retired employees on every release of salaries and allowances to current staff and so on are temporary measures adopted by the school to provide some financial solace to the retired employees. It is prayed that the present writ petition may be dismissed.

[13] Mrs. A. Noutuneshari Devi, learned counsel for the petitioners submits that there is no reason for withholding the retiral benefits of the petitioners. It is pointed out that such benefits can be withheld during the pendency of any enquiry or criminal proceedings against the petitioners and can be denied upon verdict of guilty against the pensioners in such proceedings. Learned counsel draws the attention of this Court to the sole reason of withholding the retiral benefits as due to acute financial constraints of the school management. It is prayed that the respondent be directed to release the retiral benefits of the petitioners forthwith.

[14] Mr. Dennis Tokpam, learned counsel for the respondent submits that the retiral benefits are not withheld in true sense, but non-release of the same is due to acute financial situation faced by the school management coupled with non-functional managing committee for a considerable long period. It is pointed out that whenever funds are available, a sum of Rs. 10,000/- is released to all retired employees of the school. It is

prayed that some more time be given to the school management to clear the due amount.

[15] This Court has perused the materials on record and considered the submissions made at bar. It is an admitted fact that the petitioners are retired employees of the respondent school. Further, it is not in dispute that no disciplinary and/or criminal proceedings are pending against the petitioners. It is the case of the respondent that failure to clear the retiral benefits is due to acute financial problem faced by the school management. It is the settled proposition of law in service jurisprudence that retiral benefit of a pensioner cannot be withheld except upon found guilty in a departmental proceeding and/or criminal case initiated against the pensioner. Right to pensionary benefit is a constitutional right guaranteed under Article 300A of the Constitution of India.

[16] In the case of **K. Boni Mao v. State of Manipur [WP(C) No. 633 of 2023, Order dated 29.11.2023]- MANU/MN/0222/2023**, this Court held that right and payment of pension does not depend upon the discretion of the employer and poor financial condition is not a ground to deny pensionary benefit and other entitlement to the pensioner, unless the pensioner is found guilty of grave misconduct or negligence during service period in a departmental or criminal proceeding. Para 10, 11 and 12 are reproduced below for reference.

[10] In the case of **Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.** reported as **MANU/SC/0801/2013 : (2013) 12 SCC 210** Hon'ble Supreme Court held that the right to pensionary benefit is a constitutional right as as such cannot be taken away without proper justification. Further, in the case of **Dr. Uma Agarwal v. State of U.P.** reported as **MANU/SC/0184/1999 : (1999) 3 SCC 438**, it was held that grant of pensionary benefits is not a bounty, but a right of the employee.

and as such cannot be denied without proper jurisdiction. In the case of **D.S. Nakara & Ors. v. Union of India** reported as **MANU/SC/0237/1982 : (1983) 1 SCC 3005**, a 5 Judge Bench of the Hon'ble Apex Court held that "31.....(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 (ii) 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. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure". In the case of **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.** reported as **MANU/SC/0208/1984 : (1984) 3 SCC 369**, it was held that "18. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer."

[11] Poor financial condition of the State and non-receiving of the instruction from the higher authority is not a ground to deny pensionary benefit and other entitlement to the pensioner. The contention of the State Government for releasing the pensionary benefit of the petitioner is without any substance and perverse on the face of it.

[12] Reference may be made to Rule 9 of CCS (Pension) Rules, 1972 which empowers withholding of pension or gratuity or both, if the pensioner is found guilty of grave misconduct or negligence during the period of service in a departmental or judicial proceeding. Apart from Rule 9, there is no other provisions which stipulate withholding of pension or gratuity or any other pensionary benefit. In the present case, the reason cited for not releasing the pensionary benefit is the poor financial condition of the State and non-clearance for the payment from higher authority. The contents of the letter dated 24.10.2023 sent by the Treasury Officer, Imphal West to the Office of Govt. Advocate, High Court are not within the scope of Rule 9 of CCS (Pension) Rules, 1972 for the simple reason that there was no departmental or judicial proceeding against the petitioner holding her of guilty of grave misconduct. This Court is of firmed opinion that withholding the pensionary benefit of the petitioner by the State authority is without any substance and the same is in violation of aforesaid Rule 9 and also

against the law laid down by the Hon'ble Supreme Court. Such illegal action cannot be sustained in a welfare State.

[17] This Court is aware of the fact that the school management is run by a Society, whose members are top bureaucrats of the State and the financial problem can be sorted using the good office of the members. As held in the case of **Boni Mao (supra)** as reproduced in para 16 above, this Court is of firmed opinion that poor financial condition is not a ground to deny retiral benefit. Payment of Rs.10,000/- whenever fund is available is not contemplated by any rule or precedent.

[18] In the circumstances and in view of the settled law in this regard, this Court directs the respondent to release balance amount of retiral benefits to the petitioners forthwith. The payment shall be completed within a period of three months from the date of receipt of a copy of this order, failing which interest @ 6% per annum shall be payable from the date of initial entitlement. Writ petition is allowed. No cost.

[19] Send a copy of this order to the Secretary, Manipur Public School Society for information and necessary compliance.

KH. JOSHUA
MARING

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KH. JOSHUA MARING
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JUDGE

FR/NFR

Kh. Joshua Maring