

DR. Y. IBEHAIBI DEVI (D) BY LRS. & ORS.

A

v.

THE STATE OF MANIPUR REPRESENTED BY THE
COMMISSIONER (HIGHER AND TECHICAL EDUCATION)
GOVERNMENT OF MANIPUR & ANR.

B

(Civil Appeal No. 2681 of 2022)

MARCH 31, 2022

[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]

Service Law – Pension – Manipur Services (Revised Pay) Rules, 2010 - Benefit of Revised Pension Scheme - Binding force of Office Memorandum - Over Statutory Order - The appellants are retired Assistant Professors and a College Librarian - Manipur Services (Revised Pay) Rules, 2010 were framed on 05.05.2010 - Office Memorandum dated 05.05.2010, issued by the Governor provides that the pension benefits shall be paid from 01.04.2010 - On 24.12.2011 the State Government issued a further Office Memorandum which provides that the benefit of increased Pension/ Family Pension on account of revision shall be paid from 01.11.2010 - The appellants invoked the writ jurisdiction of the High Court, staking their claim for revised pension with effect from 01.04.2010 - Single Judge allowed the writ petition and held that by the Office Memorandum dated 24.12.2011, as far as the claim of the petitioners for grant of cash payment/actual benefits w.e.f. 1.4.2010 as provided under the Office Memorandum dated 5.05.2010, cannot be taken away - Division Bench allowed the appeal filed by the State and set aside the judgment passed by the Single Judge - On appeal, held: The O.M of 24.12.2011 is in the nature of an administrative order and it has not been made and executed in the name of the Governor - In terms of Clause 3.1 of the O.M. of 05.05.2010, the appellants have acquired a vested right to get revised pension from a date which is applicable to the retired State Government employees - The O.M of 24.12.2011 though projected as an instrument to clarify a subsisting anomaly to an O.M having statutory strength, in reality encroaches upon acquired or vested right of the retirees to get such benefit from 01.04.2010 - Such “clarificatory order” cannot be permitted to override an Order having statutory strength - The O.M

F

G

H

- A *of 24.12.2011 would not have any binding effect so far as entitlement of the appellants to receive revised pension from 01.04.2010 is concerned.*

Allowing the appeal, the Court

- B **HELD:** 1. The Office Memorandum of 24th December 2011 is in the nature of an administrative order. This Office Memorandum has not been made and executed in the name of the Governor. But this Office Memorandum seeks to take away substantive right of the appellants cemented under Government Order made on 12th August 2011, read in continuation with the Orders of 5th May 2010 and 3rd June 2011. In our opinion, the course of action sought to be adopted by the State is impermissible. In terms of Clause 3.1 of the O.M. of 5th May 2010, the appellants have acquired a vested right to get revised pension from a date which is applicable to the retired State Government employees. The appellants have been placed in the said pension regime, and this has been recognised by Clause 7 of the Order of 12th August 2011. [Para 15][788-C-D]

2. The Court is unable to agree with the main reasoning of the Division Bench that by giving the appellants the benefit of revised pension with effect from 1st April 2010 an anomalous situation would arise as serving staff(s) of higher educational institutions could be getting the benefit of such revision from 1st November 2010. The State has made conscious decision to delink the retirees from the service conditions guiding the serving staffs of the concerned institutions and placed them in the retirement rules meant for those in the Manipur State Service. In such a situation, the anomaly pointed out in the judgment under appeal could be the guiding factor for fixing the date of entitlement to revised pension benefits specified by the Service Rules. The Office Memorandum of 24th December 2011 though projected as an instrument to clarify a subsisting anomaly to an Office Memorandum having statutory strength, in reality encroaches upon acquired or vested right of the retirees to get such benefit from 1st April 2010. Such “clarificatory order” cannot be permitted to override an Order having statutory strength. The Court

H

accordingly hold that the appellants shall be entitled to receive revised pension with effect from 1st April 2010, considering the provisions of Clause 7 of the Order of 12th August 2011. The Office Memorandum of 24th December 2011 would not have any binding effect so far as entitlement of the appellants to receive revised pension from 1st April 2010 is concerned. [Para 16][788-E-H; 789-A] A B

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2681 of 2022.

From the Judgment and Order dated 27.01.2017 of the High Court of Manipur at Imphal in Writ Appeal (C) No.55 of 2016. C

Ngangom Junior, Atul Kumar, Advs. for the Appellants.

Sanjay R. Hegde, Sr. Adv., Pukhrambam Ramesh Kumar, Tanay Hegde, Karun Sharma, Ashutosh Dubey, Advs. for the Respondents. D

The following Judgment of the Court was delivered:

JUDGMENT

Leave granted.

2. The appellants before us are eight retired Assistant Professors and a College Librarian, also superannuated, from the State of Manipur. All of them had superannuated between 28th February 2006 and 31st July 2008. Subsequent to filing of the Petition for Special Leave to Appeal, eleven teaching staffs from different colleges in the same State have taken out an application for impleadment as petitioners. They are allowed to intervene in this appeal. E F

3. Decision was taken by the Government of India to revise the pay scales of teachers and equivalent cadres in the central universities and this was communicated by the Government of India to the University Grants Commission by a letter of 31st December 2008. The revised scales as per 6th Pay Commission recommendation were to be implemented by the State Governments as well. In the State of Manipur, Manipur Services (Revised Pay) Rules, 2010 were framed in exercise of power conferred under the proviso to Article 309 of the Constitution of India on 5th May 2010. Such Rules were to cover those appointed to G H

- A Civil Services and posts in connection with the affairs of that State and which were under the rule making control of the Government of Manipur. Following the introduction of the Revised Pay Rules, certain modifications were made in the Rules guiding pension and allied benefits of those covered by the civil services rules in that State. These modifications
- B were made by an Office Memorandum dated 5th May 2010 bearing no.9/3/2010-FD (PIC) (“O.M. of 5th May 2010” in short) introduced by the Governor of Manipur. Though the source of power for making such modifications was not spelt out in the said memorandum, this was made in pursuance of the Government’s decision and fits the characteristic of a Rule made under proviso to Article 309 or an executive order made in
- C terms of Article 166 of the Constitution of India.

4. Clause 3.1 of the O.M. of 5th May 2010 stipulated:-

“**3.1.** Save as otherwise mentioned in these orders, the revised provisions as per these orders shall apply to

- D Government servants who retire/die in harness on or after 01/01/2006, notionally with effect from 01/01/2006 or from the date of retirement whichever is later, as the case may be, with cash payment/actual benefit from 01/04/2010. Separate orders have been issued in-respect of employees who retired/died before 01/01/2006.”

(quoted verbatim from paperbook)

- F 5. On 3rd June 2011 by way of an order issued in terms of the proviso to Article 309 of the Constitution of India, certain revisions of the scales of pay of different categories of posts in Government Colleges under the Department of Higher Education and Technical Education in the State of Manipur were mandated. This Order was to come into force with effect from 1st June 2006 and arrears for the period from 1st November 2010 to 30th June 2011 were to be deposited in the respective G.P.F. accounts of the employees. Clause 6 of this Order stipulated:-

- G “6. Rules relating to pension, family pension, gratuity and encashment of leave, ex-gratia compensation, provident fund, etc. Shall be as applicable to other State Government employees.”

(quoted verbatim from paperbook)

- H

6. On 12th August 2011, another Order [bearing no.7(7)/32009-HE(Misc.)Pt.(1)] was issued superseding the Order of 3rd June 2011 in relation to different categories of college teachers (and equivalent grades) specifying the revised scale of pay. Clauses 3, 7 and 8 of this Order of 12th August 2011 read:- A

“3. These orders shall come into force nationally with effect from 01/01/2006 with monetary benefit from 01/11/2010 and actual case payment from 01/07/2011. The arrears for the period from 01/11/2010 to 30/06/2011 shall be deposited into their respective G.P.F Accounts of the employees. B

However, for those employees who subscribe contribution under the New Pension Scheme and retired/ expired. The arrears for the period from 01/11/2010. To 30/06/2011 shall be released in 2(two) equal instalments, first on 01/01/2012, and second on 01/07/2012. C

..... D

7. Rules relating to pension, family pension, gratuity and encashment of Leave salary/Leave of any kind, Ex-gratia Compensation, Provident Fund and New Pension Scheme no-win force etc. shall be as applicable to other state Government employees. E

8. For those College Teachers/Equivalent Grads who retired/ superannuated between 01-01-2006 and 31-10-2010, Pension shall be calculated on the basis of notional pay and AGP in the revised pay.” F

(quoted verbatim from the paperbook)

7. On 24th December 2011 the State Government issued a further Office Memorandum contemplating certain clarifications to the department's Order dated 12th August 2011. The areas of doubt and the clarifications given thereto, to the extent these are relevant for adjudication of this appeal, as specified in the said Office Memorandum of 24th December 2011 were:- G

H

A	"Sl. No.	Points of doubts	Clarification
	(1)	(2)	(3)
B		Para 3 of the order under reference, relates to deposit of arrear pay and allowances for the period from 01.11.2010 to 30.06.2011 into GPF account actual cash payment from 01.07.2011 and release of arrear pay and allowance of certain categories of employees for the period from 01.11.2010 to 30.06.2011 in 2(two) equal installments. However Provisions for release of pension and other retirement benefits w.e.f 01.11.2010 or 01.07.2011. In respect of those college teachers who retired during the period 01.01.2006 to 31.10.2010 and 01.11.2010 to 30.06.2011 were not mentioned in the order under reference. Decision of the Government on the point under reference is required.	It is clarified that pension/Family Pension/Retirement Gratuity/Death Gratuity/Commutation of Pension/Leave Encashment of those college teachers who retired/diet in harness during the period from 01.01.2006. to 30.06.2011 shall be calculated on the basis of the notional pay w.e.f. 01.01.2006 or from the date of retirement or death whichever is later or on the basis of the actual emolument drawn in the pre-revised pay scales whichever is more beneficial to the incumbent. The difference of amount between the pre revised rate and the revised rate time payment, like, Retirement, Gratuity/Death Gratuity/Leave Encashment, if found more beneficial, shall also be paid. Actual benefit of increased Pension/Family Pension on account of revision shall be paid from 01.11.2010.
C			
D			
E		Further referring to para 8 of the order under reference, for those college teachers/equivalent grades who retired/superannuated between 01.01.12006 to 31.10.2010, as to whether their retirement gratuity will be revised or not may also be clarified. Further, in respect of those college teachers/equivalent Grades who expired during the period. Under reference as to whether their family pension/DG will be revised or not, may also be clarified.	In the case of commutation of Pension, benefit will be given on the basis of additional amount of pension."
F			
G			

(Emphasis added)

8. The dispute involved in this appeal is as to whether the appellants, H as retired staffs from different colleges, are to get the benefits of revised

pension from the date given in the Office Memorandum of 24th December 2011 or from 1st April 2010, the latter date being made applicable to those retired from various state services. The State Government wanted to implement revised pension from 1st November 2010. The appellants invoked the writ jurisdiction of the Manipur High Court, staking their claim for revised pension with effect from 1st April 2010. The Single Judge allowed the writ petition by a judgment delivered on 30th October 2015. It was, inter-alia, opined in that judgment:-

“**12.** Accordingly, this Court is of the view that by the Office Memorandum dated 24.12.2011, as far as the claim of the petitioners for grant of cash payment/actual benefits w.e.f. 1.4.2010 as provided under the Office Memorandum dated 5.5.2010, cannot be taken away and to that extent the aforesaid Office Memorandum dated 24.12.2011 cannot be enforced against the petitioners. This Court has also noted that the aforesaid Office Memorandum dated 24.12.2011 is merely in the nature of clarification without modifying the orders dated 3.6.2011 and 12.8.2011 and also an executive order which cannot prevail upon the Office Memorandum dated 5.5.2010 which has statutory force which governs the retiral benefits and they form a part of the Manipur Civil Services (Pension) Rules, 1977, Commutation of Pension under the Manipur Civil Services (Commutation of Pension) Rules, 2010 and the Manipur Services (Extraordinary Pension) Rules, 1995.

13. Accordingly, for the reasons discussed above, the present writ petition is allowed. The petitioners will be entitled to enjoy the actual benefit of the cash payment/actual payment as regards the pensioary benefits w.e.f. 1.4.2010 and other benefits as mentioned in the Office Memorandum dated 5.5.2010 and they shall be also entitled to any other extension of benefits including arrears in terms of the order dated 20.9.2011 or any subsequent orders that may have been passed.

The petitioners who have rendered a long valuable service in the field of education have volunteered to donate a sum of Rs.1000/- each from their entitlements for the benefit of the children of the Children Home managed by the State Government, for which gesture, this Court records its appreciation. The amount so donated by the petitioners will be deposited in the account of the Children

A

B

C

D

E

F

G

H

- A Home, Takyelpat, managed by the State Government to be utilised for the immediate and personal needs of the resident children of the Home.”

(quoted verbatim from the paperbook)

- B 9. The State Government were successful in their appeal before the Division Bench of the High Court. The Division Bench, in the judgment under appeal, decided on 27th January 2017, held:-

- “[11] It be stated that pursuant to recommendation made by University grants commission and also upon resolution being taken by Ministry of Human Resources, Govt. of India relating to revision of pay, the Government of Manipur came with the revision of pay of the college teachers vide notification dated 12.8.2011. The said order relating to revision of pay scale as per clause 3 of the said notification notionally came into effect from 1.1.2006 with monetary benefit from 1.11.2010 and actual cash payment from 1.7.2011.
- D The arrears for the period from 1.11.2010 to 30.6.2011 was stipulated to be deposited in the GPF Accounts whereas OM dated 5.5.10 was issued in the wake of revision of provisions relating to regulation of pension etc. on account of introduction of the Manipur Services (Revised Pay) Rules 2010. The clause 3.1 does stipulate that provision of it would come into effect from 1.1.2006 and monetary benefit was to be paid from 1.4.2010.
- E

- Thus, it is evident that consequent upon revision of salary by virtue of Manipur Services (Revised Pay) Rules, 2010 applicable only in case of State Govt. employees the said Office Memorandum dated 5.5.10 dealing with the provision regulating revised pension was required to be issued necessarily stipulating therein about monetary benefit being paid from 1.4.2010. The provision relating to enforceability of the Office Memorandum and payment of monetary benefit on account of revision of pay was confined to the Government employees who were being governed by the Manipur Services (Revised Pay) Rules, 2010 whereas the notification dated 12.8.2011 relating to revised scale of pay of the college teachers was issued by the State Govt. upon acceptance of the recommendation of the UGC and Govt. of India and therefore the University teachers would be governed by the stipulation made in that notification which speaks about the monetary benefits being given to them w.e.f. 1.11.2010. The said

stipulation has nothing to do with the matter relating to pension for the reason that monetary benefit which was to be given from 1.11.2010 may be related to persons in service and even the persons who got retired. However, if the proposition laid down by the learned single Judge is accepted, a situation which would be quite anomalous would come up whereby the teachers who are in service would be entitled to monetary benefit only w.e.f. 1.11.2010 whereas the retired employees would be getting monetary benefit from 1.4.2010. It be reiterated that dispute is with respect to the date from which teachers of the Universities/colleges will be entitled to have monetary benefits, which dispute never pertains to any rules relating to the pension and thereby there happens to be no applicability of any of the provisions of the OM dated 5.5.2010 whereby provision relating to pension was revised.

[12] Under the circumstances, the learned single Judge by resorting to the provisions under the Office Memorandum dt. 5.5.2010 wrongly held that the petitioners would be entitled to monetary benefit w.e.f. 1.4.2010 and thereby order dated 30.10.2015 is hereby set aside. Consequently, it is held that the petitioners are entitled to have monetary benefit w.e.f. 01.11.2010 and not w.e.f. 1.4.2010. Accordingly, this appeal stands allowed.”

10. Mr. Ngangom Junior, learned Advocate appearing for the appellants, has argued that his clients had migrated to the pension regime created for the State Government employees, which was guided by an Order issued by the Governor in pursuance of the decision of the State Government. As we have already discussed earlier in the judgment, power to issue such Order can be traced to both Article 166 as also proviso to Article 309 of the Constitution of India. It is not of much significance under which Article the Rules or Order was issued as in either case, the legal instrument would be endowed with statutory strength. We have already quoted Clause 3.1 of the amended Manipur Civil Services (Pension) Rules, 1977 in the earlier part of this judgment. It is not in dispute that the appellants had retired after 1st June 2006. The main argument of the appellants has been that since their pension entitlement was covered by a Rule made under proviso to Article 309 of the Constitution of India, the Office Memorandum dated 24th December 2011 could not alter the benefits that the appellants became entitled to under the aforesaid statutory instrument. The stand of the State

A

B

C

D

E

F

G

H

- A Government, represented by Mr. Sanjay R. Hegde, learned Senior Advocate, is that the revision of pay scales covers superannuated persons from different services under the State Government including those within the education department itself. His contention is that even after the appellants migrated to the 2010 Rules, they could not claim benefit different from, and more than that the serving staffs of the department from which they originated was enjoying. It has been pointed out that the Order of 12th August 2011 superseded the Order of 3rd June 2011 revising pay of college teachers and we have already reproduced Clause 8 of this Order.
- C 11. It has been emphasised on behalf of the State of Manipur that the Order of 12th August 2011 is not under challenge. It has also been argued on behalf of the State that the appellants who were employed in the Technical and Higher Education Department of the Government of Manipur enjoy pay scales and pensions higher than that of Government employees or those engaged in judicial services in the State of Manipur.
- D On that count, it is urged that their benefits cannot be equated with those of the original employees appointed under the Manipur State Government Service Rules. The judgment under appeal is also sought to be defended on the ground that members from different services under the Government of Manipur were receiving revised pay from different dates. It has also been asserted that the Office Memorandum of 24th December 2011 is only a clarificatory order and the original Order of 12th August 2011 was never assailed by the appellants. Various Cabinet decisions as regards implementation of revision of pay orders were brought to our notice but we need not go into these Cabinet decisions in detail. In this appeal, we are concerned with the legality of the content of the Office Memorandum of 24th December 2011 to the extent that the same shifts the date of getting actual benefit of pension/ family pension on account of revision from 1st April 2010 to 1st November 2010.
- G 12. The Order of 12th August 2011 has been issued in the name of the Governor of the State of Manipur. On the rationale we have explained earlier, it can qualify for being an executive order in the terms of Article 166 of the Constitution of India as also a Rule made under proviso to Article 309 of the Constitution of India. But this Order of 12th August 2011 does not lay down any specific stipulation for the retired college teachers or those holding equivalent grades barring clauses 7 and 8 thereof, to which we have referred to earlier in this judgment. These
- H

clauses also do not specify the date from which revised pension is to be payable to the retirees. Clause 8 specifies the manner of computation of pension for those who superannuated or retired between 1st January 2006 and 31st October 2010. Clause 7 on the other hand relates to the pension Rules to be applicable as in the cases of other State Government employees. Therefore, so far as the appellants are concerned, their migration into the regime of the 2010 Rules meant for State Government employees and their entitlement to revised pension from a date applicable to the State Government employees has not been excluded by the Order of 12th August 2011 made by the Governor of Manipur, either expressly or by implication.

13. So far as the State Government's employees are concerned, the revisions of provisions regulating pension and ancillary conditions were guided by O.M. of 5th May 2010. The subject covered by this memorandum would appear from the following clauses thereof:-

“No.9/3/2010-FD(PIC) : The undersigned is directed to say that in pursuance of Government's decision following the introduction of the Manipur Services (Revised-Pay) Rules, 2010, the Governor of Manipur is pleased to introduce the following modifications in the rules regulating Pension, Retirement / Death / Service Gratuity / Family pension / Disability Pension under the Manipur Civil Services (Pension) Rules, 1977 (hereafter referred to as Pension Rules), Commutation of Pension under the Manipur Civil Services (Commutation of Pension) Rules, 2010 and the Manipur Services (Extraordinary Pension) Rules, 1995.

2. These orders apply to State Government Employees governed by the Manipur Civil Services (Pension) Rules, 1977.”

(quoted verbatim from paperbook)

14. No distinction is made in Clause 3.1 of the O.M. of 5th May 2010 between different categories of employees, on which distinction Mr. Hegde has emphasised in his arguments. Thus, once the appellants migrate into the Rules guiding other State Government employees, the appellants' service origins become insignificant so far as application of substantive part of the aforesaid revision of Pension Rules is concerned. As we have already discussed, Clause 8 of the Order dated 12th August 2011 also does not contemplate special treatment for superannuated staff of higher educational institutions in the State of Manipur to correlate

- A them with the existing staff of their original service for the purpose of date of implementation of the revised pension. Thus, the quantum of pension the appellants would receive vis-à-vis retirees from other services in the State of Manipur would not have impact on the point of law we are examining in this appeal. We are testing in this appeal if the Order passed on 24th December 2011 could postpone the date of entitlement of revised pension to 1st November 2010 for the appellants.

- B
- C 15. The Office Memorandum of 24th December 2011 is in the nature of an administrative order. This Office Memorandum has not been made and executed in the name of the Governor. But this Office Memorandum seeks to take away substantive right of the appellants cemented under Government Order made on 12th August 2011, read in continuation with the Orders of 5th May 2010 and 3rd June 2011. In our opinion, the course of action sought to be adopted by the State is impermissible. In terms of Clause 3.1 of the O.M. of 5th May 2010, the appellants have acquired a vested right to get revised pension from a
- D date which is applicable to the retired State Government employees. The appellants have been placed in the said pension regime, and this has been recognised by Clause 7 of the Order of 12th August 2011.

- E 16. We are unable to agree with the main reasoning of the Division Bench that by giving the appellants the benefit of revised pension with effect from 1st April 2010 an anomalous situation would arise as serving staff(s) of higher educational institutions could be getting the benefit of such revision from 1st November 2010. The State has made conscious decision to delink the retirees from the service conditions guiding the serving staffs of the concerned institutions and placed them in the retirement rules meant for those in the Manipur State Service. In such a situation, we do not think the anomaly pointed out in the judgment under appeal could be the guiding factor for fixing the date of entitlement to revised pension benefits specified by the Service Rules. The Office Memorandum of 24th December 2011 though projected as an instrument to clarify a subsisting anomaly to an Office Memorandum having
- F statutory strength, in reality encroaches upon acquired or vested right of the retirees to get such benefit from 1st April 2010. Such “clarificatory order” cannot be permitted to override an Order having statutory strength. We accordingly hold that the appellants shall be entitled to receive revised pension with effect from 1st April 2010, considering the provisions of Clause 7 of the Order of 12th August 2011. The Office Memorandum of
- H

24th December 2011 would not have any binding effect so far as A
entitlement of the appellants to receive revised pension from 1st April
2010 is concerned.

17. Under the circumstances, the judgment under appeal is set aside. We restore and affirm the judgment of the Single Judge dated 30th October 2015. B

18. The appeal is accordingly allowed.

19. Pending application(s), if any, shall stand disposed of.

20. There shall be no order as to costs.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed.