

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

MAT. APP. No. 4 of 2024

Km. Chabungbam Memota Devi, aged about 45 years, D/o late Ch. Babudhon Singh, a resident of Sagolband Tera Loukrakpam Leikai, P.O. Imphal and P.S. Lamphel, Imphal West District, Manipur.

.... Appellant

- Versus -

1. Smt. Chabungbam Ningol Thokchom Ongbi Shyamasakhi Devi, aged about 70 years, W/o Thokchom Gopeshwor Singh, a resident of Wangkei Ningthem Pukhri Mapal, P.O. & P.S. Porompat, Imphal West District, Manipur.
2. Shri Chabungbam Nabachandra Singh, aged about 65 years, S/o Late Ch. Babudhon Singh, Uripok Khoisnam Leikai, P.O. Imphal, P.S. Lamphel, Imphal West District, Manipur.
3. Shri Chabungbam Budhachandra Singh, aged about 61 years, S/o late Ch. Babudhon Singh, a resident of Sagolband Tera Loukrakpam Leikai, P.O. & P.S. Lamphel, Imphal West District, Manipur.
4. Shri Chabungbam Somendro Singh, aged about 54 years, S/o late Ch. Babudhon Singh, a resident of Sagolband Tera Loukrakpam Leikai, P.O. & P.S. Lamphel, Imphal West District, Manipur.
5. Shri Chabungbam Priyokumar Singh, aged about Years S/o (late) Ch. Babudhon Singh, a resident of Sagolband Tera Loukrakpam Leikai, P.O. & P.S. Lamphel, Imphal West District, Manipur.

.... Defendants/Respondents

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI

For the petitioner : Mr. RK. Milan, Advocate
For the respondents: Mr. N. Alex Meitei, Advocate
Date of hearing : 09.12.2024
Date of judgment & order : **19.12.2024**

JUDGEMENT & ORDER
(CAV)

[Golmei Gaiphulshillu Kabui, J]

[1] Heard Mr. RK. Milan, learned counsel appearing for the appellant and Mr. N. Alex Meitei, learned counsel appearing for the respondents.

[2] The present appeal has been filed on behalf of Km. Chabungbam Memo Devi with the following prayer:

- (i) To admit the appeal.
- (ii) To call for the record.
- (iii) To set aside the judgment and decree dated 25.09.2024 passed in Mat. (Declaration) Suit No. 6 of 2024 of the Ld. Family Court, Manipur.
- (iv) To pass decree declaring that the plaintiff/appellant is the unmarried daughter of (L) Chabungbam Babudhon Singh and (L) Chabungbam Thambal Devi.
- (v) To pass decree declaring that the plaintiff/appellant is entitled to the family pension.

- (vi) To pass any other order/direction or orders/directions which the Hon'ble Court may deem fit and proper in the circumstances of the case for the end of justice.

[3] Brief facts of the case are that the appellant is the last daughter born on 01.04.1979 out of the wedlock of her father namely, Chabungbam Babudhon Singh. Her father was serving as Chowkidar in the Education Department, Government of Manipur posted at the office of the Principal, Government Hindi Teacher Training College, Imphal. He retired from service on superannuation on 31.09.2002 and died on 10.05.2015 while enjoying his pension. After his death, her mother namely, Ch. Thambal Devi enjoyed the family pension of her father. However, after the death of her mother on 12.11.2023 leaving behind the respondents including herself, since she is unmarried and unemployed daughter, she approached the concerned authority to get the family pension on 08.01.2024, as having no means for her livelihood. As advised by the authority, she filed a Matrimonial (Declaratory) Suit No. 6 of 2024 before the Ld. Family Court Manipur with the following prayer:

- (i) To pass a decree declaring that the plaintiff/appellant is the unmarried daughter of Chabungbam Babudhon Sigh and Chabungbam Thambal Devi.
- (ii) To pass any other orders as this Hon'ble Court deems fit and proper for end of justice.

The respondents have also filed their written statement having no objection to the claim of the appellant/plaintiff as the facts are all correct and true.

[4] In this regard, the plaintiff/appellant produced three witnesses including herself and it is the finding of the Ld. Trial Court that the plaintiff/appellant is the unmarried daughter of the deceased.

However, vide order dated 25.09.2024 which is impugned herein, the Ld. Family Court dismissed the Matrimonial (Declaration) Suit of the plaintiff/appellant and the operative portions of the said order are extracted herein below:

"9. *The present application has been filed to enjoy the benefits of family pension which has been extended to unmarried/widowed/divorced daughter, not covered by category-I of Para No. 8.4 of the O.M. dated 05.05.2010, upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earlier of the Government Servants who retired or expired as a pensioner or died/die, while in service as the case may be, on or after 01.01.2006 as per Notification No. 114 dated 21.05.2011 published in the Manipur Gazette (Extra Ordinary). However, at para No. 4 of her pleadings, she stated that her father retired on 31.09.2002 and this fact of corroborated by Ext. A/3 which shows the date of retirement as '31.03.2002' and therefore she is not entitled to family pension as per Notification No. 114 dated 21-05-2011 published in the MANIPUR GAZETTE (Extraordinary).*

10. *Hence the plaintiff has no cause of action for filing the present suit.*

Reliefs:

11. *As the plaintiff has no cause of action for filing the present suit, she is not entitled to any reliefs claimed.*

12. *Suit is dismissed.*

13. *Prepare a decree."*

[5] Mr. RK. Milan, learned counsel appearing for the appellant submits that even if the office memorandum is an issue in the Ld. Trial Court, the Ld. Trial Court failed to interpret the office memorandum. It has been admitted fact as well as reflected in the impugned judgment and decree that the father of the appellant retired on superannuation on 31.09.2002 and died on 10.05.2015. Since the Ld. Trial Court failed to interpret the words "expired as a pensioner", the present matrimonial appeal has been filed. The aforementioned office memorandum is extracted herein below:

"GOVERNMENT OF MANIPUR
SECRETARIAT : FINANCE DEPARTMENT
(PAY IMPLEMENTATION CELL)

OFFICE MEMORANDUM
Imphal, the 17th May, 2011

Subject: Grant of family pension to the unmarried/widowed/divorced daughter – clarifications thereof.

No. 9/54/2009-FD(PIC): The undersigned is directed to say that orders for revision of provisions regulating pension/gratuity/commutation of pension/family pension/disability pension of post 01/01/2006 pensioners/family pensioners were issued vide this Department's Office Memorandum No. 9/3/2010-FD(PIC) dated 05/05/2010. Under para 8.4 Category-II(c) of the above OM, the benefit of family pension has also been extended to the unmarried/widowed/divorced/daughter not covered by Category-I of para 8.4 of the said OM dated 05/05/2010 upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earliest of the Government servants who retired or expired as a pensioner or died/die while in service, as the case may be, on or after 01/01/2006.

2. In order to facilitate prompt disposal of family pension claim whenever made by such unmarried/widowed/divorced daughter covered under Category-II(c) of para 8.4 of the OM dated 05/05/2010 and to prevent misuse of the benefit, it is hereby clarified that the Pension Sanctioning Authorities

should sanction the family pension, for the first payment, only on production of an Order/Decree passed by the Chief Judicial Magistrate of the District concerned to the effect that the claimant is unmarried/widowed/divorced daughter of the deceased pensioner/Government servant.

3. It is reiterated that sanction of family pension in such cases on the basis of papers/documents, such as Affidavits produced by the claimants and which are non-Government documents shall not be entertained as notified vide Office Memorandum No. 8/9/84-PIC dated 26/03/1993 issued in consultation with Law Department.

4. Claim of such family pension should be submitted by the Pension Sanctioning Authorities to the Office of the Sr. Deputy Accountant General (A&E), Manipur through the State Pension Cell for further consideration.

5. The Pension Sanctioning Authorities shall bear in mind the above instructions while processing and sanctioning such family pension.

6. The family pensioner, in such cases, after receipt of the first payment of the family pension, should produce before the Treasury Office concerned for every 6 (six) months on 1st January and 1st July every year a Certificate duly signed by a Group 'A' Gazetted Government Office to the effect that she (the family pensioner) has not been married or re-married or earning.

*Sd/-
(V.K. Dewangan)
Commissioner (Finance)
Government of Manipur"*

*"GOVERNMENT OF MANIPUR
SECRETARIAT : FINANCE DEPARTMENT
(PAY IMPLEMENTATION CELL)*

*.....
CORRIGENDUM
Imphal, the 27th June, 2011*

*Subject: Grant of family pension to the
unmarried/widowed/divorced daughter –
clarifications thereof.*

No. 9/54/2009-FD(PIC): Kindly read as "Family Court" in place of the words "Chief Judicial Magistrate" appearing at fifth line of para 2 of this Department's Office Memorandum of even number dated 17/05/2011.

*Sd/-
(A.R. Sharma)
Under Secretary/Finance (PIC)
Government of Manipur"*

"GOVERNMENT OF MANIPUR
SECRETARIAT : FINANCE DEPARTMENT
(PAY IMPLEMENTATION CELL)

.....

OFFICE MEMORANDUM
Imphal, the 16th September, 2015

Subject: Grant of family pension to the unmarried/widowed/divorced daughter of the State Government employee/pensioners – clarifications thereof.

No. 9/54/2009-FD(PIC): The undersigned is directed to refer to this Department's Office Memorandum of even number dated 17/05/2011 and corrigendum dated 27/06/2011 where clarification was given that under Para No. 8.4 Category – II(c) of the Office Memorandum No. 9/3/201–FD(PIC), dated 05/-5/2010, the benefit of family pension has also been extended to the unmarried/widowed/divorced daughter, not covered by Category-I of Para 8.4 of the said OM dated 05/05/2010, upto the date of marriage/re-marriage or till the date she starts earning or upto the dated of death, whichever is earliest, of the Government servants who retired or expired as a pensioner or died/die while in service, as the case may be, on or after 01/07/2006.

2. Reference has been received from the Office of the Accountant General (A&E), Manipur that a good number of representations are being received from unmarried/widowed/divorced daughters of Government servants who either retired/expired prior to 01/01/2006 while the family pensioners expired on or after 01/01/2006 for grant of family pension.

3. It is hereby clarified that the benefit of family pension extended to the unmarried/widowed/divorced daughter under Category –II(c) of Para 8.4 of the OM No. 9/3/2010-FD(PIC), dated 05/05/2010 and OM No. 9/54-2009-FD(PIC), dated 17/05/2011 shall be only in respect of State Government employees who –

- (a) retired on or after 01/01/2006*
- (b) retired and expired as a pensioner on or after 01/01/2006 Or*
- (c) died while in service on or after 01/01/2006.*

4. Further, it is clarified that such benefit will not be extended to the unmarried/widowed/divorced daughter of the Government employees who retired or expired prior to 01/01/2006 even though the pensioner or the family pensioner, as the case may be, expired on or after 01/01/2006.

Sd/-
(Dr. J. Suresh Babu)
Principal Secretary (Finance)
Government of Manipur."

[6] Since the judgment and decree was passed on 25.09.2004, certified copy of the same was applied on 27.07.2024 and delivered to the appellant on 19.10.2024, the present appeal is within time.

In view of the facts and circumstances and being aggrieved by the said impugned judgment and decree, the instant case has been filed on the following grounds:

- (i) The Trial Court while passing the impugned judgment and decree failed to interpret the office memorandum.
- (ii) The Ld. Trial Court failed to appreciate the fact that the office memorandum has never been an issue in the matrimonial (declaration) suit.
- (iii) The Ld. Trial Court had greatly error in coming to the conclusion that the father of the appellant retired on 31.09.2002 and therefore, his daughter is not entitled to family pension as the Ld. Trial Court failed to interpret the meaning of the words "expired as a

pensioner” as he died on 10.05.2015 much after 01.01.2006 which qualified the appellant for family pension.

- (iv) The Ld. Trial Court failed to appreciate that under what condition, the appellant has filed the declaratory suit for declaration of an unmarried daughter as having no means, living hand to mouth and also by delaying justice to the appellant will have serious effect.

[7] On perusal of the pleadings of the appellant/plaintiff, the relief/prayer sought for in her application was just to declare the plaintiff/appellant as unmarried daughter of Chabungbam Babudhon Singh and Chabungbam Thambal Devi. But, on perusal of the dismissal order of the Ld. Family Court, Manipur, the Ld. Family Court, Manipur dismissed the application of the plaintiff/appellant on the following grounds:

"9. The present application has been filed to enjoy the benefits of family pension which has been extended to unmarried/widowed/divorced daughter, not covered by category-I of Para No. 8.4 of the O.M. dated 05.05.2010, upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earlier of the Government Servants who retired or expired as a pensioner or died/die, while in service as the case may be, on or after 01.01.2006 as per Notification No. 114 dated 21.05.2011 published in the Manipur Gazette (Extra Ordinary). However, at para No. 4 of her pleadings, she stated that her father retired on 31.09.2002 and this fact of corroborated by Ext. A/3 which shows the date of retirement as '31.03.2002' and therefore she is not entitled to family pension as per Notification No. 114 dated 21-05-2011 published in the MANIPUR GAZETTE (Extraordinary).

10. *Hence the plaintiff has no cause of action for filing the present suit.*

Reliefs:

11. *As the plaintiff has no cause of action for filing the present suit, she is not entitled to any reliefs claimed.*

12. *Suit is dismissed.*

13. *Prepare a decree."*

It is to clarify that the date of the Office Memorandum as mentioned in the said judgment and decree should be 17.05.2011 not 21.05.2011.

[8] On careful perusal of the said Office Memorandum dated 17.05.2011, the Ld. Trial Court wrongly quoted that the petitioner is not entitled to family pension. But, it is to clarify that the contents of the said memorandum show that the plaintiff/appellant is entitled to the family pension. Because the last part of the memorandum clearly mentioned that -

"..... Government servants who retired or expired as a pensioner or died/die while in service as the case may be on or after 01.01.2006."

It is admitted position of fact that the father of plaintiff/appellant retired in the year 2002 and expired in the year 2015.

However, we are not inclined to give any finding in this regard as this is not an issue at hand.

In the facts and circumstances and observation made above, we are of the view that the core issue for discussion in the instant case is as to whether the Trial Court can grant relief which are not sought for in the pleading.

On perusal of the impugned judgment and decree, the Ld. Trial Court after examination of 3 (three) PWs and hearing the parties, after considering the relief sought in the application, made the following points for determination –

1. *Whether the plaintiff is the unmarried daughter of (L) Chabungbam Babudhon Singh and (late) Chabungbam Thambal Devi or not?*
2. *Cause of action?*
3. *Reliefs.*

The Ld. Trial Court at para No. 8 of her judgment passed the following:

"8. It is case of plaintiff in para Nos. 2 and 3 of her pleadings that she is unmarried daughter of her deceased parents and this fact has been deposed by her in her examination-in-chief as PW-1. PW-2 and PW-3 also corroborate her pleadings. By preponderance of evidence, plaintiff had discharged the onus of proof placed on her. Hence, point for determination No. 1 is decided in four of plaintiff."

The observation in this para indicates that the Ld. Trial Court has already granted relief sought for by the plaintiff/appellant. However, the observation made at para No. 9& 10 of the judgment and decree, it seems the Ld. Trial Court has traversed beyond pleadings as the narration and observation made at the said paras are not relief sought for by the plaintiff/appellant.

Assuming that the plaintiff/appellant included in her prayer for granting relief for declaring that the plaintiff/appellant is entitled to the family pension for which ground, the Ld. Trial Court dismissed the petition, the issue herein cannot be decided by the Ld. Trial Court without impleading the State Government and Accountant

General as parties and hearing them as they will be the necessary parties. Accordingly, we are of the view that the decision made therein is not correct.

[9] The issue herein to be decided by this Court is whether relief not asked for by a party could be granted or not. In this regard, we are relying on the following decisions of the Hon'ble Supreme Court.

In **2022 SCC OnLine 928 [Akella Lalitha V. Konda Hanumantha Rao & Anr.]**, the Hon'ble Supreme Court framed 3 (three) issues i.e.

- "(a) *The appellant i.e. Akella Lalitha would be the natural guardian of the child, but shall be under obligation to bring the child to residence of the respondents in such a way that the child will be with them for a period of 2 days during winter vacation. The respondents shall also be entitled to see the child in the residence of the appellants, with prior intimation.*
- (b) *The appellant shall complete the formalities for restoration of the surname and father's surname of the child within a period of three months from the date of receipt of a copy of this order; and*
- (c) *So far as the name of the father of the child is concerned, it is directed that wherever the records permit, the name of the natural father shall be shown and if it is otherwise impermissible, the name of Ravi Narasimha Sarma, shall be mentioned as step-father."*

In the present case, we are concerned with the finding of the Hon'ble Supreme Court for issue No. (c) as mentioned above. In this regard, the Hon'ble Supreme Court in Para No. 16, 17 & 18 observed that –

"16. Coming to address the second issue, while this Court is not apathetic to the predicament of the respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that

of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17. *In the case of Trojan & Co. Ltd. V. Rm. N.N. Nagappa Chettiar, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:*

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

18. *In the case of Bharat Amratlal Kothari v. Dosukhan Samadkha Sindhi held:*

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

[10] Again, we are relying on **(2010) 11 SCC 557 [Manohar Lal (Dead) by LRs. V. Urgasen (Dead) by LRs. &Ors.]**. In this case, the Hon'ble Supreme Court framed 3 (three) issues; they are namely –

- "(a) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?*
- (b) Whether the order passed or action taken by a statutory authority in contravention of the interim order of the Court is enforceable? and*
- (c) Whether the Court can grant relief which had not been asked for?"*

[11] The Hon'ble Supreme Court relating to the issue No. (c) in para Nos. 30, 31, 32, 33 & 34 observed as thus-

"30. In Trojan & Co. v. Nagappa Chettiar this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under : (AIR p. 240, para 22)

"22. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plain, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

31. A similar view has been reiterated by this Court in Krishna Priya Ganguly v. University of Lucknow and Om Prakash v. Ram Kumar observing that a party cannot be granted a relief which is not claimed.

32. Dealing with the same issue, this Court in Bharat Amratlal Kothari v. Dosukhan Samadkha Sindhi held : (SCC p. 246, para 30)

"30. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

33. In Fertilizer Corpn. Of India Ltd. v. Sarat Chandra Rath this Court held that "the High Court ought not to have granted reliefs to the respondents which they had not even prayed for."

34. In view of the above, law on the issue can be summarized that the court cannot grant a relief which has not been specifically prayed by the parties. The instant case requires to be examined in the light of the aforesaid certain legal propositions."

[12] In view of the facts and circumstances of the present case and for reasons and findings given herein above and the ratio laid down by the Hon'ble Apex Court in the above cases, we are of the considered view that the instant case is squarely covered by the observation and finding made by the Hon'ble Supreme Court.

[13] Accordingly, the judgment and decree made by the Ld. Trial Court made at para No. 9 to 13 are set aside and the observation made at para No. 8 is upheld and accordingly declared that "***the plaintiff is the unmarried daughter of late Chabungbam Babudhon Singh and Chabungbam Thambal Devi***".

As regards, the prayer No. V made in the present matrimonial appeal i.e. "***to pass decree declaring that the plaintiff/appellant is entitled to the family pension.***", we are not inclined to make any observation in this regard as this is not an issue in the present appeal.

[14] With the above observation and finding, the present appeal stands allowed in part. The parties are directed to bear their own cost and expenses incurred in this appeal.

Accordingly, this appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Bipin