

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
WP(C) No. 418 of 2019**

Shri. Y. Thaiba, aged about 72 years, permanently resident of Liyai Village, P.O & P.S-Tadubi, Senapati District Manipur-795104.

... Petitioner

-Versus-

1. The State of Manipur represented by the Commissioner/ Secretary Education (S), Govt. of Manipur at Secretariat Building, Babupara, Imphal -795001.
2. Director Education (s), Manipur. Govt. of Manipur at RIMS Doctors Colony, Lamphelpat, Imphal, Manipur - 795004.
3. The Chief Executive Officer (CEO), Autonomous District Council (ADC) Senapati, Senapati District, Manipur.-795106.
4. The Accountant General Manipur at Imphal. Babupara, Imphal - 795001.

... Respondents

**B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the petitioner	::	Shri S. Thoi Thoi Meitei, Advocate
For the respondents	::	Shri Th. Vashum, GA; Shri Moses Pao, Advocate
Date of Hearing	::	08-11-2021
Date of Judgment & Order	::	24-11-2021

JUDGMENT AND ORDER

[1] Heard Shri S. Thoi Thoi Meitei, learned Advocate appearing for the petitioner and Shri Th. Vashum, learned GA appearing for the respondents while Shri Moses Pao, learned Advocate appears for the Accountant General, Manipur.

[2] By the instant writ petition, the petitioner has prayed for issuing

a writ of mandamus or any other appropriate writ to direct the respondents to grant him his pension and retirement benefits with @ 10% interest from the date of his retirement and also to direct the respondents to fix the responsibility for not granting them to him. In addition thereto, a prayer has been made to direct the respondents to extend the benefit of the judgment and order dated 07-10-2016 passed by this Court in WP(C) No.563 of 2016.

[3.1] According to the petitioner, he was initially appointed as the Assistant Teacher on regular basis vide order dated 27-01-1972 of the DEO, Directorate of Education(S), Manipur and he continued to work in that capacity till 28-02-1973 when he was sent on deputation to District Council (N), Tadubi, vide order dated 27-08-1973.

[3.2] The petitioner, on deputation, started discharging his duties as a Assistant teacher at Liyai Primary High School under the Autonomous District Council, Senapati, Senapati District, Manipur (hereinafter referred to as "**the ADC, Senapati**") and had been rendering his service sincerely and faithfully without any stigma till the issuance of a conditional termination order dated 29-02-2008 by the Chief Executive Officer, ADC, Senapati, by which he was allowed to retire from service on attaining the age of superannuation with effect from 29-09-2008(A/N) subject to the approval of the Director of Education(s), Government of Manipur.

[3.3] In order to grant the approval by the Director of Education (S), Manipur, he approached him and other concerned authorities by

submitting representation after representation so that he could be formally allowed to retire from service and he could enjoy his pension and retiral benefits. Being aggrieved by the inaction on the part of the Respondents, the petitioner approached this Court by way of writ petition being WP(C) No.763 of 2016 which was disposed of on 07-10-2016 with the direction that the State Respondents should pass appropriate orders so that the petitioner could enjoy his pension and retiral benefits within a period of two months therefrom.

[3.4] Since the State respondents failed to comply with this Court's order dated 07-10-2016, a contempt case being Contempt Petition (C) No.38 of 2017 came to be filed by the petitioner. Surprisingly, during the pendency of the said contempt case, the State respondents preferred an appeal being WA No.31 of 2018, along with MC (W.A) No.45 of 2018, challenging the order dated 07-10-2016. After having heard the parties, this Court dismissed the appeal vide its order dated 13-12-2018.

[3.5] In compliance with this Court's order dated 07-10-2016, the Director of Education(S), Government of Manipur issued an order dated 11-02-2019 allowing the petitioner to retire from service on attaining the age of superannuation with effect from 29-02-2008 (A.N). After the said order being issued, the petitioner approached the concerned authorities/ respondents to release his pension and retirement benefits by way of a representation dated 29-03-2019. However, the State respondent failed to take any positive action thereon.

[3.6] Being aggrieved by the inaction on the part of the respondents, the petitioner filed the instant writ petition on the inter-alia grounds that the respondents being the "State" under Article 12 of the Constitution of India, its officers are public functionaries. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. In a welfare State like India which is governed by the rule of Law, it is the duty of the respondents to follow and obey the rule of law and their inaction depriving the petitioner from enjoying his pension and retirement benefit in spite of his retirement, is unconstitutional, bias, and arbitrary. In order to substantiate his case, the petitioner has referred to and relied upon various decisions of the Hon'ble Supreme Court.

[4] The stand of the State Government as reflected in their affidavit is that the petitioner could not produce the order dated 27-08-1973 nor was his name found in the list of teachers transferred on deputation to ADC, Senapati. The order dated 11-02-2019 issued by the Director of Education (S), Manipur allowing him to retire from service with effect from 29-02-2008 was not the final order and it was made subject to the outcome of the petition for special leave to appeal preferred before the Hon'ble Supreme Court vide Diary No.16916 of 2019. An affidavit was filed by the respondent No.3 stating that the petitioner had been working as Assistant Teacher under the District Council (N) Tadubi/ the ADC, Senapati vide order dated 27-08-1973 and was allowed to retire from service on attaining the age of superannuation vide order dated 29-02-

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2008 subject to the approval being granted by the Director of Education (S), Manipur.

[5] In his rejoinder, the petitioner stated that on 03-05-2019, the State Government preferred a defective special leave petition before the Hon'ble Supreme Court which was not cured till 13-09-2019 when the their affidavit was filed in this Court. The State Government did file it deliberately to delay the conclusion of the proceedings pending before this Court. Thereafter, on 17-02-2020, the petitioner filed an additional affidavit enclosing therewith a copy of the order dated 14-02-2020 passed by the Hon'ble Supreme Court dismissing the said special leave petition. After the special leave petition having been dismissed, the Addl. Director of Education (S), Manipur issued an order dated 19-10-2020 modifying its earlier dated 11-02-2019 to the effect that the petitioner is allowed to enjoy retirement benefits and other as admissible under the rules.

[6] After the order dated 19-10-2020 being issued by the State Government, the instant writ petition could have been disposed of but the grievance of the petitioner is that the pension and retiral benefits have not yet been given to him. In other words, no amount towards his pension and retiral benefits has been released to him.

[7] It may be noted that the petitioner claimed that he was initially appointed as Assistant Teacher on regular basis in the Education (S) Department, Government of Manipur vide order dated 27-01-1972 and thereafter, he was sent to ADC, Senapati on deputation. While on

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deputation, he was allowed to retire from service on attaining the age of superannuation with effect from 29-02-2008 subject to the approval to be granted by the State Government. But the approval was not granted by the State Government, despite several representations being submitted by the petitioner. When the petitioner approached this Court by way of a writ petition being WP(C) No.563 of 2016, it was disposed of on 07-10-2016 by this Court with the direction that the State Government should issue appropriate orders so that the petitioner could enjoy his pension and retiral benefits within two months therefrom. This order dated 07-10-2016 had attained finality, when the State Government's special leave petition being dismissed by the Hon'ble Supreme Court on 14-02-2020. It ought to be complied with by the State Government and having no alternative, the State Government issued the order dated 19-10-2020 towards the compliance of this Court's order.

[8] The contention of the counsel appearing for the petitioner is that despite the order dated 19-10-2020 being issued by the State Government, the petitioner has not yet been given his pension and retiral benefits. The short question that arises for consideration by this Court is as to whether the issuance of the order dated 19-10-2020 by the State Government would suffice, in the sense that it would serve the purpose of complying with this Court's order dated 07-10-2016. The answer is in the negative for the reason that even after a lapse of more than a year from the day of issuing the said order dated 19-10-2020, the petitioner has not yet been given the opportunity to enjoy his pension and retiral benefits.

There is no guarantee that the needful would be done by the State Government within a reasonable time from now onwards.

[9] In **State of Kerala v. M Padmanabhan Nair, (1985) 1 SCC 429**, the Supreme Court held as under:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

It has further been held:

"Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay panel interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

On top of that, in a catena of decisions, the Hon'ble Supreme Court held that withholding of pension and other retiral benefits of retired

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employees for years together, is not only illegal and arbitrary but a sin if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee, must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our constitution.

[10] In view of the aforesaid circumstances and the law laid down by the Hon'ble Supreme Court, it is imperative on the part of the State Government to take immediate steps to ensure that the petitioner enjoys his pension and retiral benefits at the earliest possible. It is unfortunate that the petitioner after having retired in the year, 2008, has not been able to enjoy his valuable rights and property as held by the Hon'ble Supreme Court for the last more than ten years and that too, after the order dated 07-10-2016 having been passed by this Court. It may be noted that an order passed by the Court is binding between the parties and will have to be complied with by them. The failure to do so will attract the provisions of the Contempt of Courts Act. Simply and truly speaking, the scheme of the Constitution envisages that an appeal can be preferred before the High Court against an order passed by the subordinate Court following the procedure prescribed in law and likewise, an appeal can be preferred before the Hon'ble Supreme Court against the order passed by the High Court. The order passed by the Hon'ble Supreme Court is final. This has exactly happened in the present case for the reason that the State Government did loss the battle upto Hon'ble Supreme Court and

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therefore, the compliance with this Court's order dated 07-10-2016 by the State Government is indispensable for the end of justice. In fact, the petitioner has been unfairly and illegally denied the opportunity of enjoying his pension and retiral benefits.

[11] For the reasons stated hereinabove, the instant writ petition is allowed with the direction that the respondents shall compute the pension and retiral benefits of the petitioner and pay him the amount thereof within three months, from the date of receipt of a copy of this judgment and order, with interest thereon @ 8% per annum from date of his retirement till the date of payment. There shall be no order as to costs.

JUDGE

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Victoria