

GAHC010033282022



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

Case No. : WP(C)/1417/2022

SARAT CHANDRA BURAGOHAIN
S/O LATE TANKESWAR BURAGOHAIN, R/O VILL-SENCHOWA, P.O.-
BHATIAPAR, P.S.-SIVASAGAR, DIST-SIVASAGAR, ASSAM, PIN-785664

VERSUS

OIL AND NATURAL GAS CORPORATION LTD AND 2 ORS
REPRESENTED BY THE REGIONAL DIRECTOR, ERBG, NAZIRA, DIST-
SIVASAGAR, PIN-785685, ASSAM

2:THE DIRECTOR
HUMAN RESOURCES
O.N.G.C. (L)
TEL BHAWAN
GREEN HILLS BUILDING
DEHRADUN
UTTARAKHAND
PIN-248001

3:IN-CHARGE (S.E.E.)
O.N.G.C. (L)
SEPARATED EMPLOYEE CELL
GROUND FLOOR
GREEN HILLS BUILDING
DEHRADUN
UTTARAKHAND
PIN-24800

Advocate for the Petitioner : MR P BHARDWAJ

Advocate for the Respondent : MD A A HUSSAIN (r- 1,2,3)

Linked Case : **WP(C)/1595/2020**

SARAT CHANDRA BURAGOHAIN
S/O- LT. TANKESWAR BURAGOHAIN
EX. A.A. GRADE-II (M.M)
R/O- VILL- SENCHOWA VILLAGE
P.O. BHATIAPAR
P.S. SIVSAGAR
DIST.- SIVSAGAR
ASSAM
C.P.F. NO.- 32877

VERSUS

OIL AND NATURAL GAS CORPORATION LTD. AND ANR.
(REP. BY REGIONAL DIRECTOR ONGC) ERBG
NAZIRA
DIST.- SIVASAGAR
ASSAM
PIN- 781006

2:IN-CHARGE
OIL AND NATURAL GAS CORPORATION LTD.
(S.E.E) O.N.G.C (L)
SEPARATED EMPLOYEE CELL
GROUP FLOOR
GREEN HILLS
DEHRADUN
UTTARAKHAND

Advocate for : MR. R P HAZARIKA
Advocate for : MD A A HUSSAIN (R-1
2) appearing for OIL AND NATURAL GAS CORPORATION LTD. AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 16-11-2023

1. Heard Mr. P Bhardwaj, learned counsel for the petitioner in both the writ petitions. Also heard Mr. AA Hussain, learned counsel for the

respondents/ONGC Ltd.

2. The two writ petitions are being disposed of by a common order, inasmuch as, the petitioner in WP(C) No. 1595/2020 has prayed for release of gratuity from the date of his joining in service, i.e., 28.02.1973 to the post of Assistant Grade-II in the ONGC, till the date of his dismissal from service on 19.05.1999. In WP(C) No. 1417/2022, the petitioner has prayed for release of all retirement benefits, which the petitioner is entitled to, without specifying which retirement benefits he is entitled to.

3. The petitioner's case is that he was appointed as an Assistant Grade-II officer in the ONGC Ltd. On 28.02.1973 and was dismissed from service on 19.05.1999, as the petitioner was convicted in a criminal proceeding on corruption charges, for having misappropriated an amount of Rs.2,20,000/-. The petitioner was convicted by the learned Special Judge, (Prevention Corruption Act), Guwahati in Special Case 1(C)/1988 vide judgment dated 24.09.1996 and his appeal in this Court, vide Criminal Appeal No. 266/1996, was dismissed on 28.04.2006.

4. The petitioner had also put to challenge the impugned order dated 19.05.1999, by which he had been dismissed from service, in WP(C) No. 1965/2007. However, WP(C) No. 1965/2007 was dismissed vide order dated 05.09.2014.

5. The petitioner claimed payment of his Contributory Provident Fund (CPF) amount on being released from prison, the petitioner was paid his CPF on 21.09.2010.

6. The petitioner's counsel submits that the petitioner is not aware of the service benefits that would have to be paid to him by the ONGC and it is the duty of the ONGC to clarify as to what should be paid to the petitioner.

7. Mr. AA Hussain, learned counsel for the respondents, on the other hand submits that the writ petition having been filed twenty two (22) years after his dismissal from service, the same is hit by delay and laches. He also submits that as a consequence of the petitioner being dismissed from service, which is a major penalty, the petitioner is not entitled to payment of gratuity, as gratuity is forfeited on dismissal from service. Further, encashment of half pay leave (good health reward) is not admissible under Rule 22(2) of Leave Rule, 1995. Earned leave encashment is also not payable in case of removal or dismissal from service. He also submits that the petitioner is not entitled to any post retirement medical benefits or travelling allowance as he has been dismissed from service. He accordingly submits that the writ petitions should be dismissed.

8. I have heard the learned counsels for the parties.

9. As can be seen from the Oil and Natural Gas Corporation Leave Rules,

1995 (hereinafter referred to as the Leave Rules, 1995), the petitioner is not entitled to encashment of half pay leave or earned leave encashment, as he has been dismissed from service. Further, in terms of Section 4(6) of the Payment of Gratuity Act, 1972, the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee has been terminated for any act which constitutes an offence involving moral turpitude. In the present case, the petitioner has been convicted for misappropriation by the learned Special Judge (Prevention of Corruption Act) in respect of charges under Sections 120-B/468/471/420 IPC and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1988 and the same was upheld by this Court.

10. On considering the above, the petitioner is not entitled to any payment of gratuity, as he has been convicted for an offence involving moral turpitude. Further, he is not entitled to any other allowance besides CPF, which he has been given.

11. With respect to the issue of whether the petitioner has been given subsistence allowance during his suspension period, keeping in view the fact that he has misappropriated Rs. 2,20,000/-, besides the judgment of the Division Bench of this Court passed in ***Harendra Chandra Nath vs. State of Tripura***, reported in ***2013 2 GLT 1094*** having held that there can be no claim

for arrears of money beyond three years from the date of institution of a writ petition, this Court is of the view that the present case is liable to be dismissed for laches and delay.

12. In view of the reasons stated above and in view of the fact that there is delay of more than twenty years in filing the present writ petitions, the writ petitions are dismissed.

JUDGE

Comparing Assistant