

GAHC040006492023



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

Case No. : WP(C)/241/2023

Pema Cho W/o Lt. Tsering Dorjee,
Resident of Bomdila, PO/PS Bomdila, West Kameng District, Arunachal Pradesh
790001 Ph No. 8413889616

VERSUS

THE STATE OF AP and 6 Ors.

Represented by the Commissioner/Secretary, Health and Family Welfare, Govt. of
Arunachal Pradesh, Itanagar. 791111

2:The Commissioner (Vigilance) Govt. of Arunachal Pradesh, Itanagar. 791111

Age: 0

Occupation :

3:The Director Health Services Govt. of Arunachal Pradesh, Naharlagun 791110

Age: 0

Occupation :

4:The Under Secretary (Vigilance) Govt. of Arunachal Pradesh, Itanagar. 791111

Age: 0

Occupation :

5:The Deputy Commissioner Bomdila West Kameng District, Arunachal Pradesh,
790001

Age: 0

Occupation :

6:The District Medical Officer Bomdila West Kameng District, Govt of Arunachal Pradesh

Age: 0

Occupation :

7:The Director Audit & Pension Government of Arunachal Pradesh Naharlagun 791110

Age: 0

Occupation

Advocate for the Petitioner : T T Tara
Jungam Jini
Binter Picha
Gamken Bam
Tao Tarin

Advocate for the Respondent : GA (AP)
Taba Tagum SC(Health)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 19.07.2023

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Heard Mr. Jungam Jini, learned counsel for the petitioner. Also heard Mr. Taba Tagum, learned standing counsel, Department of Health & Family Welfare, Government of Arunachal Pradesh, appearing on behalf of respondents No. 1, 3 & 6; and Ms. Tsering Wangmu, learned Government Advocate, appearing on behalf of respondents No. 2, 4, 5 & 7.

2. The petitioner, herein, who had retired from service on attaining the age of superannuation as Community Health Officer (CHO) on 01.07.2016, from the District Hospital, Bomdila, has approached this Court, alleging non-payment of the pension to

her purportedly on the ground that she has not submitted the No Objection Certificate(NOC) to the effect that she has not encroached upon the Government land as provided in the order, dated 11.05.2018, issued by the Secretary, Vigilance, Government of Arunachal Pradesh, Itanagar, vide Memo. No. VIG-07/2018/41, as can be gathered from the letter, dated 04.11.2019, written by the Deputy Commissioner, West Kameng District, Bomdila, to her, vide Memo. No. BR-2854/455/2019-20/539 [Annexure-6(series) to the petition].

From the aforesaid letter of the Deputy Commissioner, West Kameng District, Bomdila, dated 04.11.2019; it further appears that the petitioner has been found to be in occupation of a plot of land at Medical Colony, Bomdila, without any allotment order from the competent authority and constructed a RCC building thereon.

3. Mr. Jini, learned counsel for the petitioner, submits that the petitioner's pension cannot be denied on the ground that the No Objection Certificate(NOC) regarding non-encroachment of the Government land, has not been submitted by her in terms of the order, dated 11.05.2018, issued by the Department of Vigilance, Government of Arunachal Pradesh, mentioned hereinabove.

4. The petitioner has also annexed various other orders issued by the respondent authorities, from time to time, for denying pension of the employees of the State Government who had retired, on the grounds stated, which are, as under:

- (i). Order, dated 02.04.2013, issued by the Principal Secretary (Vigilance), Government of Arunachal Pradesh, Itanagar, vide Memo. No. PSH-06/2012-13;
- (ii). Order, dated 06.06.2017, issued by the Principal Secretary (Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-71/2014/45;
- (iii). Order, dated 25.02.2020, issued by the Commissioner (Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-71/2014/365; and
- (iv). Order, dated 11.05.2018, issued by the Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-07/2018/41.

5. Mr. Jini, learned counsel, also contends that the pension of the petitioner cannot be denied on the basis of the aforesaid orders which are in the nature of executive orders unless the same is in conformity with the Central Civil Services(Pension) Rules, 1972. The various orders referred to hereinabove, issued by the various authorities of the State being not in consonance with the Central Civil Services(Pension) Rules, 1972; the denial of the pension to the petitioner is illegal and the respondents are, therefore, liable to be directed to release the pension of the petitioner.

6. Ms. Wangmo, learned Government Advocate, on the basis of the instruction received from the Deputy Commissioner, West Kameng District, Bomdila, submits that

since the writ petitioner was found to be in occupation of a Government land without allotment; she has been denied her pension in terms of the order, dated 02.04.2013, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, vide Memo. No. PSH-06/2012-13.

7. Mr. Tagum, learned standing counsel, Department of Health, Government of Arunachal Pradesh, on the other hand, submits that the Department of Health cannot violate the various orders issued by the Government referred to hereinabove and it is precisely for that reason; the writ petitioner has not been paid the pension as yet.

8. I have heard the learned counsels appearing for the parties and perused the materials placed on record.

9. From the submissions made by Ms. Wangmo, learned Government Advocate; it has been noticed that the petitioner who had retired from service as a Community Health Officer(CHO) on attaining the age of superannuation on 01.07.2016, from the office of the District Hospital, West Kameng District, Bomdila, has not yet been paid her pension on the basis of the order, dated 02.04.2013, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, on the ground that the petitioner is found to be in occupation of a Government land without allotment and she had failed to submit the No Objection Certificate(NOC) as contemplated under the order, dated 02.04.2013, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar.

10. It is a settled position of law that the right to receive pension by a public servant after retirement has been held to be covered under the "right to property" and the same cannot be taken away by the authorities except in accordance with law.

11. The office order, dated 02.04.2013, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, referred to above by Ms. Wangmo, learned Government Advocate, is an executive order issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar.

12. The payment of pension to the Government servant in the State of Arunachal Pradesh, more particularly, in the case of the petitioner, herein; is stated to be governed by the Central Civil Services(Pension) Rules, 1972, which is a statutory rule framed by the competent authority for payment of pension to the retired employee.

13. It is equally a settled position of law that an executive order which runs contrary to the statutory rules, cannot be enforced for the reason that such an executive order is not a law whereas, the Central Civil Services(Pension) Rules, 1972, is a statutory law.

14. The order, dated 02.04.2013, therefore, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, not being a law but merely, an executive order which is found to be contrary to the Central Civil

Services(Pension) Rules, 1972; I am of the considered view that the respondent authorities cannot deny the petitioner, her pension, for the services she had rendered for the State of Arunachal Pradesh on the strength of the order, dated 02.04.2013, issued by the Principal Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar.

15. For the reasons stated hereinabove; it is equally held that the State authorities cannot deny the pension of the employees who had retired from service on the strength of the orders, i.e. (i) Order, dated 02.04.2013, issued by the Principal Secretary (Vigilance), Government of Arunachal Pradesh, Itanagar, vide Memo. No. PSH-06/2012-13; (ii). Order, dated 06.06.2017, issued by the Principal Secretary (Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-71/2014/45; (iii). Order, dated 25.02.2020, issued by the Commissioner (Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-71/2014/365; and (iv). Order, dated 11.05.2018, issued by the Secretary(Vigilance), Government of Arunachal Pradesh, Itanagar, vide No. VIG-07/2018/41; if the retired employee is entitled to a pension under the Central Civil Services(Pension) Rules, 1972, or, any other statutory rules for payment of pension to such a retired employee.

16. For the reasons and discussions made hereinabove; this writ petition succeeds.

17. The respondent authorities are hereby directed to immediately process the pension papers of the petitioner and pay pension to the petitioner, within a period of

2(two) months from the date of receipt of a certified copy of this order, if she is entitled to pension under the Central Civil Services(Pension) Rules, 1972, without insisting on adherence of any of the Notifications referred to hereinabove.

18. The writ petition stands disposed of, in terms above.

JUDGE

Comparing Assistant