

GAHC040003992023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 152/2023

1:Kapa Kholi
IAS (Rtd)
S/o Lt. L. Kholie, Model Village, Naharlagun, Papum Pare District, Arunachal Pradesh.
Phone No. 8256822533

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Secretary (Vigilance)
Govt. of Arunachal Pradesh
Itanagar.

3:The Secretary (Personnel)
Govt. of Arunachal Pradesh
Itanagar.

4:The Superintendent of Police
SIC (VIG)
Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 12-06-2023

Heard Mr. T. T. Tara, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate, representing the respondent nos. 1, 2 & 3 and Mr. O. Pada, learned Standing counsel for the SIC (Vigilance) representing the respondent no. 4.

2. In this petition under Article 226 of the Constitution of India, the petitioner, *Shri Kapa Kholi*, has prayed for issuing a direction to the Secretary (Vigilance) to issue Vigilance Clearance Certificate or alternatively to an extent of Provisional Vigilance Clearance Certificate so as to enable the Department of Personnel to process the pensionary benefits of the petitioner or to issue direction to the Secretary (Personnel) to process the pension paper of the petitioner for pensionary benefits, without Vigilance Clearance Certificate, so as to enable the petitioner to get provisional pensionary benefits, as expeditiously as possible.

3. The background facts leading to filing of the present petition is briefly stated as under:

The petitioner, who was a Secretary Rural Works Department (hereinafter RWD), Government of Arunachal Pradesh, superannuated on 30.06.2020. Before his superannuation, on 14.11.2020, the petitioner had submitted his pension papers to the Secretary (Personnel) Government of Arunachal Pradesh so as to enable him to get the pensionary benefit. But, till filing of this petition, the Secretary (Personnel) Government of

Arunachal Pradesh has not processed his pension papers for want of Vigilance Clearance Certificate to be issued by the Secretary (Vigilance) Government of Arunachal Pradesh, on the pretext of a registration of a preliminary inquiry case No. SIC(VIG) PS/ENQ-No.16/2020, dated 24.04.2020, relating to awards of PMGSY road contracts through NIT to successful bidders. Being aggrieved, the petitioner is before this Court.

4. The respondent No. 3 has filed affidavit-in-opposition, almost admitting the contention made in the petition and taken a stand that due to absence of Vigilance Clearance Certificate the pension papers of the petitioner could not be processed.

5. Mr. T. T. Tara, learned counsel for the petitioner submits that the petitioner retired on superannuation on 30.06.2020, and prior to his superannuation he has submitted his pension papers to the Secretary (Personnel) Government of Arunachal Pradesh. But, till filing of this petition, the Secretary (Personnel) Government of Arunachal Pradesh has not processed his pension papers. Mr. Tara further submits that the ground for non-processing of the pension paper is that Vigilance Clearance Certificate, which has to be issued by the Secretary (Vigilance) Government of Arunachal Pradesh has not yet been received and the ground for not furnishing the vigilance clearance certificate is that preliminary inquiry case No. SIC(VIG) PS/ENQ-No.16/2020, dated 24.04.2020, is pending against him. Mr. Tara further submits that the award of the aforesaid contract has been unsuccessfully challenged before this Court by filing WP(C)No.248/2019, WP(C)No.198/2019, WP(C)No.201/2019, WP(C)No.221/2019, WP(C)No.222/2019, WP(C)No.224/2019 and WP(C)No.227/2019 and all the

aforesaid writ petitions came to be dismissed by this Court.

6. Mr. Tara further submits that Hon'ble Supreme Court in the case of ***State Of Jharkhand & Anr vs Jitendra Kumar Srivastava & Ors***, reported in **(2013) 12 SCC 210** held that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. And it is, thus hard-earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India. Mr. Tara also referred to another case law of Hon'ble Supreme Court, in ***Dr. Hira Lal vs The State of Bihar***, reported in **(2020) 4 SCC 346**, wherein, the Hon'ble Supreme Court in paragraph-19 of the aforesaid decision has discussed the case law of ***Jitendra Kumar Srivastava*** (supra), and held that right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service. Mr. Tara further submits that in the instant case the petitioner is being deprived of his entitlement without just reason and he has been suffering a lot on account of this.

7. Under the aforesaid facts and circumstances, Mr. Tara contented to allow this petition by directing the respondent nos. 2 & 4, i.e., the Secretary (Vigilance), Government of Arunachal Pradesh, Itanagar and The Superintendent of Police, SIC (VIG), Government of Arunachal Pradesh, Itanagar, to issue Vigilance Clearance Certificate to the petitioner and also to direct the respondent nos. 1 & 3, i.e., The Chief Secretary, Government of

Arunachal Pradesh, Itanagar and The Secretary (Personnel), Government of Arunachal Pradesh, Itanagar, to process the pension papers of the petitioner.

8. Mr. I. Riram, learned Additional Senior Government Advocate also submits that he has no objection in the event of issuing a direction as prayed for by the petitioner in this petition to the respondent authorities.

9. Mr. O. Pada, learned Standing counsel, SIC(Vig) for the respondent no. 4, also submits that in view of already settled law in the cases referred by the learned counsel for the petitioner, he has no objection in the event of issuing such direction to the respondent no. 4. Mr. Pada further submits that no regular case has been registered against the petitioner and it is not certain when the preliminary inquiry will complete.

10. Having heard the submission of the learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record and also perused the case laws referred by the learned counsel for the petitioner.

11. The proposition of law, in respect of granting of gratuity and pension matter is well settled by the Hon'ble Supreme Court in the case of **Jitendra Kumar Srivastava** (supra). In the aforesaid case, it has been held that it is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. And it is thus hard-earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India. The same proposition of law has been

accepted in the subsequent case of **Dr. Hira Lal** (supra) by the Hon'ble Supreme Court.

12. In the case in hand, the petitioner retired on superannuation from his service on 30.06.2020. It also appears that before his superannuation, on 14.11.2020, the petitioner had submitted his pension papers to the Secretary (Personnel) Government of Arunachal Pradesh so as to enable him to get the pensionary benefit. But, in spite of furnishing of the pension papers, the respondent no. 2 has not processed the same on the ground that preliminary inquiry case No. SIC(VIG) PS/ENQ-No.16/2020, dated 24.04.2020, is pending against the petitioner. It is clear from the submission of Mr. Pada, learned Standing counsel, SIC (Vig) that it is not certain as to when the aforesaid preliminary inquiry will be completed and it is also clarified that no regular case against the present petitioner is registered with the SIC (Vigilance).

13. Under the aforesaid facts and circumstances, this Court is of the view that the principle of law so, propounded in the case of **Jitendra Kumar Srivastava** (supra) and **Dr. Hira Lal** (supra), are squarely applicable to the facts and circumstances of the case in hand. Thus, I find sufficient force in the submission of Mr. Tara, learned counsel for the petitioner and the case laws referred by him also fortified his submission. The ground for refusing to process pension papers of the petitioner appears to be arbitrary and illegal and it failed to withstand the test of correctness in view of the already settled proposition of law that, this right of pensionary benefits cannot be taken away without due process of law, as it is a constitutional right.

14. In the result, I find sufficient merit in the petition and accordingly the same stands allowed. The respondent nos. 2 & 4, i.e., the Secretary

(Vigilance), Government of Arunachal Pradesh, Itanagar and The Superintendent of Police, SIC (VIG), Government of Arunachal Pradesh, Itanagar, are accordingly directed, by a mandamus of this Court, to issue Vigilance Clearance Certificate to the petitioner and the respondent nos. 1 & 3, i.e., the Chief Secretary, Government of Arunachal Pradesh, Itanagar and the Secretary (Personnel), Government of Arunachal Pradesh, Itanagar, to process the pension papers of the petitioner, immediately after receiving the Vigilance Clearance Certificate. The entire exercise has to be carried out within a period of 1 (one) month from the date of receipt of certified copy of this Order. The petitioner shall produce certified copy of this order before the respondent authorities within a week from today.

15. In terms of the above, this writ petition stands disposed of.

16. Parties have to bear their own cost.

JUDGE

Comparing Assistant