

GAHC010030362022



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

Case No. : WP(C)/1398/2022

KASHEM ALI
S/O. LT. KUDRAT ALI, VILL. NATABARI, P.O. AND P.S. TAMARHAT, DIST.
DHUBRI, ASSAM, PIN-783332.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF CO-
OPERATION, DISPUR, GUWAHATI-06.

2:THE REGISTRAR

CO-OPERATIVE SOCIETIES
KHANAPARA
GUWAHATI-22.

3:THE DIRECTOR OF PENSION

HOUSEFED
DISPUR
GUWAHATI-06.

4:THE ASSTT. REGISTRAR

CO-OPERATIVE SOCIETIES
DHUBRI
PIN-783332.

5:THE ACCOUNTANT GENERAL

ASSAM
GUWAHATI-28

Advocate for the Petitioner : MR. A ROSHID

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20.02.2023

Heard Mr. A. Roshid, the learned counsel appearing on behalf of the petitioner. Mr. G. Bordoloi, the learned counsel appears on behalf of the respondent Nos. 1, 2 and 4, Mr. A. Chakraborty, the learned counsel appears on behalf of the respondent No. 3 and Mr. R.K. Talukdar, the learned counsel appears for the respondent No.5.

2. The instant writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to pay pension and gratuity to the petitioner and to set aside the order dated 21/12/2021.

3. The facts involved in the instant writ petition is that the petitioner was appointed in the year 1975 as Cadre Management in the Cooperative Societies, Tamarhat Cooperative Societies. The service of the petitioner was provincialised in the year 1994 and placed at Tulsibil Co-operative Societies as Secretary under the Office of the Assistant Registrar(ARCS), Dhubri. The petitioner worked under the ARCS, Dhubri upto 31/1/2017 as Junior Inspector of the Cooperative Societies (provincialised Secretary). Pursuant to his retirement on 31/1/2017, the petitioner prayed for release of his leave salary. In the said communication, it was also mentioned that if any recovery is found against him, the said amount be recovered from his other pensionary benefits such as gratuity amount and

the GIS amount.

4. The Assistant Registrar of the Cooperative Societies, Dhubri, issued a letter dated 17/3/2017 to the Registrar of Cooperative Societies whereby the letter dated 8/3/2017 was forwarded. Thereupon the Registrar of Cooperative Societies, Assam accorded sanction for payment of provisional pension of Rs. 21,880/- per month and other reliefs and medical allowance w.e.f. 1/2/2017 till issue of the PPO.

5. Pursuant thereto there was a delay in the finalisation of pension of the petitioner as well as his other pensionary benefits for which the petitioner had instituted a writ petition before this Court which was registered and numbered as W.P.(C) No. 1392/2021. At this stage, it is relevant to take note of that in the said writ proceedings the Cooperation Department had taken a specific stand to the effect that the petitioner while working as a Secretary in the respective Samabhai Samitees, the following amounts were to be recovered from the petitioner i.e. (i) Baterhat S.S. Ltd., -- Rs.25,20,163/-, (ii) Alomganj S.S. Ltd.— Rs.2,94,128.32 and (iii) Chapar S.S. Ltd.--- Rs. 5,77,786/-. It was therefore the stand of the Cooperation Department that only after receiving clearance of the concerned Deputy Registrar of the Cooperative Societies, the proposal of pension would be sent to the Accountant General, Assam (A & E).

6. This Court after hearing the parties and taking into account that there was no proceedings initiated in terms with Rule 21 of the Assam Services (Pension) Rules, 1969 (in short "the Rules of 1969") disposed off the said writ petition vide an order dated 1/10/2021 thereby directing the Cooperation Department and its officials to issue appropriate orders to enable the authorities to prepare and sent the pension proposal to the office of the Accountant General (A & E) Assam within a period of 6 weeks from the date of the service of a downloaded

copy of this order to the Registrar Cooperative Societies and the Assistant Registrar of the Cooperative Societies. It was further directed that upon receipt of the pension proposal from the competent authority of the Cooperation Department, the office of the Accountant General (A & E), Assam would process and do the needful within a period of 4 weeks thereafter. Paragraph Nos. 5 and 6 of the said order being relevant are quoted herein below :-

“5. It is seen from the stand taken by the respondent No. 1 in the affidavit-in-opposition that there is no averment to the effect that any disciplinary proceeding has been initiated against the petitioner for alleged retention of moneys belonging to the 3(three) samabay samities. It is also not the specific stand of the respondent NO. 1 that the competent authorities had reserved their right to recover money, if any, recoverable from the petitioner from the pension and any other retiral benefits of the petitioner as envisaged under Rule 21 of the Assam Services (Pension) Rules, 1969. In the absence of any reservation of right to recover any dues from the pension of the petitioner in accordance with law, the act of withholding of pension, gratuity and other retiral benefits of the petitioner is not found sustainable on facts and in law.”

“6. Accordingly, the Court is inclined to allow this writ petition by holding that the petitioner is entitled for payment of his lawfully admissible retiral dues like pension and gratuity. Accordingly, this writ petition stands allowed to enable the authorities prepare and send the pension proposal to the office of the respondent No. 5 within a period of 6(six) weeks from the date of service of downloaded copy of this order to the respondent No. 2 and the respondent No. 4. Thereafter, upon receipt of the pension proposal from the competent authority of the respondent Nos. 1, 2 and 4, the respondent no. 5 would process and do the needful for release of pension amount to the petitioner within a period of 4(four) weeks thereafter.”

7. It further appears that in pursuance to the said order, on 3rd December, 2021, the Registrar of Cooperative Societies accorded for payment of provisional gratuity of Rs.6,97,875/- in lumpsum in one installment to the petitioner. It is however relevant to take note of that in the said order dated

3/12/2021, while endorsing a copy to the Assistant Registrar of the Cooperative Societies, Dhubri, the Registrar of Cooperative Societies, Assam had requested the former to draw and disburse the amount to the petitioner and before disbursement of the amount the Assistant Registrar was requested to recover the outstanding money belonging to the 3 Samabhai Samitees if any, as per this Court's order dated 01/10/2021 and to deposit to the Societies bank account. Thereupon on 21st of December, 2021, the Assistant Registrar of the Cooperative Societies had issued a communication to the petitioner directing him to recover the outstanding amount belonging to 3 numbers of Samabhai Samittes as per the order issued by the Registrar of Cooperative Societies dated 3/12/2022 without further delay so that the Assistant Registrar of Cooperative Societies could disburse the amount of Rs.6,97,875/- to the petitioner's account.

8. Being aggrieved by the said communications issued by the Registrar of Cooperative Societies as well as the Assistant Registrar of Cooperative Societies and also the inaction on the part of the respondent authorities in complying with the direction passed by this Court in the order dated 1/10/2021 passed in W.P. (C) No. 1392/2021, the petitioner has approached this court by filing the instant writ petition. It appears from the records that as on 2/3/2022 notice was issued. The respondents herein however have not filed any affidavit.

9. I have heard the learned counsels for the parties as well as have perused the materials on record.

10. Before further proceeding, this Court finds it relevant to take note of Rule 21 of the Rules of 1969. A perusal of the said Rule stipulates that 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 the Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including the service rendered upon re-employment after retirement. In terms with clause (a) of Rule 21 such departmental proceedings, 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 Rule 21 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. Clause (b) of Rule 21 is however pertinent for the purpose of the instant dispute. Taking into account its importance, Clause (b) along with its sub-clauses are quoted herein below :-

“(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 of the officer during his service.”

11. It appears from Clause (b) (ii) that if a departmental proceedings if not instituted while the officer was in service, whether before his retirement or during his reemployment, shall not be instituted in respect of any event which took place more than 4 years before such institution.

12. It is an admitted fact that the petitioner retired as on 31/1/2017. Till today, no departmental proceedings has been initiated against him. Without a departmental proceedings the question of making a recovery from the petitioner

or finding that there has been a misconduct on his part does not arise in the facts of the instant case. This aspect of the matter has already been dealt with by the Coordinate Bench of this Court in its order dated 01/10/2021 and therefore there was a specific direction for releasing the pension as well as the pensionary benefits to the petitioner. However, strangely and contrary to the directions passed by this Court in its order dated 1/10/2021 passed in W.P.(C) No. 1392/2021, the Registrar as well as the Assistant Registrar of the Cooperative Societies, Dhubri have again resorted to recover from the petitioner without any proceedings initiated under Rule 21 of the Rules of 1969 which is not permissible.

13. It is also relevant to take note of that in view of Rule 21 (b) (ii) of the Rules of 1969, the respondent authorities cannot now initiate the departmental proceedings against the petitioner. It is also relevant at this stage to take note of that vide the judgment dated 31/10/2014 passed by the Court of the Additional CJM, Dhubri in GR Case No. 41/2008, the petitioner was also acquitted by the said Court of the charge under Section 406 of the Indian Penal Code. Therefore, as there is neither any case of misconduct nor there being any judicial proceedings against the petitioner, the question of recovery from the petitioner at this stage does not arise. Under such circumstances, this Court therefore set asides the communication dated 3/12/2021 in so far there is a direction by the Registrar of the Cooperative Societies to the Assistant Registrar of the Cooperative Societies to recover from the petitioner the outstanding money belonging to the 3 Samabhay Samitees and also the communication dated 21/12/2021 whereby the Assistant Registrar of the Cooperatives had directed to recover the outstanding money from the petitioner.

14. This Court further directs the Respondent Authorities, taking into account

the directions passed by this Court dated 1/10/2021 in W.P.(C) No. 1394/2021 and almost 18 months have passed by to forthwith take appropriate steps for release of the petitioner's pension as well as the pensionary benefits.

15. The said exercise be carried out by the respondent authorities within a period of 60 days from the date a certified copy of the instant order is served upon the Registrar of the Cooperative Societies.

16. With the above observations and directions, the instant petition stands disposed off.

JUDGE

Comparing Assistant