

**IN THE HIGH COURT OF MANIPUR**

**AT IMPHAL**

**WP(C) No. 349 of 2016**

**Chingabam Dilip Meitei**, aged about 48 years, S/o (L) Ch. Ibocha Singh, Ex-Work charged Chowkidar, Mechanical Division No. 1, PWD, Manipur and a resident of Khurai Kongpal Chingabam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.

**... Petitioner**

**-Versus-**

- 1.** The State of Manipur, represented by the Commissioner/ Secretary, Works to the Government of Manipur at the Civil Secretariat Complex, Imphal.
- 2.** The Chief Engineer, PWD, Govt. of Manipur at Imphal.
- 3.** The Commissioner/ Secretary (Finance) to the Govt. of Manipur at Imphal.
- 4.** The Joint Secretary Pension Cell to the Govt. of Manipur at Imphal.
- 5.** The Accountant General, Manipur at Imphal.

**... Respondents**

**B E F O R E**

**HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the petitioner	::	Mr. N. Umakanta, Advocate
For the respondents	::	Mr. N. Ibotombi, Sr. Advocate asstd. By Mr. A. Rommel, Advocate; Mr. Niranjana Sanasam, GA & Mr. S. Samarjeet, Advocate
Date of hearing	::	<b>05-02-2024</b>
Date of judgment & order	::	<b>28.05.2024.</b>

**JUDGMENT & ORDER**

[1] Heard Mr. N. Umakanta, learned counsel appearing for the petitioner; Mr. Niranjan Sanasam learned GA appearing for the respondents No. 1,3 and 4, Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel appearing for the respondent No. 2 and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondent No. 5.

The present writ petition pertains to the claim for payment of arrear family pension made by the legal heirs of a deceased government employee, who died while in service as a confirmed work charged Chowkidar in the PWD, Manipur.

[2] The case of the petitioner is that his father worked as a Muster Roll employee in the PWD, Manipur for a substantial period of time and later on, he was appointed as a work charged Chowkidar by an order dated 20-02-1978 issued by the Chief Engineer, PWD, Manipur. While serving as a work charged Chowkidar in the PWD, Manipur, the petitioner's father expired on 07-07-1991 after a sudden and short illness and as such, the service of the petitioner's father was formally terminated by an order dated 23-08-1991 issued by the Chief Engineer, PWD, Manipur. As the petitioner's father have rendered more than 23 years as a work charged employee, his service was confirmed w.e.f. 01-04-1990 by an order dated 05-09-1991 issued by the Chief Engineer, PWD Manipur.

[3] Consequent upon the expiry of the petitioner's father, the Department initiated the necessary process for payment of terminal benefits to his legal heirs/ family members, however, the process for

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payment of family pension to the legal heirs/ family members of the deceased employee was not finalized by the authorities. Feeling aggrieved, the petitioner's mother filed a writ petition being WP(C) No. 1071 of 2006 before the Gauhati High Court, Imphal Bench with the prayer for directing the authorities to pay the family pension due payable to her. Unfortunately during the pendency of the said writ petition, the petitioner's mother also expired on 29-06-2011 and thereafter, the aforesaid writ petition was withdrawn with liberty to file a fresh one.

[4] After the death of his mother, the petitioner being the only son and legal heir filed an application dated 26-07-2013 to the Commissioner/Secretary (Works) and the Chief Engineer, PWD, Manipur requesting for payment of arrear family pension due payable to his late mother for the period from 07-07-1991 to 29-06-2011. After submission of the said application, the petitioner came to know about the existence of an order dated 30-08-2007 issued by the Chief Engineer, PWD, Manipur cancelling the earlier order dated 05-09-1991, by which the work charged service of the petitioner's father was confirmed. Having been aggrieved, the petitioner filed the present writ petition assailing the said order dated 30-08-2007 and also praying for issuing a direction to the authorities to pay the arrear family pension due payable to him in terms of the provisions of Terminal Benefits for Work Charged Staff of PWD/IFC/PHE/MI/ Electricity, Manipur Rules, 1978 (hereinafter referred to as "**The Terminal Benefits Rules**", for short).

[5] The case of the petitioner is that the impugned cancellation order dated 30-08-2007 was issued more than 16 years after the death of his

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father and without giving any notice and behind the back of legal heirs of the deceased government employee and also without following due process of law and as such, the said impugned cancellation order is not sustainable in the eyes of law and the same is liable to be quash and set aside. It is also the case of the petitioner that despite issuance of the said cancellation order, he is still entitled to get the arrear family pension in terms of the judgment and order dated 12-08-2010 rendered by a Division Bench of the Gauhati High Court, Imphal Bench in Writ Appeal No. 29 of 2009, which have been upheld by the Hon'ble Apex Court. The petitioner's case is that the issues raised in the present writ petition is squarely covered by the judgment and order dated 01-10-2001 passed by the Hon'ble Gauhati High Court in Writ Appeals No. 154 of 1998 and five other analogous writ appeals, judgment and order dated 01-03-2005 passed by the Hon'ble Gauhati High Court in WP(C) No. 1445 of 2003 and seventeen other analogous writ petitions and judgment and order dated 12-08-2010 passed by the Hon'ble Gauhati High Court, Imphal Bench in Writ Appeal No. 29 of 2009 and as such, the present writ petition may be disposed of by granting similar reliefs as has been granted in the above cases.

[6] The case of the State Government is that the work charged service of the petitioner's father was confirmed retrospectively by an order dated 05.09.1991 issued by the Chief Engineer, PWD, Manipur, after the death of the petitioner's father. Subsequently, the State Government issued office memorandum dated 13.04.2006 laying down the conditions for confirmation of the work charged employees wherein, it is, inter-alia, provided that the benefit of confirmation shall not be available to retired/deceased employees and that the existing rules in that regard will

be deemed to have been amended to the extent indicated in the said office memorandum. Later on, the Secretariat Works Department issued another office memorandum dated 07.06.2007 directing the Head of Department and other Heads of Office under the Department of works to ensure that timely action is taken for confirmation of service of work charged employees subject to availability of vacancies in the permanent work charged post and that confirmation should not be done after the death/retirement of the work charged employees.

Pursuant to the issuance of the aforesaid office memorandum dated 07.06.2007, the Under Secretary (Works), Government of Manipur wrote a letter dated 13.07.2007 to the Chief Engineer, PWD, Manipur, requesting the letter to cancel the confirmation order which have been issued after the death of work charged employees and pursuant to the said letter, the Chief Engineer, PWD, Manipur, issued the impugned order dated 30.08.2007 thereby cancelling the order dated 05.09.1991 which confirmed the work charged service of the petitioner's father and other work charged employees.

The case of the State Government is that since the order confirming the work charged service of the petitioner's father had been cancelled, his family members, including the petitioner, are not entitled to get family pension, inasmuch as, only family members of a permanent/confirmed work charged employees are entitled to get family pension.

[7] The case of the Account General, respondent No. 5 herein, is that while the confirmation order dated 05.09.1991 in respect of the

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petitioner's father was in operation, family pension was admissible to the petitioner's late mother and as such, the office of the Accountant General took up process for payment of family pension after receiving all the required documents from the Joint Secretary (Pension Cell), Government of Manipur. However, before completion of the process for authorisation of family pension, the said confirmation order in respect of the petitioner's father was cancelled by the Chief Engineer, PWD, Manipur by issuing an order dated 30.08.2007. It is the case of the Accountant General that since the confirmation order in respect of the petitioner's father had been cancelled, family pension is not admissible to the family members of the deceased employees and as such, the petitioner is not entitled to the relief claimed by him in the present writ petition and the present writ petition is liable to be dismissed.

[8] Since the dispute as to whether the petitioner is entitled to avail family pension or not centre rounds the interpretation of the provisions of the Terminal Benefits Rules, more particularly Rule 6 of the Terminal Benefits Rules, this Court is of the considered view that it will be necessary to examine minutely the provisions of the said Rule 6 and all the subsequent amendments made thereto.

The said Terminal Benefits Rules came into force w.e.f. 27.09.1978 when the same was notified in the Manipur Gazette and in the said Terminal Benefits Rules there was no provision for payment of family pension. By an order dated 21.06.1990 issued by the Secretariat Works Department, a new provision under Rule 6 (A) was added below Rules 6 (ii) (b) of the Terminal Benefits Rules and the said new Rules came into

force with immediate effect. The newly added Rule 6 (A) provides for payment of family pension as calculated under the Manipur Civil Service (Pension) Rules, 1977 as amended from time to time, meaning thereby that the family members of a deceased permanent work charged employee will be entitled to avail family pension as calculated under the Manipur Civil Service (Pension) Rules, 1977 as amended from time to time.

[9] Later on, by a notification dated 21.05.1993 issued by the Secretariat Works Department, Rule 6 (A) of the Terminal Benefits Rules was amended with prospective effect. By the said amended Rules, the original Rule 6 (A) of the Terminal Benefits Rules was substituted. The new amended Rule 6 (A) reads as under:-

*“2. Amendment to Rule 6:-*

*The following shall be substituted for Rule 6 A of the Terminal Benefit for work charged staff PWD/IFCD/PHED/MI and Electricity Rules 1978.*

- i) The benefit shall be available to the family of any permanent work charged employees who rendered not less than 1 (one) years of service after confirmation.*
- ii) These amendments would have prospective effect only and no arrear shall be paid.”*

Subsequently, by another notification dated 08.09.1994 issued by the Secretariat Finance Department, Rule 6 (A) was again amended with prospective effect. The amended Rule 6 (A) reads as under:-

*“Rule 6 (A) Family pension as calculated under MCS (Pension) Rules, 1978 as amended from time to time subject to the following conditions:-*

- i) The benefit shall be available to the family of any permanent work charged employees who died while in service on or after 21.6.1990 after rendering not less than 1 (one) year of service after confirmation.*

- ii) *The payment of family pension shall be effective from 21.05.1993 and no arrears in cash or otherwise for the period from 21.06.1990 to 25.05.1993 shall be paid."*

[10] Since the aforesaid amended Rules were given prospective effect only, I am of the considered view that the provisions of the said two amended Rules will be applicable only in the case of claims for availing family pension made by the family members of a permanent work charge employee who expired on or after the issuance/publication of the said two amended Rules. The corollary is that the aforesaid two amended Rules will not be applicable in the case of claims for availing family pension made by the family members of a permanent work charged employees who expired before notification/publication of the said two amended Rules.

[11] In the present case, the only issue that needs consideration by this Court is whether the petitioner is entitled to avail family pension even after the cancellation of the order dated 05.09.1991 confirming the work charged service of his father. The common stand of the respondent is that since the confirmation order in respect of the petitioner's father had been cancelled and since the petitioner's father cannot be treated as a confirm or permanent work charged employee, the petitioner is not entitled to avail family pension in view of the provisions of Rules 6 read with Rule 6 (A) of the Terminal Benefits Rules.

[12] Coming to the facts of the present case, the petitioner's father was appointed as a work charged Chowkidar in the PWD, Manipur by an order dated 20.02.1978 after rendering service as a muster role employee for a substantial period of time. While serving as a work charged employee, the petitioner's father expired on 07.07.1991 and his service was officially



terminated w.e.f. 07.07.1991 by an order dated 23.08.1991 issued by the Chief Engineer, PWD, Manipur. Just after about 2 (two) months from the date of expiry of the petitioner's father, the office of the Chief Engineer issued an order dated 05.09.1991 confirming the work charged service of the petitioner's father retrospectively w.e.f. 01.04.1990. The effective date of confirmation was given after more than 12 (twelve) years of service as a work charged employee.

In my considered view, the petitioner's father was entitled to get his work charged service confirmed well before 1990 in terms of the applicable policy of the State Government but because of the negligence or lapses on the part of the authorities his work charged service was not confirmed or made permanent during his life time. After about 16 (sixteen) years from the date of issuance of the confirmation order dated 05.09.1991 and by taking advantage of their negligence and lapses, the authorities have issued the impugned order dated 30.08.2007 cancelling the said confirmation order dated 05.09.1991 in respect of the petitioner's father without giving any notice and behind the back of the family members of the deceased work charged employee and incomplete violation of the principles of natural justice.

[13] According to the State respondents, the impugned cancellation order had been issued in terms of the office memorandums dated 13.04.2006 and 07.06.2007. The said office memorandums were not given retrospective effect meaning thereby that the said office memorandums will operate with prospective effect only. Moreover, the said office memorandums only stipulates that benefit of confirmation shall not be

available to retire/deceased employees and that the confirmation should not be given after the death/retirement of the work charged employees. The said 2 (two) office memorandums never stipulates for cancellation of the confirmation orders issued earlier in respect of the retired/deceased work charged employees. Accordingly, this Court is of the considered view that the stand taken by the respondents that the impugned cancellation order had been issued on the basis of the said 2 (two) office memorandums is unsustainable and deserves to be rejected.

[14] It is also on record that the Under Secretary (Works), Government of Manipur, while furnishing para-wise comments in connection with the writ petition filed by the petitioner's mother, wrote a letter dated 13.07.2007 to the Chief Engineer, PWD, Manipur, stating, inter-alia, that the confirmation order was illegal and requesting the Chief Engineer to cancel the said confirmation order of the petitioner's father. Pursuant to the said letter, the Chief Engineer, PWD, Manipur issued the impugned order dated 30.08.2007 cancelling the confirmation order in respect of the petitioner's father without following any due process of law and incomplete violation of the principles of natural justice.

In my considered view, such action of the respondents is totally arbitrary and illegal and accordingly, the impugned cancellation order dated 30.08.2007 deserves to be quashed and set aside.

[15] Coming to the contention of the of the respondents that the family members of a work charged employee, whose service is yet to be confirmed or made permanent, are not entitled to avail family pension, it is to be pointed out that this issue has been considered and already decided by a

division Bench of the Gauhati High Court, Imphal Bench in its judgment and order dated 12.08.2010 passed in WA No. 29 of 2009 (at Annexure-A/16). The said writ appeal was preferred by the State of Manipur against the judgment and order dated 20.11.2007 passed by the learned Single Judge in WP (C) No. 899 of 2006, extending the benefit of family pension to the family members of work charged employee whose service was yet to be confirmed or made permanent. In the said writ appeal, the same contention raised by the respondents in the present writ petition was also raised as contained in para 7 of the judgment and order, which is quoted below for ready reference:-

*“7. While Mr. Th Ibohal Singh, learned Sr. Government Advocate, Manipur upon a reference to the aforesaid provisions of 1978 Rules and the Division Bench judgment submits that the service of the deceased husband of writ petitioner/respondent being not confirmed and/or permanent, the petitioner is not entitled to receive family pension.”*

[16] After considering the rival submissions of the parties and the provisions of the Terminal Benefits Rules, the division Bench of the Gauhati High Court, Imphal Bench did not accept the contention raised on behalf of the State Government and dismissed the writ appeal preferred by the State Government. In the said judgment and order, the division Bench upheld the judgment and order of the learned Single Judge extending the benefit of family pension to the family members of a work charged employee whose service was yet to be confirmed or made permanent. In my considered view, the corollary of the said judgment and order is that the confirmation of a deceased work charged employee is not sine-qua-non for availing family pension by his dependents if it is found that the deceased worked charged employee was entitled to have his worked charged service

confirmed or made permanent under the relevant policy of the State Government. The relevant portion of the judgment and order are reproduced here under for ready reference:-

*“10. Rule 6B which has been quoted above having not made any distinction between confirmed and permanent work-charged employees and those who are not confirmed work-charged employees, we are of the considered opinion that upon a reference to some other provisions, the expression 'confirmation and permanent' cannot be brought into the said provisions. Be that as it may, on perusal of the chart which forms part of the Division Bench judgment what we find is that, there are many work-charged employees whose services were confirmed retrospectively. In many cases, work-charged employees were confirmed after their expiry. Thus, it cannot be said that the benefits to which the families of the said work-charged employees were provided by way of family pension would require confirmation of service of the deceased husband of the petitioner for said benefits to the petitioner. If for family pension to the petitioner confirmation of her husband's service is required, the authority may do so by passing appropriate order as was done in case of the persons which we find mention in the Division Bench judgment.*

*“11. Needless to say confirmation of service and/or permanency in service by issuance of specific order is always an uncertainty. In the normal circumstances, an employee after rendering a particular length of service is entitled to get his service confirmed or permanent. In the instant case, husband of the petitioner rendered sufficient length of service so as to earn confirmation. The chart which formed part of the Division Bench judgment shows that a work-charged employee who was appointed on 03.08.1979 was confirmed w.e.f. 01.03.1986. Likewise, another employee who was appointed on 21.03.1978 was confirmed by order dated 25.02.1992 w.e.f. 12.08.1996. Another employee who was appointed on 01.08.1959 was confirmed w.e.f. 05.03.1968 by order dated 09.01.1974 after his expiry on 15.08.1968. There is another employee who was appointed on 28.03.1962 was confirmed on 06.03.1968 by order dated 09.01.1994 after his expiry on 08.01.1983.*

*“12. Above being the position, we see no reason as to why the petitioner who has filed the writ petition should be deprived of similar treatment. Situated thus, we see no reason to interfere with the impugned judgement and order passed by the learned single Judge dated 20.11.2007 in WP(c) No.899/2006.”*

[17] The SLP filed by the State of Manipur challenging the above judgment and order dated 12.08.2010 passed in Writ Appeal No. 29 of 2009 had also been dismissed by the Hon'ble Supreme Court of India by an order dated 17.01.2011 passed in SLP (C) No. 218/2011 (at Annexure-A/17) and thus the matter has attained finality.

[18] Taking into consideration, the facts and circumstances of the present case, the judgment and order dated 12.08.2010 passed in WA No. 29 of 2009 and for the reasons given herein above, this Court has no hesitation to arrive at the conclusion that the respondents have acted arbitrarily and illegally in issuing the impugned order dated 30.08.2007 and in refusing to pay the arrear family pension due payable to the petitioner.

In the result, the present writ petition is disposed of with the following directions:-

1. The impugned order dated 30.08.2007 is hereby quashed and set aside.
2. The respondents are directed to expedite the process for payment of arrear family pension due payable to the petitioner for the period from 07.07.1991 to 29.06.2011 and to release the same within a period of 3 (three) months from today.
3. In the event the respondents failed to comply with the directions given at (2) above, the total amount of arrear family pension due payable to the petitioner shall carry an interests @ 9 % per annum from the date of filing of the present writ

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petition till the date of payment of the total amount of arrear family pension.

With the aforesaid directions, the present writ petition is disposed of.

Parties are to bear their own costs.

**JUDGE**

**FR / NFR**

*Sapana*