

GAHC010020792023



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

Case No. : WP(C)/623/2023

NIRMAL JYOTI CHAKRABORTY
S/O- LT. NARESH CHANDRA CHAKRABORTY,
RESIDENT OF ABC TARUN NAGAR,
GLORY APARTMENT,
P.O. AND P.S.- BHANGAGARH,
DIST.- KAMRUP METRO, ASSAM,
INDIA, PIN- 781005.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
AGRICULTURE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR
DEPARTMENT OF AGRICULTURE
GOVT. OF ASSAM
KHANAPARA
GUWAHATI- 781022

DIST.- KAMRUP(M)
ASSAM.

3:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT
GOVT. OF ASSAM
PANZABARI
GUWAHATI

DIST.- KAMRUP(M)
PIN- 781037

ASSAM.

4:ACCOUNTANT GENERAL (AE)

ASSAM

MAIDAMGAON

BELTOLA

GUWAHATI

DIST.- KAMRUP(M)

PIN- 781029

ASSAM.

5:PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY

CACHAR

SILCHAR

PIN- 788001

ASSAM.

6:THE DIRECTOR OF PENSION

HOUSEFED

GUWAHATI-781006

Advocate for the Petitioner : MR. S P BHATTACHARJEE

Advocate for the Respondent : SC, AGRI. DEPARTMENT

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Judgment and Order (Oral)

Date : 12-12-2023

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr. N.K. Dev Nath, learned Standing Counsel, P&RD Department, Mr. S.K. Medhi,

learned Standing Counsel, Accountant General (A&E), Ms. G. Bora, learned Standing Counsel, Agriculture Department and Ms. A. Talukdar, learned Junior Government Advocate, Assam.

2] The petitioner before this Court was serving as an Instructor in the Agriculture Department, Government of Assam. After rendering his continuous service as an Instructor, he superannuated from the said post on 31.01.2004. However, he has not been sanctioned the regular pension. He was initially paid a provisional pension till 2017 but neither his regular pension nor was he paid his gratuity for money, salary, area salary, DA, etc. The petitioner is at present 79 years old and he and his wife are suffering from serious ailments and are therefore in grave financial distress. Being aggrieved by the non release of his regular pension, the petitioner has approached this court by filing the present petition.

3] Learned counsel for the petitioner has strenuously urged that there is no dispute that the petitioner rendered qualifying services under the Agricultural Department. Therefore, he is entitled to pension under the Assam Services (Pension) Rules, 1969. However, his regular pension has not been released and in the meager sum by way of provisional pension has been released. Learned counsel for the petitioner submits that the respondents are duty bound to

release the pension of the petitioner as he satisfies all the requirements under the Pension Rules, 1969 and pension can only be curtailed or stopped strictly under the provisions of Rule 21 of the Pension Rules. Referring to the provisions of Rule 21 of the Pension Rules, learned counsel for the petitioner submits that under the provisions of Rule 21 of the Pension Rules, it is the Governor of that State who reserves to himself the right of withholding or withdrawing a pension or any part thereof, whether permanently or for specified period, and the right of ordering for recovery from a pension of the whole or any part of any pecuniary loss caused to the Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of service. That apart, the learned counsel for the petitioner refers to substantial Rule 21(C) of the Pension Rules where it has been clearly mentioned that no judicial proceeding can be instituted if it was not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution. Learned counsel for the petitioner submits that except as provided under Rule 21 of the Pension Rules, the pension payable to the petitioner cannot be curtailed or restricted. It is further submitted that if under Rule 21 of the Pension Rules if the pension is curtail or restricted then under Rule 21 of the Pension Rules he

shall be paid a provisional pension. It is submitted that in view of the specific provisions under Rule 21 and 22, stoppage and withdrawal, or withholding of pension and nonpayment of proper and adequate amount of provisional pension to the petitioner is violating of the provisions of 21 and 22 of the Pension Rules and therefore, the respondents be directed forthwith to release the final pension along with all other retirement benefits to the petitioner.

4] Ms. G. Bora, learned Standing Counsel, Agriculture Department, Assam for the respondent nos. 1 & 2 submits that an affidavit has been filed on behalf of the respondent no.1, namely, the Joint Secretary in the Agriculture Department. In the said affidavit learned Standing Counsel submits that an FIR was registered against the petitioner being Vigilance P.S. Case No.03/2005 under Section 120(B)/420/468/471 IPC read with Section 13 10 (d)(ii)/13 (2) P.C. Act, 1988 with regard to some financial irregularities and anomalies of Government fund in implementation of some schemes between the period 1998-2002. Pursuant to completion of the investigation the charge sheet was filed and the competent Court has already taken cognizance. As such, in view of the pendency of the case, the regular pension was not granted. It is further submitted that the provisional pension is given only on the basis of the last basic pay per month which was received by the petitioner as per RoP Rules, 1996. It is further submitted that GPF final amount has also been released to

the petitioner. Learned counsel submits that because of the pendency of the vigilance case, the regular pension along with gratuity, leave salary, DA arrear has not been released. Learned counsel for the petitioner has relied upon judgment of a Coordinate Bench rendered in ***Hari Nath vs. State of Assam & Ors***, reported in 2005 (Suppl) GLT 903.

5] Learned counsel for the parties have been heard and the pleadings in records as well as the judgment cited in the Bar have been carefully perused.

6] Rule 21 of the Pension Rules, 1969 reads as under :

21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that-

(a) such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

Explanation- The continuation of the proceeding after the final retirement of the officer shall be automatic under sub-rule (a) of Rule 21 and no fresh decision of the Governor and/or the Appointing authority nor any show-cause notice to the person concerned shall be necessary.

The powers under rule 21 shall be exerciseable not only in case of

causing pecuniary loss to Government but also in all other cases”];

(b) such departmental proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the governor of Assam;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor of Assam may direct and in accordance with procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the Assam Public Service Commission shall be consulted before final orders are passed.”

7] A bare perusal of the Rules clearly reveals that Rule 21 an employee's pension can be withdrawn or stopped. It is categorically specified in Rule 21 that the power for withdrawal or stoppage of pension is preserved only for the Governor of the State, namely, the Governor of Assam in the context of the present proceedings. The Rule 21 does not provide for any exception for issuance of any orders for stoppage of or withdrawal of pension. The powers of the Governor are well defined under the provisions of Article 163 of the

Constitution of India. Under Article 163 of the Constitution of India, the Governor of the State reserves certain functions, as such, pass or issue orders and there are other matters where the Governor is required to take into account and pass necessary orders only on the aid and advice of the Council of Ministers of the State.

8] It is also seen from the Rule 21(c) that no judicial proceedings can be initiated against the pensioner if the same was not initiated while the officer was in service and no such proceeding shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution. It is submitted that the petitioner superannuated from service on 31.01.2004 and the said fact is not disputed by the respondents in his affidavit.

9] From the affidavit filed by the respondents it is seen that the charge sheet in the matter was filed on 03.01.2011 before the Court of Special Judge vide Vigilance P.S. Charge Sheet No.01/2011.

10] As such, it is seen that there is no material which is available in the affidavit filed by the respondents as to state of the division proceedings stated to be initiated against the petitioner.

11] No order has been enclosed in the affidavit which shows the date on

which the concerned Magistrate of the Special Judge had taken cognizance of the charge sheet filed by the Investigating Officer. In any event of the matter, any such orders that may have been passed by the competent Court taking cognizance of the matter will be after the date of superannuation of the petitioner, which is on 31.01.2004.

12] From the pleadings it is seen that the vigilance case is registered as Vigilance P.S. Case No.03/2005 which goes to show that the vigilance case was filed only after superannuation of the petitioner, which is on 31.01.2004 as per the petitioner. As per the provisions of Rule 21 (c), no judicial proceeding is to be initiated in respect of a cause of action which arose or an event which took place more than four years before such institution.

13] From the averments made in the affidavit by the respondents, it is not discernible as to whether the allegations against the petitioner which finally culminated in filing of the Vigilance P.S. Case No.03/2005 relates to an incident which arose more than four years prior to institution of the said case. Under Rules 21 (c) there is a clear bar in instituting any criminal proceedings which pertains to an issue which arose more than four years before institution of such a case. No materials to that effect have been placed before the Court. That apart, under rule 21 (d), the Assam Public Service Commission (APSC) is also

required to consult before the final orders are passed.

14] Upon careful consideration of the pleadings on records and the rival submissions of the learned Counsel for the parties as well as upon careful perusal of the provisions of the Assam Pension (Services) Rules, 1969 and the judgment rendered in Hari Nath (Supra), it is clear that it is only the Governor who has a power to withhold or stop any pension. Ordinarily, such power is to be exercised upon satisfaction of the provisions of Rule 21 (b), (c) (d). Insofar as the present proceedings are concerned, it is 21 (c) and 21 (d) which are relevant. Under the said provisions, there is a bar of instituting any judicial proceeding, if not already instituted by the officer within service, in respect of an event or a cause of action which arose more than four years before such institution.

15] In celebrated judgment of the Apex Court rendered in ***Deokinandan Prasad vs. The State of Bihar & Ors.*** reported in 1971 (2) SCC 330, the Constitution Bench of the Apex Court authoritatively held that the payment of pension does not depend upon the discretion of the State. The payment of pension is governed by the rules and the government servant coming within the Rules is entitled to claim pension. The Apex Court went on to hold that the right to receive pension by a government servant is property within goods so as to

attract Article 19 (1)(f) and 31(1) of the Constitution of India. Referring to the judgments rendered in ***Bhagwant Singh vs Union of India*** referring to the judgment of the ***Punjab High Court in Bhagawan Singh***, AIR 1962 Punj 503 as well as ***K.R. Erry vs. State of Punjab***, ILR 1967 Punj & Har 278 and also ***State of M.P. vs. Ranojirao Shinde*** reported in AIR 1968 SC 1C53, the Apex Court had expressed its opinion that the right of the petitioner to receive pension is property under Article 31 of the Constitution and by mere executive order the State has no power to withhold the same. The claim of an employee to receive pension is property under Article 19 (1) (f) and it is not saved by sub article (5) of Article 19. The paragraphs 16, 33 of *Deokinandan Prasad* are quoted herein below:

“.....

16. We are not inclined to accept the contention of Mr. Jha that no fundamental rights of the petitioner are affected by passing the order dated June 12, 1968. 'We will refer to the relevant Pension Rules bearing on the matter and also certain decisions. In our opinion, the right to get pension is "property" and by withholding the same, the petitioner's fundamental rights guaranteed under Arts. 19(1)(f) and 31(1) are affected. As the matter is being discussed more fully in the latter part of the judgment, it is enough to state at this stage that the writ petition is maintainable. Even according to the respondents the order dated June 12, 1968 has no independent existence and that order has been passed on the basis of the earlier order dated August 5, 1966. In our opinion, if the order dated August 5, 1966 cannot be sustained, it will follow that the order dated June 12, 1968 will also fall to the ground. Hence we will deal, in the first instance, with the validity of the order dated August 5, 1966. The full text of the order dated August 5, 1966 passed by the Director of Public Instruction, Bihar, is as follows:

"Number-7 / 07 / 60 Edn. 3791

Sri Devaki Nandan Prasad, Sub-Inspector of Schools, Deoghhar, having not

been on his duties for more than 5 years since 1-3-60 has ceased to be in Government employ since 2-3-65 under rule 76 of the Bihar Service Code.

(Sd.) K. Ahmed

Director of Public Instruction

Bihar.

Memo No. 3791 Patna, dated 5th August, 1966. Copy forwarded to Sri Devaki Nandan Prasad, New Yarpur, Patna for information."

Rule 76 of the Service Code reads as follows:

"Unless the State Government, in view of the special circumstances of the case shall otherwise determine, A Government servant after five years of continuous absence from duty, elsewhere than on foreign service in India, whether with or without leave, ceases to be in Government employ."

The essential requirement for taking action under the said rule is that the government servant should have been Continuously absent from duty for over five years. Under this rule it is immaterial whether absence from duty by the government servant was with or without leave so long as it is established that he was absent from duty for a continuous period for over five years. We are referring to this aspect because it is the case of the petitioner that he availed himself of leave with effect from March 11, 1960 and he left the headquarters after obtaining the necessary sanction from his superior officers. On the other hand, it is the case of the respondents that the petitioner merely putting in an application for leave from March 11, 1960 left the headquarters without obtaining the prior permission of the superiors. It is not necessary for us to deal with this controversy, as under the rules absence for the period stated therein, either with or without leave, are both treated on the same basis.

.....

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under [Art. 31\(1\)](#) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under [Art. 19\(1\)\(f\)](#) and it is not saved by sub-article (5) of [Art. 19](#). Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Arts. 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under [Art. 32](#) is maintainable. It may be that under the [Pension Act](#) (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.

16] This judgment was again referred to in ***D.S. Nakara & Ors. Vs. Union of India*** reported in (1983) 1 SCC 305. The Apex Court in *D.S. Nakara* reiterated the law laid down in its earlier judgment i.e. *Deokinandan Prasad*

(supra) and held that the notion of pension being a bounty or a gratuitous payment depending upon the sweet will or the grace of the employer and cannot be claimed as a matter of right and it was held that pension is a right and the payment thereof does not depend upon the discretion of the government but is governed by the Rules and a government servant coming within those Rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. The Apex Court upon examining the goals that the pension scheme seeks to subserve, held that the pension payable to a government servant is earned by rendering long and efficient service and therefore, can be said to be a deferred portion of the compensation or for service render. The Apex Court held that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It was observed that one may live and avoid unemployment but not senility and penury if there is nothing to fall back upon. The Apex Court upon due examination held that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It creates a vested right subject to the pension rules, which are statutory in nature because they are enacted in exercise of the powers conferred by the proviso to Article 309 and Clause 5 of the article 148 of the Constitution. It was held by the Apex Court that pension is not an ex-gratia payment, but it is a payment for the past services rendered and

it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. The relevant paragraph i.e. paragraph 20, 26, 27, 28, 29 & 31 of this celebrated judgment of the Apex Court are quoted herein below:

.....

20. *The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. (1) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in [State of Punjab & Anr. v. Iqbal Singh \(1\)](#).*

....

26. *Let us therefore examine what are the goals that pension scheme seeks to subserve ? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement ? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, 'that is funny, I could not before'. It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self- sufficiency declines the need for his attendance or institutional care grows. Many are literally*

surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and 'pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed'. (see Social Security law by Prof. Harry Calvert, p. 1).

27. *Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means or promoting general welfare (see Encyclopaedia Britannica, Vol. 17 p.575.) But these views have become otiose.*

28. *Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education(1) a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.*

29. *Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day of life to your*

employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

....

30. *From the discussion three things emerge : (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to [Art. 309](#) and clause (5) of [Art. 148](#) of the Constitution ; (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to requirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.”*

17] As such, it is no longer *res integra* that pension is not a bounty depending on the whims and fancies to be granted to a government servant. If the government servant satisfies the norms prescribed under the Rules, he has the right to receive pension as per his entitlement and such right cannot be curtailed. A bare perusal of the Pension Rules revealed that the right to withhold or withdraw pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery is reserved under the power of

Governor. The Governor has the right to order for recovery from a pensioner, the whole or a part of any pecuniary loss caused to the Government if, in a departmental or judicial proceeding, a pensioner is found guilty of grave misconduct or negligence during the period of a Service, including the service rendered upon reemployment after retirement, provided such departmental proceeding was initiated before his retirement or reemployed. The Apex Court held that a person cannot be deprived of pension without the authority of law. The Apex Court negated the attempt of the State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instructions. The Apex Court held that such act cannot be countenance.

18] From the pleadings it is seen that the petitioner superannuated from service on 31.01.2004 and FIR was registered on 27.09.2005. However, as discussed above from the pleadings before this Court, including the averments made in the affidavit, it is not reveal as to whether the event or incident in respect of which the FIR was registered on 27.09.2005 relates to a period which is more than four years prior to retirement of the petitioner. There is also no averment that the APSC has been consulted as is required under Section 21 (d) of the Pension Rules, 1969. Further, in the event any order for stoppage or withholding is issued under Rule 21, then a proper provisional pension has to be

released under Rule 22 of the Pension Rules.

19] A coordinate Bench of this court in *Hari Nath vs. State of Assam & Ors.* reported in 2005 (Suppl) GLT 903 made an observation to deal with a similar issue explaining the powers of Governor under Rule 21 of the Rules, which is relied upon by the learned Counsel for the petitioner. It has been repeatedly held by this Court as well as by the Apex Court that pension is not a bounty, it is a right include under a specific statute made under the Assam Services (Pension) Rules. The grant or withdrawal or stoppage of pension of any government employee must be restricted under the prescription of the Rules under the statute.

20] In *Hari Nath* (supra) a Coordinate Bench of this Court had examined the similar issues and had said that under Rule 21 of the Pension Rules, it is the Governor of the Assam who is empowered to withhold or withdraw such pensionary benefits or any part thereof, whether permanently or for a specified period, and the right of ordering a recovery from pension of the whole or any part thereof for causing pecuniary loss to the Government. By taking note of Rule 21 (C) and (d) of the Pension Rules, the Coordinate Bench held that in view of the specific provision under Rule 21 of the Pension Rules, the Department could not have withdraw or withheld the pension without the

compliance of the mandate of Rule 21 of the Pensions Rules. This Court in *Md. Mukibul Islam vs. State of Assam* [WP(C) No.2235/2013] while addressing similar issue regarding stoppage or withholding of pension, also examined the provisions of Rule 21 of the Pension Rules. It was held that the powers of withholding of Pension is reserved only for the Governor of the State under Rule 21 of the Pension Rules, 1969.

21] Under such circumstances, this Court is of the considered view that the matter will require proper consideration at the hands of the respondent authority, more particularly, the respondent no.1, to the effect as to whether the cause of action or the event for which the Vigilance P.S. Case No.03/2005 was lodged on 27.09.2005 relate to an episode or an incident which occurred more than four years before such an institution. Such materials not being placed before the Court, the respondent no.1 will examine the matter and pass appropriate orders and if it is found that the judicial proceeding has been instituted, which is not in conformity with the provisions of Rule 21 (c) of the Pension Rules, 1969, then the authorities will proceed to pass any such order as may be necessary under Rule 21 and thereafter, issue appropriate orders for release of the regular pension along with gratuity, leave salary, DA arrear. This exercise shall be completed by the respondent no.1 within a period of 30 (thirty) days from the date of receipt of a certificate copy of this order. The petitioner is

permitted to place a certified copy of this order before the respondent no.1 and who will thereafter carry out the directions contained in this order.

In terms of the above, the writ petition stands disposed of. No order as to cost.

JUDGE

Comparing Assistant