

GAHC010076612023



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

Case No. : WP(C)/2080/2023

MRIGEN SAIKIA
SON OF LATE MONI RAM SAIKIA,
RESIDENT OF BOGORITAL,
BOTAHGULI,
P.O.- PANJABARI, P.S.- DISPUR,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781037.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
ANIMAL HUSBANDRY AND VETERINARY DEPARTMENT,
DISPUR, GUWAHATI- 06, KAMRUP(M),
ASSAM.

2:THE DIRECTOR
A.H. AND VETERINARY ETC. DEPARTMENT
GUWAHATI-03
KAMRUP(M)
ASSAM.

3:THE ACCOUNTANT GENERAL (A AND E)
MAIDAMGAON
GUWAHATI- 781029.

4:THE TREASURY OFFICER
KAMRUP TREASURY
ASSAM

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 03.05.2023

Heard Ms. S. Sarma Hazarika, the learned counsel appearing on behalf of the petitioner. Ms. M.M. Kakoti, the learned counsel appears on behalf of the Animal Husbandry and Veterinary Department, Mr. A. Hassan, the learned counsel appears on behalf of the Accountant General(A & E) and Ms. R.M. Baruah, the learned counsel appears for the respondent No.4.

2. The case of the petitioner herein is that the petitioner was appointed as a Veterinary Assistant Surgeon in the year 1989 and thereafter in the year 2014 he was promoted as a Regional Artificial Insemination Officer (RAIO) and posted in Ramkrishna Nagar, Karimganj, Assam. Thereupon the petitioner was transferred vide order dated 30/8/2016 and posted as the Sub-Divisional A.H. & Veterinary Officer, Kamrup, Guwahati wherein he submitted his joining report dated 1/9/2016 which was duly received by the concerned Department vide Receipt No. 1543 dated 12/9/2016.

3. While the petitioner was working in the capacity of Sub-Divisional A.H. & Veterinary Officer, Kamrup, an FIR was lodged which was registered and numbered as Dibrugarh P.S. Case No. 936/2016 under Section 7/13(1) (b) and 2(b) of the Prevention of Corruption Act, 1988 read with Section 120(B)/420 of the Indian Penal Code. The petitioner was implicated in the said case. Subsequently thereto, the petitioner was placed under suspension vide an order dated 28/11/2016. The petitioner approached this court by filing an Anticipatory

Bail No.245/2020 and this Court was pleased to grant the privilege of pre-arrest bail vide an order dated 21/9/2021. It is also stated in the writ petition that the said FIR was subsequently chargesheeted and is presently at the trial stage before the competent Court. 0

4. It further appears from the records that the petitioner thereupon had challenged the order of the suspension by filing a writ petition being WP(C) No. 374/2022 praying for quashing of the suspension order dated 28/11/2016 and to reinstate the petitioner to service as no departmental proceedings was initiated against the petitioner at that relevant point of time. However, the said writ petition was disposed off as infructuous inasmuch as the petitioner retired from his service on 28/2/2022 upon superannuation. The present writ petition has been filed on a limited prayer for grant of provisional pension in terms with Rule 22 of the Assam Service (Pension) Rules 1969(for short, 'the Rules of 1969').

5. It is the specific case of the petitioner herein that in terms with Rule 22 of the Rules of 1969 and the Office Memorandum dated 21/6/2012 the petitioner is entitled to the provisional pension till the finalisation of the criminal proceedings initiated against the petitioner.

6. I have perused the Rule 22 of the Rules of 1969 as well as the Office Memorandum dated 21/6/2012 which makes it clear that an officer who has retired on attaining the age of compulsory retirement or otherwise shall be paid during the period of commencing from the date of his retirement to the date on which upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of his retirement or if he was under suspension on the date of retirement upto the

date immediately preceding the date on which he was placed under suspension.

7. Taking into account the said mandate of Rule 22 of the Rules of 1969, this Court therefore disposes off the writ petition with a direction to the respondent authorities to forthwith take steps for release of the arrear provisional pension as well as the provisional pension to the petitioner. The said exercise be completed within 4 weeks from the date a certified copy of the instant order is served upon the respondent No. 2.

8. With the above observations and directions the petition stands disposed at the motion stage itself.

JUDGE

Comparing Assistant