

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

WP (C) No. 467 of 2019

1. Smt. Puyam Ibemhal Devi, aged about 57 years, W/o (Late) Puyam Subol Singh, resident of Lamdeng Makha Leikai, P.O. & P.S. Lamsang, District Imphal West, Manipur.

..... *Petitioner*

Vs.

1. The State of Manipur represented by the Commissioner/Secretary (PHED), Government of Manipur, P.O. and P.S. Imphal, Imphal West District, Manipur, Secretariat South Block-795001.
2. The Chief Engineer, Public Health Engineering Department (P.H.E.D.), Government of Manipur, P.O. Imphal, P.S. City Police, Imphal West District, P.W.D. Complex, at Khuyathong, Manipur-795001.
3. The Principal Secretary (Finance), Government of Manipur, P.O. and P.S. Imphal, Chief Minister's Secretariat at Babupara, Imphal West District, Manipur-795001.
4. The Joint Secretary/Under Secretary (Pension Cell), Department of Personnel, Government of Manipur, P.O. and P.S. Imphal, Imphal West District, Manipur (Secretariat North Block)-795001.

..... *Respondents*

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioners	: Mr. Ch. Robinchandra, Advocate.
For the respondents	: Mr. Th. Vashum, GA.
Date of Hearing	: 26.02.2024.
Date of Judgment & Order	: 29.05.2024.

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. Ch. Robinchandra, learned counsel appearing for the petitioner and Mr. Th. Vashum, learned Government Advocate appearing for the respondents.

[2] The issue raised in the present writ petition is whether the family members of a work charged employee, whose service is yet to be confirmed, are entitled to avail family pension under the Terminal Benefits for work charged staff of PWD/IFC/PHE/MI/Electricity Manipur Rules, 1978 or not (hereinafter referred to as "the Terminal Benefits Rules" for short).

[3] The case of the petitioner is that, her late husband viz., Puyam Subol Singh, was initially entered service as a Technical Jugali on muster roll basis in the Public Health Engineering Department, Government of Manipur. While the petitioner's husband was serving as a muster roll technical jugali, the State Government framed a policy on 16.04.1997 for conversion of casual/muster roll workers into work charged establishment and work charged employees into regular employees. Under the said policy those casual/muster roll workers who have completed 10 (ten) years of service as on 16.04.1997 shall be converted into work charged establishment and those work charged employees who have completed 10 (ten) years of service as on 16.04.1997 shall be converted into regular employees. The said policy was for a one time measure.

[4] In pursuance of the said State policy, the State Government converted 888 muster roll workers, including the petitioner's husband, who have completed 10 (ten) years of service as muster roll workers into work charged Establishment by an order dated 11.01.1999 issued by the Chief Engineer (Rural), PHED, Manipur. In the said order the name of the petitioner's husband appears at serial No. 266.

[5] After such conversion into work charged Establishment and after rendering service as a worked charged Technical Jugali for more than 20 (twenty) years, the petitioner's husband expired on 22.03.2019 while he was still in service. After her husband death, the petitioner submitted a representation dated 25.04.2019 to the Chief Engineer, PHED, Government of Manipur requesting for payment of family pension as provided under the Terminal Benefits Rules. However, such request was not acceded to by the authorities and by a letter dated 07.05.2019 from the office of the Chief Engineer, PHED, the petitioner was informed that as there is no policy of the Government to grant family pension to the retired worked charged employees, her request cannot be considered at the moment. Having been aggrieved, the petitioner preferred the present writ petition for redressing her grievances.

[6] It is also the case of the petitioner that while her late husband was serving as a work charged employee, the Secretariat Finance Department issued an office memorandum dated 22.01.2001 laying down guidelines for confirmation of work charged employees. Under the said office memorandum, it is provided as under:-

- (i) Confirmation of work charged employees should be made against the permanent posts in the work charged Establishment.
- (ii) Confirmation of work charged employees may be made only when they have put in 10 (ten) years service as work charged with the effect of confirmation from the date, they have completed 5 years service in the work charged Establishment.
- (iii) No, confirmation of those work charged employees who have been brought to the regular Establishment, with Retrospective effect, should be made.

According to the petitioner, the services of many work charged employees similarly situated with her late husband have been confirmed or made permanent in terms of the aforesaid office memorandum. Since her late husband have rendered more than 20 years' service as a worked charged Technical Jugali, he was also entitled to have his work charged service confirmed in terms of the guidelines laid down in the aforesaid office memorandum dated 22.01.2001 during his life time. However, because of the gross negligence and lapses on the part of the concerned authorities, her husband had been denied of such confirmation and discriminatory treatment had been meted out to her husband and the petitioner had been made to suffer for not fault on her part.

[7] It has been submitted on behalf of the petitioner that the petitioner's late husband rendered service for more than 10 years as a muster roll worker and for more than 20 years as a work charged employee in the capacity of Technical Jugali in the PHE Department and as such, after the expiry of her husband, the petitioner is entitled to avail family pension as provided under the Rule 6A of the Terminal Benefits Rules irrespective of whether the work charged service of her late husband was confirmed or not.

[8] It has further been submitted that the issue raised in the present writ petition is squarely covered by the judgment and order dated 10.08.2016 passed by this Court in WP (C) No. 369 of 2015, judgment and order dated 03.05.2023 passed by this Court in WA No. 48 of 2018 and judgment and order dated 12.08.2010 passed by the Hon'ble Gauhati High Court, Imphal Bench, in WA 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.

[9] The common stand taken by the respondents in their counter affidavits are as under:-

- (i) The guideline laid down in the office memorandum dated 22.01.2001 lays down that confirmation of work charged employees should be made against the permanent posts in the work charged establishment. As there is no permanent work charged posts in the PHED, Manipur, no confirmation could be made;
- (ii) Under the office memorandum dated 28.08.2007 laying down guidelines for confirmation of work charged employees, it is provided that no retrospective confirmation shall be made after retirement or expiry of the employee. Since the petitioner's husband had already expired before confirmation of his service, no order for confirmation can be made after the expiry of the petitioner's husband;
- (iii) Under the Rule 6A of the Terminal Benefits Rules, it is provided that family pension shall be available only to family members of a permanent work charged employees. Since the work charged service of the petitioner's husband was not confirmed or made permanent, the petitioner is not entitled to avail family pension in terms of Rule 6A of the Terminal Benefits Rules.

[10] In the present case, the Muster Roll service of the petitioner's husband was converted to Work Charged Establishment by an order dated 11-01-1999 issued by the Chief Engineer (Rural) PHED, Manipur with immediate effect. After such conversion to Work Charged establishment, the petitioner's husband rendered service as a Work Charged employee in the PHED for more than 20(twenty) years till he expired on 22-03-2019 while he was still in service. The guidelines contained in paragraph 4 of the Office Memorandum dated 22-01-2001 prescribes that confirmation of Work Charged employee should be made against the permanent posts in the Work Charged establishment and that

confirmation of Work Charged employees may be made only when they have put in 10(ten) years' service as Work Charged with the effect of confirmation from the date, they have completed 5 (five) years' service in the Work Charged establishment.

[11] On examination of the record, it is found that the petitioner's husband have put in 10(ten) years' service as Work Charged employee in the year 2009, more than a decade before the date of his expiry, and as such, this Court is of the considered view that the petitioner's husband was entitled to have his case considered by the authorities for confirmation of his Work Charged services in terms of the aforesaid Office Memorandum dated 22-01-2001 well before his expiry. Only because of the failure or negligence on the part of the concerned authorities, the petitioner's husband had been deprived of his Work Charged services being confirmed as provided under the said Office Memorandum dated 22-01-2001 and the petitioner has been made to suffer on account of the failure and negligence on the part of the respondents and for no fault on her part.

[12] With regard to the first stand taken by the respondents, it is to be pointed out that such stand of the respondents is contrary to the materials available on record. As many as 412 permanent Work Charged posts in the Engineering Departments of the Manipur Government were available at the time of publication of the Terminal Benefits Rule and such factum is clearly mentioned at Rule 5 of the said Terminal Benefits Rule. In the said Rule 5, it is also mentioned that some more permanent posts at various departments are to be created for confirmation of Work Charged staffs. Moreover by an order dated 10-03-1988 issued by the Chief Engineer (PHED), Manipur, a copy of which was submitted by the counsel for the petitioner, altogether 57 various categories of permanent Work Charged posts, including 16 posts of Technical Jugali were created. In view of such undisputed factual positions, this Court is not inclined to accept the stand taken by the respondents that the Work Charged services

of the petitioner's husband cannot be confirmed as there was no permanent post in the PHED.

[13] With regard to the second stand taken by the respondents, it is to be pointed out that the petitioner's husband completed 10 (ten) years' service as work charged employee in the year 2009, more than a decade before the date of his expiry, and as such, this Court is of the considered view that the petitioner's husband was entitled to have his case considered for confirmation of his service under the O.M. dated 22-01-2001 well before his expiry. Only because of the failure or negligence on the part of the authorities, he had been deprived of such confirmation. In such view of the matter, this Court is of the considered view that there is no force or merit in the second stand taken by the respondents. Guidelines contained in para 2(3) of the Office Memorandum dated 28-08-2007 cannot stand in the way or deprived the petitioner's husband of his valuable rights to have his case considered for confirmation of his Work Charged service as provided under the Office Memorandum dated 22-01-2001, specially when large number of Work Charged staffs/employees similarly situated with the petitioner's husband have been given the benefit of confirmation under the said Office Memorandum.

[14] In so far as the 3rd stand taken by the respondents is concerned, this Court is of the considered view that the issue raised by the respondents is no longer res integra. The issue as to whether the Work Charged employee, who is not yet confirmed or made permanent is entitled to get pension or not under the Terminal Benefits rule had been already considered and decided by the judgment and order dated 12-08-2010 passed by a Division Bench of the Gauhati High Court, Imphal Bench in WA No. 29 of 2009. The said writ appeal was filed by the State of Manipur challenging the judgment and order dated 20-11-2007 passed by the learned Single Bench in WP (C) No. 899 of 2006 extending the benefit of family pension to the widow of the Work Charged employee whose service was yet to be confirmed.

[15] In the said judgment and order, it has been held, inter alia, that confirmation of service and/or permanency in service by issuance of specific order is always an uncertainty and that in normal circumstances, employee after rendering a particular length of service is entitled to get his service confirmed or made permanent. It has further been held that for availing pension/family pension upon the confirmation of service is required, the authorities may do so by passing appropriate order and thereafter, the Division Bench dismissed the writ appeal and refused to interfere with the impugned judgment and order passed by the learned Single Judge, the relevant portion of the aforesaid judgment and order are reproduced herein 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-charge 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 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 judgment and order passed by the learned single Judge dated 20-11-2007 in WP(C) No. 899 of 2006."

[16] The SLP being SLP C No. 218/2011 filed by the State of Manipur assailing the aforesaid judgment and order dated 12-08-2010 passed in WA No. 29 of 2009 had already been dismissed by the Hon'ble Apex Court by an order dated 17-01-2011 and as such the matter has attained finality.

[17] In my considered view, the corollary of the aforesaid judgment and order dated 12-08-2010 passed in WA No. 29 of 2009 is that confirmation/permanency of the Work Charged service of an employee is not sine qua non for availing pension / family pension under the Terminal Benefits Rule, if it is found that the Work Charged employee was entitled to get confirmation/permanency in terms of applicable guidelines.

[18] Taking into consideration the fact and circumstances of the present case and in view of the findings and reasons given therein above, this Court is of the considered view that the petitioner is entitled to the relief sought for in the present petition. In the result, the present petition is allowed. The respondents are directed to consider the case of the petitioner's husband for confirmation of his Work Charged service in terms of the Office Memorandum dated 22-01-2001 and to issue necessary orders for confirmation of his Work Charged service, if the same is considered necessary. The whole process should be completed within a period of 2(two) months from today. Thereafter the respondents are further directed to expedite the process for payment of family pension to the petitioner in terms of Rule 6A of the Terminal Benefits Rule as

amended from time to time as expeditiously as possible preferably within a period of 5 (five) months from today.

[19] With the aforesaid directions, the present writ petition is disposed of. There will be no order as to costs.

JUDGE

FR/NFR

Sapana