

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C) 501(AP) of 2013

1. Shri Ponglai Wangpan,
S/o, Lt. Pangbo Wangpan,
Permanent Resident of Vill-Senua,
PO/PS- Longding,
Dist- Longding, Arunachal Pradesh.
2. Shri Phojang Wangpan,
S/oLt. Pangbo Wangpan,
Permanent Resident of Vill-Senua,
PO/PS- Longding,
Dist- Longding, Arunachal Pradesh.
3. Ms. Phelai Wangpan,
D/o Lt. Pangbo Wangpan,
Permanent Resident of Vill-Senua,
PO/PS- Longding,
Dist- Longding, Arunachal Pradesh.

..... Petitioners.

– VERSUS –

1. The State of Arunachal Pradesh, to be represented by Secretary, Public Works Department Govt. of Arunachal Pradesh.
2. The Chief Engineer, (Eastern Zone) Public Works Department Govt. of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer, Jairampur Circle, PWD, Arunachal Pradesh, PO/ PS Jairampur, Dist-Changlang, A.P.

4. The Executive Engineer, PWD Div Office Longding, PO/PS Longding, Dist- Longding, Arunachal Pradesh.
5. The Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun.

..... Respondents.

Advocate for the Petitioners: Mr. R. B. Yadav and Mr. S. Wangpan.

Advocate for the Respondents: Ms. G. Ete, Additional Senior Govt. Advocate.

::: BEFORE :::
HON'BLE MR. JUSTICE NANI TAGIA

JUDGMENT AND ORDER (Oral)

26.08.2019

None appears for the petitioners on call.

Heard Ms. G. Ete, learned Additional Senior Govt. Advocate for the State respondents No. 1 to 5.

2. The writ petitioners have filed this writ petition praying for grant of family pension of their father by contending, *inter alia*, that the father of the petitioners was engaged as a Casual Mazdoor in the year 1978 and after serving for more than 30 years without break, his service was regularized by the respondent authorities as a Work Charge Mazdoor on 02.06.2009 at the age of 50 years by holding Departmental Promotion Committee (DPC) on 26.05.2009. However, the petitioners' father died on 26.12.2009 due to illness. The petitioners accordingly, contends that as the service of their father was regularized on 02.06.2009, and, accordingly was a regular employee, as such, the father of the petitioners would be entitled to the family pension.

3. A counter affidavit has been filed by the respondent Nos. 1 to 4, wherein at Paragraph-7, it has been stated that the father of the petitioners was appointed as a Work Charge Mazdoor on 12.06.2009 and not on 02.06.2009 as contended by the petitioners. The Government of Arunachal Pradesh by a Notification dated 17.11.2007, issued by the Development

Commissioner (Finance), Govt. of Arunachal Pradesh, Itanagar vide No.DAP/PEN/11/2004 had approved the introduction of new Defined Contributory Pension Scheme replacing the existing system of defined benefit pension scheme, which was to come into effect on and from 01.01.2008. The father of the writ petitioners having been regularly appointed as a Work Charge Mazdoor only on 12.06.2009, which is much after the approval and coming into effect of the new Defined Contributory Pension Scheme on and from 01.01.2008, the father of the petitioners would not be entitled to pension.

4. The respondent No.5 has also filed an affidavit-in-opposition, wherein at Paragraph-6, it has been reiterated that the new pension scheme is applicable to all new entrants of the State government service, who are appointed on or after 01.01.2008 and the department, under the new defined benefit pension scheme the department should open an NPS account with the Director of Accounts & Treasuries in the name of deceased government servant and realized employees' contribution from the monthly salary of the incumbent at source. The office has no record whether the department has taken any action in this regard

5. I have heard the learned Additional Senior Govt. Advocate for the State respondent Nos. 1 to 5, Ms. G. Ete and also perused the material available on records.

6. From the counter affidavit filed by the respondents, it is noticed that in the Notification dated 17.11.2007 vide No.DAP/PEN/11/2004, issued by the Development Commissioner (Finance), Govt. of Arunachal Pradesh, Itanagar, it has been stated that the Government of Arunachal Pradesh had approved the introduction of new Defined Contributory Pension Scheme replacing the existing system of defined benefit pension scheme for new recruits of the State government service in line with the scheme introduced by the Government of India in respect of Central Government employees and AIS officers. The new pension scheme has been made applicable to all new entrants to the State service, who are appointed on or after 01.01.2008.

7. Admittedly, the father of the writ petitioners was regularly appointed as a Work Charged Mazdoor on 12.06.2008, which is much after 01.01.2008 and accordingly, existing systems of defined benefit pension scheme would not be

applicable to the father of the writ petitioners. On the other hand, the petitioners would be governed by the new pension scheme, under which scheme the employee and the employer are required to make a contribution by opening an NPS account; and the same having not been done, the petitioners would not be entitled to any pension under the new defined contributory pension scheme.

8. In that view of the matter, this Court is of the view that the writ petitioners have not been able to make out a case, which would indicate the entitlement of the pension of the petitioners' father.

9. The present writ petition is accordingly, **dismissed** being devoid of merit.

JUDGE

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