



**Serial No. 22**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C) No. 82 of 2023

Date of Decision: 14.06.2024

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Smti. Uttora G. Sangma  
D/o Shri. Monindro Agitok  
R/o Ampati, South West Garo  
Hills District, Meghalaya

:::Petitioner

-Vs-

1.The State of Meghalaya  
Represented by the Secretary to the  
Government of Meghalaya, Education  
Department, Shillong

2.The Director of School Education and  
Literacy, Meghalaya, Shillong

3.The Joint Director of School Education and  
Literacy, West Garo Hills, Tura

4.The Special Officer to the Government of  
Meghalaya, Education Department, Shillong

:::Respondents

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**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mrs. N.G. Shylla, Sr. GA with  
Ms. Z.E. Nongkynrih, GA.

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i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

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**JUDGMENT AND ORDER (ORAL)**

1. The writ petitioner by way of the instant writ petition has sought for regularization of her services and further for release of pensionary and other terminal benefits as entitled.

2. The brief facts of the case are that the petitioner was initially appointed as an Assistant Teacher on 21.07.1989, and thereafter, by order dated 01.09.1998, passed by the Inspector of Schools, she along with 4(four) other similarly situated Assistant Teachers were regularized w.e.f. 28.10.1996. It appears that thereafter the petitioner was transferred and posted as a Ladies' Social Education Officer (LSEO) in the Office of the Joint Director of School Education & Literacy, West Garo Hills, Tura, on 13.10.2010, and while serving the said post had applied for voluntary retirement of service from the said post, as admissible under the rules.



However, the said application of the writ petitioner was not accepted, on the ground that the petitioner was yet to be regularized and that the voluntary retirement scheme would be applicable only after regularization of the adhoc appointment of the writ petitioner. The petitioner then by letter dated 01.02.2023, while her regularization was still being considered by the respondents, resigned from service, and the same was accepted on 02.02.2023.

3. Mr. S. Deb, learned counsel for the petitioner has submitted that the petitioner on entering into service as far back as in 1989, and on the issuance of the letter dated 01.09.1998, regularizing her services w.e.f. 28.10.1996, was in the firm belief that her services had been regularized, making her eligible to apply for the voluntary retirement. He further submits that on being informed that her services were yet to be regularized, and that the process was on, in view of the urgency to contest the elections, had submitted the resignation letter. It is further submitted that the petitioner having served for 33(thirty-three) years cannot be deprived of her just entitlement, i.e. pensionary and other terminal benefits. It is also contended that with the issue as to whether the resignation would amount to her relinquishment of the rights accrued in service, the learned counsel has submitted that, in the circumstances surrounding the entire case, the resignation for all practical purposes should be treated as a letter of



voluntary retirement. In support of his arguments, the learned counsel has placed reliance on the following judgments, wherein the other High Courts and the Supreme Court have granted relief to persons, which he submits where similarly situated, i.e. for grant of pension after having served for long number of years.

- (i) *High Court of Judicature at Madras, in the case of T.K. Thanigaivel vs. The Managing Director & Ors. dated 19.04.2022 passed in W.P. No. 41096 of 2016 and W.M. P. No. 35082 of 2016*
- (ii) *High Court of Gujarat at Ahmedabad, in the case of Subhashchandra Chimanlal Patel vs. State of Gujarat Thro Secretary dated 19.08.2016 in Special Civil Application No. 2593 of 2012*
- (iii) *High Court of Chhattisgarh at Bilaspur, in the case of Asha Ram Suryavanshi vs. Chhattisgarh Gramin Bank, through its Chairman, Bilaspur (C.G) dated 26.06.2020 passed in WPS No. 1692 of 2011*
- (iv) *Shashikala Devi vs. Central Bank of India & Ors. reported in (2014) 16 SCC 260.*



4. In reply, the learned Senior Government Advocate for the State respondents, Mrs. N.G. Shylla, has submitted that the entire premise of the arguments of the writ petitioner has no basis, inasmuch as, she was never formally regularized at any point of time, and the regularization order dated 01.09.1998, was of no value as the same was made by an incompetent authority. She further submits that by application of Rule 23(1) of the Meghalaya Civil Services (Pension) Rules 1993, the writ petitioner having resigned from the post and further not being regularized, has no vested right to claim for any pensionary benefits at this stage, as by operation of the Rules, by her resignation, the petitioner has relinquished her entire service and entitlements. She further submits that though the petitioner was subsequently regularized by order dated 25.04.2023, this will be of no consequence, as by the action of the petitioner itself, whatever rights that has been accrued were washed away by the said resignation letter. With regard to the authorities placed by the counsel for the writ petitioner, she submits that the same will have no application, inasmuch as, in all those cases, the persons concerned therein, were regular employees. She therefore submits that there being no merits in the writ petition, as VRS is not applicable to unregularized employee, the same should be dismissed.

5. Having heard the learned counsel for the parties, it is seen that in her service, the petitioner has been caught in an unfortunate situation,



inasmuch as, after serving for 33 years, and in aspiring for a career in politics, has instead been compelled to approach this Court to fight for her pensionary and other benefits. The fact that the petitioner had been serving on being appointed since 23.07.1989, is not in dispute, as also the fact that by a letter dated 01.09.1998, the Inspector of Schools, had regularized her services w.e.f. 29.10.1996, though the same at a much later stage was not accepted by the respondents on the ground that the same had been done by an incompetent authority. However, it is seen from the materials on record that, ex-post facto approval for the petitioner's regularization had been sought meaning thereby, the matter was under active consideration. This is evidenced from the letters dated 15.05.2017, 29.06.2017, 10.08.2021 and 04.10.2021. Other letters present in the records also show that, on 20.09.2021 and 10.02.2022, that the process of regularization was still on. An averment that has been made by the petitioner that pursuant to letter dated 20.09.2021, asking for names of adhoc employees who were appointed prior to 2007, the name of the petitioner had been sent and her services were subsequently regularized by the cabinet decision dated 15.03.2022. Though this averment is noted by this Court, however, in the absence of further supporting materials, apart from the letter dated 20.09.2021, no reliance will be placed on the same, while deciding this case.



6. Looking back at the facts, the petitioner it appears under the impression that, she was eligible for voluntary retirement on having completed 25 years of qualifying service, as per Rule 38A of the Meghalaya Civil Services (Pension) Fourth Amendment, Rules 1998, had then applied for voluntary retirement vide letter dated 01.09.2022, which however, came to be rejected by letter dated 29.11.2021, on the circumstances, as discussed above. This rejection then caused the petitioner to tender her resignation vide letter dated 01.02.2023, which was then accepted by the respondents. It is to be noted that, after the entire sequence of events, the petitioner was then regularized by the respondents by order dated 25.04.2023, on the special approval being received from the Meghalaya Public Service Commission. The only issue that remains for consideration therefore, will be to examine as to whether on the facts of the petitioner's case, and the surrounding circumstances, the relief as prayed for pension and terminal benefits would be available to the petitioner.

7. The petitioner as earlier observed, has been in continuous service since 21.07.1989, till her resignation on 01.02.2023, which undoubtedly if her services had been regularized, would have made her eligible to apply for VRS, and also entitled her to all pensionary and terminal benefits. The fact that the petitioner was under the bona fide belief that she stood regularized by the order dated 01.09.1998, along with 4(four) other



similarly situated teachers cannot be ignored. It was on this belief, notwithstanding the other communications seeking ex-post facto approval for regularization that the petitioner it appears had put in her application for VRS. It is relevant to note, at this juncture that, Rule 38A of the Pension Rules, provides as follows.

***“38A. Retirement on completion of twenty years continuous qualifying service – (1) At any time a Government employee has completed twenty years continuous qualifying service or after he has attained the age of fifty years, whichever is earlier, he may, by giving notice of not less than three months in writing to the appointing authority, retired from service.***

***(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority.***

***Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”***

8. The above noted rule therefore, mandates a period of 3(three) months’ notice and that further in the proviso, the appointing authority in the case of rejection was to communicate the same before the expiry of the





notice period. In the instant case however, it is seen from the records that, there is no intimation of rejection, apart from the letter dated 29.11.2022, which was not even communicated to the petitioner, and as submitted, the petitioner came to learn about the same only after filing the first writ petition.

9. Further it is also noted that, on her attempts to be allowed voluntary retirement, the petitioner had then resigned from service, which would in normal course, have resulted in forfeiture of past service by the application of Rule 23(1) of the Pension Rules, 1983. A twist in this tale, however is with the regularization that was granted on 25.04.2023, w.e.f. 01.09.1998, as seen in the order so dated, which in the considered view of this Court, has altered the perspective of the case of the petitioner, inasmuch as, had she continued in service after the rejection of her VRS application, she would be entitled to all her service benefits. In this context, the judgments placed by the learned counsel for the petitioner, considering the long years of service of the writ petitioner, will have some bearing. In the case of *T.K. Thanigaivel (supra)*, the Madras High Court, treated the resignation of the writ petitioner as one of the voluntary retirement, making him eligible for pension. Paras – 17 and 18 of the judgment is quoted herein below.

*“17. For all the above stated reasons, this Court is of the considered view that fairness, equity and good conscience*



*demand that the petitioner be granted the relief as prayed for by him.*

*18. Accordingly, this writ petition stands allowed. The impugned order passed by the third respondent herein vide his proceedings Ka.No.44111/ ku06/ Pension/ MTC/2015 dated 10.12.2015, is hereby set aside. The respondents are consequently directed to treat the resignation of the petitioner as one of voluntary retirement with effect from the date he was relieved from service under the relevant provisions of the Pension Rules, applicable to the Corporation.”*

10. The writ petitioner in the instant case was faced with a situation, wherein her VRS application stood rejected, her regularization at the mercy of the respondents inspite of her long years of service, and with the impending elections, which she was keen to contest in, in jeopardy, culminated in her tendering her resignation. In this context, the case of *Shashikala Devi (supra)* also comes to the assistance of the writ petitioner. This decision is relevant as, it would be unthinkable to any employee having served for about 33 years, to throw away due benefits which would have been granted in the usual course, especially after the formal regularization order had been passed on 25.04.2023. Para – 17 of the judgment which is relevant on this aspect is reproduced herein below.



*“17. When viewed in the backdrop of the above facts, it is difficult to reject the contention urged on behalf of the appellant that what the deceased employee intended to do by his letter dated 8-10-2007 was to seek voluntary retirement and not resignation from his employment. We say so in the light of several attendant circumstances. In the first place, the employee at the time of his writing the letter dated 8-10-2007 was left with just about one-and-a-half years of service. It will be too imprudent for anyone to suggest that a bank employee who has worked with such commitment as earned him the appreciation of the management would have so thoughtlessly given up the retiral benefits in the form of pension, etc. which he had earned on account of his continued dedication to his job. If pension is not a bounty, but a right which the employee acquires on account of long years of sincere and good work done by him, the Court will be slow in presuming that the employee intended to waive or abandon such a valuable right without any cogent reason. At any rate there ought to be some compelling circumstance to suggest that the employee had consciously given up the right and benefit, which he had acquired so assiduously. Far from the material on record suggesting any such conscious surrender, abandonment or waiver of the right to retiral benefit including pension, we find that the material placed on record clearly suggests that the employee had no source of income or sustenance except the benefit that he had earned for long years of service. This is evident from a reading of the letter*



*dated 8-10-2007 in which the employee seeks release of his retiral benefits at the earliest to enable him to undergo medical treatment that he requires. The letter, as seen earlier, lays emphasis on the fact that for his sustenance the employee is dependent entirely on such benefits. It is in that view difficult for us to attribute to the employee the intention to give up what was rightfully his in terms of retiral benefits, when such benefits were the only source not only for his survival but for his medical treatment that he so urgently required. For a waiver of a legally enforceable right earned by an employee, it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences. No such intention can be gathered from the facts and circumstances of the instant case. The employee's subsequent letters and communication which are placed on record cannot be said to be an afterthought. Being proximate in point of time letter dated 8-10-2007 must be treated to be a part of the subsequent communication making the employee's intentions clear, at least for the purposes of determining the true intention underlying the act of the employee."*

11. As such, in view of the peculiar facts and circumstances of the case, where the petitioner cannot be said to be totally at fault, the resignation of the petitioner shall be considered by the respondents to be in effect and in continuation of the application for voluntary retirement, and the petitioner



consequently be afforded all the retiral benefits, as entitled and permissible. It is further made clear that, the petitioner shall be allowed pension under the Meghalaya Civil Services (Pension) Rules 1983. It is expected that orders in this regard be passed by the respondents at the earliest.

12. For the reasons aforementioned, this writ petition stands allowed, and is accordingly disposed of.

**Judge**

Meghalaya  
14.06.2024  
"D.Thabah-PS"