



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

Case No. : WP(C)/271/2022

Chonkai Boham
Ex H/Const. APP,
Deomali, P.O. Deomali, District Tirap, Arunachal Pradesh.
Phone No. 8974106884

VERSUS

The State of AP and 5 Ors. Represented by the Principal Secretary (Finance), Govt. of Arunachal Pradesh, Itanagar, Arunachal Pradesh.

2:The Director
Age: 0
Occupation : of Audit and Pension Govt. of Arunachal Pradesh Naharlagun Arunachal Pradesh.

3:The Assistant Inspector General of Police (E)
Age: 0
Occupation : Police Head Quarter Itanagar Arunachal Pradesh.

4:The Deputy Inspector General of Police
Age: 0
Occupation : TCL Namsangmukh District Tirap Arunachal Pradesh.

5:Superintendent of Police
Age: 0
Occupation : Longding Dist. Longding Arunachal Pradesh.

6:Superintendent of Police Age: 0 Occupation : Khonsa Dist. Tirap Arunachal Pradesh

Advocate for the Petitioner : D K Deori

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 05-12-2023

Heard Mr. D. K. Deori, learned counsel for the petitioner. Also heard Ms. G. Ete, learned Additional Senior Government Advocate for the State respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the grievance expressed by the petitioner is that he is a retired Police personnel and although he has superannuated and released from Government service as a Head Constable w.e.f. 31.01.2022, vide order dated 21.01.2022, he has not been paid the retiral dues.

3. The petitioner relies on Annexure-3 to the writ petition, which is a letter dated 07.07.2022 by the Dy. Superintendent of Police (HQ), Longding District, indicating that the Departmental Enquiry was initiated against the petitioner, vide order dated 11.07.2016, which is yet to be finalised although the Departmental Enquiry is reportedly completed. Accordingly, it is submitted that despite completion of the departmental enquiry, the pensionary dues of the petitioner have not yet been released till date.

4. The learned Additional Senior Government Advocate has submitted that the petitioner had constructed a house within the Police Campus which has not been demolished and according to her instructions, the daughter of the petitioner is residing inside the said house. It is also submitted that despite efforts made by the Police authorities, that they have not been able to evict

the daughter of the petitioner from the house situated within the Police campus. The learned Additional Senior Government Advocate has also referred to the Annexures appended to the affidavit-in-opposition filed by the respondents no. 4 & 6, to project that Show-cause notice in connection with Departmental Enquiry was served upon the petitioner, along with Statement of Article of Charges, Statement of Imputation of Illegal Acts committed by the petitioner, pursuant to which an enquiry was conducted and she relies on the Enquiry Report dated 09.02.2017, proposing award of punishment against the petitioner.

5. Be that as it may, it appears from the Annexure-E to the affidavit-in-opposition that by an order dated 21.11.2018, the petitioner has been exonerated of the charges and his suspension w.e.f. 08.03.2016 to 10.07.2016 was ordered to be treated as time spent on duty for all intent and purpose. However, by an order dated 31.08.2022, the Assistant Inspector General of Police (E), PHQ, Itanagar, in exercise of power under Rule 13 of the Arunachal Pradesh Police (Discipline & Appeal) Rules, 1999, as amended, imposed a penalty of "Censure" and the period of suspension was ordered to be treated as spent on duty and further penalty was imposed on the petitioner withholding 3 (three) increments with cumulative effect.

6. On the aforesaid para-5 being dictated on the basis of Annexure-G to the affidavit-in-opposition filed by the respondents no. 4 & 6 as well as Annexure B to the affidavit-in-opposition filed by respondent no. 3, the learned Additional Senior Government Advocate has submitted that as per her instructions the petitioner has been exonerated of the charges and accordingly, in paragraph-5 of the affidavit-in-opposition filed by the

respondent no. 3, it is projected that the Police authorities have moved the competent authority for release of the pensionary/retirement benefit to the petitioner.

7. Be that as it may, it appears from reading of the documents appended to the writ petition as well as the affidavit-in-opposition filed by respondent no. 3 and in the affidavit-in-opposition filed by the respondents no. 4 & 6, it is gathered that the petitioner had constructed a house illegally within the Police Campus and notwithstanding the punishment of penalty of Censure imposed, the period of suspension was treated as spent on duty. It is by way of denial of a No Objection Certificate (NOC) that has become an impediment in the release of pension and other retiral benefits to the petitioner.

8. It appears from the Annexure-J to the affidavit-in-opposition filed by the respondents no. 4 & 6 that the daughter-in-law of the petitioner, namely, *Smti Phahi Boham* is still pursuing BA at WRGC Deomali and the constructed house has not been demolished till date, the Superintendent of Police, Tirap had requested the Superintendent of Police, Longding that any kind of clearance or No Objection Certificate in respect of the petitioner may not be issued from his Office till he demolishes the constructed house from the Police land at Deomali in Tirap District.

9. It is appalling to note that the Police authorities in the rank of Superintendent of Police, Tirap District has expressed that the petitioner did not demolish the house within the Police lines, which reflects the inability of the State to take care of the property of the State police and it is surprising that the Police authorities have expressed helplessness on an unauthorized

construction within their premises. Therefore, an impression is gathered that the State respondents, by their inaction, are permitting the petitioner to protect his possession over the illegal construction made within the Police land. Be that as it may, if the petitioner has been possessing land illegally within the Police lines, it is open to the District Administration and the Police Administration to take such measure as may be permissible to them by law for taking back possession of their own land, for which they may be well advised.

10. The Court is made to understand under Rule 9 of the Central Civil Services (Pension) Rule, 1972, in respect of the State of Arunachal Pradesh, it is the right of the Governor to withhold or withdraw pension. However, nothing has been shown by the respondents that the competent authority, in the name of the Governor, had passed any lawful order to withhold the pension payable to the petitioner. Therefore, merely on the basis of a communication by the Superintendent of Police, Tirap to the Superintendent of Police, Longding for withholding NOC would not be sufficient to enable the respondent authorities, specifically the authority who is concerned with the sanction and release of pension and other retiral benefits to the petitioner, withhold the release of retiral dues to the petitioner.

11. Accordingly, the Court is of the considered opinion that the withholding of pension and other retiral dues by the respondent authorities is *ex facie* illegal and not sustainable in the eye of law.

12. Accordingly, the writ petition stands allowed by directing the respondent authorities, jointly and severally, to release the admissible pension, gratuity, leave encashment and General Provident Fund to the

petitioner within an outer period of 3 (three) months from the date of receipt of the certified copy of this order by the Superintendent of Police, Longding. It is further provided that in the event, the dues are not released within the allowed time, the respondent authorities would be liable to pay interest to the petitioner @ 6% per annum for first 6 (six) months from the date of default and thereafter, the rate of interest payable would be 9% per annum. The State would have the liberty to recover the interest portion from the concerned official in an appropriate manner as may be permissible in law.

13. Under the circumstances, the writ petition is allowed to the extent as indicated above. However, there shall be no order so as to cost.

JUDGE

Comparing Assistant