IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P.(C) NO.727 OF 2018

Smt. Kangnu, aged about 67 years, w/o (L) Zawlthangvunga and mother of (L) Ex-Sep. Suanliankap, resident of New Bazar, Hill Town Village, PO, PS & District Churchandpur, Manipur-795128.

... Petitioner

- Versus -

1. Union of India, represented by Secretary, Ministry of Defence, Central Government Secretariat, South Block, New Delhi, Pin-110001.
2. The Principal, Controller of Defence Accounts (Pensions), Allahabad-211014, U.P.
3. The Senior Records Officer, Records, The Assam Regiment Abhilekh, Pin(Army)-900332,C/O 99 APO.
4. The Welfare Officer, Zila Sainik Welfare and Resettlement, P.O. Aizawl, Pin-796001, Mizoram State.
5. The Secretary, Zila Sainik Board, Churachandpur District, Vengnuam, P.O. New Lamka, Pin-795006, Manipur State.
6. Smt. Rosangpui, Model Veng, House No. C-20, P.O. Aizawl-796001, Mizoram State.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner	::	Mr B.P. Sahu, Sr. Adv.
For the respondents.	::	Mr. S. Samarjeet, CGC; BR.Sharma, Adv.
Date of hearing & reserved	::	04.2.2020.
Date of Delivery of Judgment & Order	::	26.02.2020.

JUDGMENT & ORDER
(CAV)

[1] The mother of the deceased M.Suanliankap, who was working as Sepoy in Assam Regiment, has come forward with this writ petition calling upon the respondents to include in her name as nominee in the Payment Pension Order dated 10.11.1998 and also seeks direction on the respondents 1 to 5 to pay the arrear pension amount already paid to respondent No.6.

[2] The case of the petitioner is that her son was serving as Sepoy in the Assam Regiment and he had joined a Scheme known as Extended Army Group Insurance for a sum of Rs.1,00,000/- on payment of one time non-refundable premium of Rs.3,500/-. In the said Scheme, the petitioner was shown as nominee. According to the petitioner, her son was given retirement from service and was allowed to get a monthly pension under Pension Payment Order dated 10.11.1998 and in the column for nominee was kept blank. Her son died on 21.9.2012 due to illness. After the death of her son, the petitioner submitted an application to the Principal, Controller of Defence Accounts (Pension), Allahabad seeking family pension to her as a successor and heir of the deceased.

[3] While the application of the petitioner was under process, respondent No.6 submitted an application to the Records office, Records, Assam Regiment claiming to be the wife of the deceased

Suanliankap. The senior Record officer kept the application of the petitioner pending and no further information on the progress of her application was given to her by the said authority. Thereafter, the petitioner instituted a Suit in Mat.(Declaratory) Suit No.34 of 2016 before the learned Family Court, Churachandpur, Manipur against respondent No.6. Despite service of summons, respondent No.6 did not turn up and by the judgment dated 21.2.2017, the learned Family Court has given verdict that Suanliankap died on 21.9.2012 unmarried and was a bachelor. Pursuant to the decree granted in the said suit, the petitioner sent notice to the official respondents for taking necessary action for payment of family pension to her. Thereafter, payment of family pension to the petitioner.

[4] In the mean time, respondent No.6 filed W.P.(C) No.48 of 2017 before the Gauhati High Court and by the judgment dated 15.11.2017, the writ petition came to be disposed of with a direction to respondent No.6 to approach the appropriate Court in Manipur if she is aggrieved with the decree passed in Mat.(Declaratory) Suit No.34 of 2016 within a period of one month from the date of the order in the writ petition dated 15.11.2017. Till such time respondent No.6 approaches the appropriate Court and till further orders are passed by the appropriate Court, the family pension shall be continued to be paid by the State respondents to her. Stating that the official respondents are still

giving pension to respondent No.6 and the same needs to be stopped, the petitioner has filed the present writ petition.

[5] Resisting the writ petition, the first respondent filed affidavit-in-opposition stating that Suanliankap was granted disability pension at the rate of 30% for five years with effect from 4.10.1997 to 29.8.2002 and thereafter, for life vide Pension Payment Order dated 25.7.2003. The petitioner approached the first respondent through her Advocate claiming family pension. In the mean time, respondent No.6 claimed to be wife of the deceased also requested the first respondent for grant of family pension vide application dated 11.2.2014 through office of District Sainik Welfare and Resettlement, Aizawl. Since the documents submitted by respondent No.6 were genuine, family pension was sanctioned to respondent No.6. It is stated that vide letter dated 24.2.2014, the petitioner was informed that further course of action regarding grant of family pension in her favour cannot be processed till factual position of the case has been established. Thereafter, the petitioner filed the suit in Mat. (Declaratory) No.34 of 2016 and in the suit, it was ordered that Suanliankap died as unmarried and was a bachelor. The petitioner had also submitted a copy of the order passed in the suit through her Advocate and upon receipt of the same, vide letter dated 29.3.2017, the Records Assam Regiment requested welfare officer, Zila Sainik Welfare & Resettlement, Aizwl and Secretary, Zila Sainik Board, Churachandpur to clarify their stand on the genuineness of

verification/investigation report and also requested the Centralised Pension Processing Centre, Gauhati to immediately stop the family pension to respondent No.6 till further order.

[6] It is stated that the Records, Assam Regiment processed the family pension claim in favour of respondent No.6 based on the investigation report submitted by the investigation agencies that Suanliankap married with respondent No.6 on 16.6.2006 according to customary law practiced by Mizo Tribe and he re-married according to Christian rites on 8.12.2010 at Presbyterian church, Lamka. Since respondent No.6 is the legally wedded wife of late Suanliankap, the PC DA (P), Allahabad had issued Pension Payment order to respondent No.6 on 23.8.2016. In the writ petition being W.P.(C) No. 48 of 2017 filed by respondent No.6, it has been observed that till further orders are passed by the appropriate Court, the family pension shall be continued to be paid by the respondents to respondent No.6 and not directed that respondent No.6 failed to file any petition in appropriate Court within a period of one month from 15.11 .2017 needs to be stopped her family pension forthwith. Since the records reveal that the deceased Suanliankap married with respondent No.6, the Records Assam Regiment processed the family pension claim in favour of respondent No.6 and thus prayed for dismissal of the writ petition.

[7] Learned counsel for the petitioner submitted that she is the natural mother of the deceased Suanliankap, who was a pensioner

drawing pension benefits under Pension Payment Order dated 10.11.1998 from his service as Sepoy under the Assam Regiment and the son of the petitioner died on 21.9.2012 due to illness. Learned counsel further submitted that the deceased was a bachelor during his life time and he never got married at any point of time of his life. At the time of death, the deceased was survived only the petitioner and she was paid Army Group Insurance Fund. However, without having any right, respondent No.6 is claiming family pension stating that deceased got married her.

[8] Learned counsel further submitted that the petitioner had filed Mat. (Declaratory) Suit No.34 of 2016 before the Family Court, Churachandpur to declare that her deceased son died unmarried and was a bachelor at the time of his death and the said suit came to be decreed on 21.2.2017. Therefore, it is evident that the petitioner's son died unmarried and respondent No.6 is not entitled to seek any right in the family pension.

[9] Per contra, the learned counsel for the official respondents submitted that on verification/investigation done by the private agencies/NGO, it was found that Suanliankap married respondent No.6 on 16.6.2006 as per Mizo customary law and one daughter was born to them on 27.10.2006. After the death of Suanliankap, family pension was being paid to respondent No.6. Since the family pension was suddenly stopped, respondent No.6 approached the Gauhati High Court by filing

WP(C) No.48 of 2017 and by the judgment dated 15.11.2017, the Gauhati High Court directed respondent No.6 to approach the appropriate Court in Manipur and till such time and till further orders are passed by the appropriate Court, the family pension shall be continued to be paid by the State respondents to respondent No.6.

[10] Learned counsel for the official respondents further submitted that based on the records, they are acting. Moreover, vide letter dated 18.5.2018, the first respondent requested respondent No.6 to intimate whether she has appealed against the court order in appropriate Court at Manipur or not and intimated that the first respondent wilt not be responsible for any adverse order from this court and financial loss.

[11] This court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

[12] The point arises for consideration is whether the petitioner is entitled to get the family pension as claimed by her.

[13] According to the petitioner, she being the natural mother and her son died unmarried and bachelor, the petitioner is entitled to get Family Pension. The non-mentioning of the name of nominee in the Pension Payment order dated 10.11.1998 is not totally prohibited the petitioner from claiming family pension and therefore, she should be paid

family pension by incorporating her name in the Pension Payment order dated 10.11.1998.

[14] The son of the petitioner is stated to be died on 21.9.2012 and after the death, the petitioner submitted application to the controller of Defence Accounts (pension), Allahabad seeking family pension. When the application of the petitioner was under process, respondent No.6 submitted application claiming family pension as wife of the deceased.

[15] To show that the son of the petitioner died unmarried, the petitioner has produced the judgment passed in Mat (Declaratory) suit No.34 of 2016, wherein respondent No.6 has been shown as defendant. On a perusal of the judgment, it is seen that the Family court had passed the decree ex parte on 21.02.2017 declaring that Suanliankap of Assam Regiment, a pensioner under pension payment order dated 10.11.1998 died unmarried and was a bachelor.

[16] Thereafter, respondent No.6 has filed writ petition being WP(C) No.48 of 2017 before the Gauhati High court and by the judgment dated 15.11.2017, the Gauhati High court disposed of the said writ petition and the operative portion of the order reads thus:

> *"14. Accordingly, the present case is disposed of with a direction to the petitioner to approach the appropriate court in Manipur if she is aggrieved with the decree passed in Matrimonial/Declaration Suit No.34/2016 by the Family Court at Churachandpur within a period of 1 (one)*

month from today. Till such time the petitioner approaches the appropriate Court and till further orders are passed by the appropriate Court, the family pension shall be continued to be paid by the State respondents herein to the petitioner."

[17] According to the petitioner, respondent No.6 has not filed any appeal before the Manipur Court till 15.12.2017 and therefore, she is not entitled to receive the family pension against the service of Suanliankap and only the petitioner, who is the mother of the deceased is entitled to receive payment of family pension soon after the death of her son on 21.9.2012 and onwards under Pension Payment Order dated 10.11.1998.

[18] It is the case of the official Respondents that as per the records submitted by the deceased employee, the family Pension has been paid. But, admittedly, the 6th respondent has approached Guahati High Court and filed the writ petition No.48 of 2017 and Hon'ble Guahati High Court also passed order on 15.11.2017 by directing the 6th respondent to approach the appropriate court in Manipur if she is aggrieved with the decree passed in Mat/Declaration Suit No.34/16 by the Family Court at Churchandpur within a period of one month from the date of passing the order i.e.15.11.2017. Therefore, as per the order dated 15.11.2017, the 6th respondent ought to have approach the Family Court on or before 15.12.2017 but even after lapse of 2(two) years she has not approach the Family Court. Therefore, it is made clear that the

6th respondent has no right to claim the Family Pension from the respondents No.1 to 5.

[19] Once the Hon'ble Gauhati High Court has passed the order the respondents No. 1 to 5 should not pay the Family Pension to the 6th respondent since the competent Family court has passed an appropriate order by declaring that the deceased died unmarried and as a bachelor and this petitioner being the mother of the deceased is entitled to receive the Family Pension from the Respondents Nos. 1 to 5.

[20] It is pertinent to note here that it is admitted fact that the writ petitioner has not impleaded the official Respondents Nos.1 to 5 as party respondent in the Mat.Suit No.34/2016 but the official respondents ought to have approach the Family Court for setting aside the order otherwise they should obey the order of the Family Court in Mat/Declaration Suit No.34/2016. But, without doing so they cannot simply represent before this Court that the deceased has married the 6th respondent and out of that wedlock one daughter was born based on the verification/investigation done by the Private agencies/NGO. But, in the counter filed by the first respondent it is stated that as per documents available with this office, the individual who was bachelor at the time of discharge from service. The official Respondents should not investigate through the private agencies/NGO about the alleged marriage of the deceased with the 6th respondent.

[21] Apart from this the Official Respondents know very well that they were the party respondents in the writ petition No.48 of 2017 and order dated 15.11.2017 passed by the Hon'ble Gauhati High Court. Once competent Courts namely, the learned Family Court and Gauhati High Court have passed appropriate orders, it is the bounden duty of the official respondents 1 to 5 to follow the same. Therefore, as per the order of the learned Family court, Churchandpur in Mat/Declaration Suit No.34/2016 dated 15.11.2017 this writ petitioner is entitled to receive the Family Pension.

[22] Accordingly, this Court is inclined to pass the following orders:

a) this writ petition is allowed.

b) this Court directs the respondents No.1 to 5 to issue fresh PPO or amending the PPO already issued in favour of Ex Sep Suanliankap bearing No. D/001382/98 dated 10.11.1998 by inserting name of the petitioner as nominee within a period of 4(four) weeks from the date of receipt of this order.

c) the respondents 1 to 5 are directing to pay Family Pension regularly to the writ petitioner immediately to her Bank Account No.32759814318 of State Bank of India, Churchandpur Branch.

d) the respondents Nos. 1 to 5 are hereby directing to take appropriate action against the Family Pension Paying Officer for the payment of Family Pension to the 6th respondent even after lapse of one month as per the order of the Guahati High Court in W.P.(C) No.48/2017 dated 15.11.2017 and recover the amount from the 6th respondent and to pay the same to the writ petitioner without any delay.

JUDGE

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