

GAHC010112862013



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

Case No. : WP(C)/2235/2013

MD. MUKIBUL ISLAM
S/O LATE KHAIRUL ISLAM, R/O ABHAYPUR, MORAN, DIST- DIBRUGARH

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ANIMAL HUSBANDRY and VETERINARY DEPTT., DISPUR,
GHY-6

2:THE DIRECTOR
ANIMAL HUSBANDRY and VETERINARY DEPTT.
CHENIKUTHI
GUWAHATI

3:THE JT. LEGAL REMEMBRANCER
ASSAM
JUDICIAL DEPARTMENT
DISPUR
GHY-6

4:THE ACCOUNTANT GENERAL
ASSAM PENSION
MAIDAM GAON
BELTOLA
GHY-2

Advocate for the Petitioner : MR.F ISLAM

Advocate for the Respondent : MR.C BARUAH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Date of Hearing & Judgment : 30.11.2023

Judgment and Order (Oral)

Heard Mr. S. Chakraborty, learned counsel for the petitioner. Also heard Mr. C.S. Hazarika, learned Government Advocate, Assam for the respondent no.1, Mr. M.M. Katakya, learned Standing Counsel, Animal Husbandry & Veterinary Department, and Mr. M. Ahmed, learned counsel for the respondent no.4.

2] This writ petition is filed by the petitioner seeking a direction from this Court to the respondent authorities for release of his pension and other retiral benefits due to him. The petitioner was appointed to the post of Lower Division Assistant-cum-Typist under the Animal Husbandry and Veterinary Department. He was subsequently promoted and he superannuated from his service on 31.05.2004.

3] During his service period, certain criminal proceedings were initiated against the petitioner, whereby the petitioner was convicted and sentenced to suffer rigorous imprisonment (R.I) for 2 (two) years and a fine of Rs.20,000/- in default rigorous imprisonment for another 2 (two) months for offence under

Section 120 B IPC. The petitioner was further sentenced to suffer R.I for 5 (five) years and a fine of Rs.50,000/- in default RI for 4 (four) months for offence under Section 420 IPC and suffer R.I. for 5 (five) years and a fine of Rs.50,000/- in default R.I. for another 4 (four) months under Section 13 (2) read with Section 13 (1), (d) P.C. Act, 1988. All the sentences were to run concurrently.

Pursuant there to, the petitioner filed an appeal before this Court being Criminal Appeal no. 15 of 2007. During the pendency of the criminal appeal, upon completion of his sentence and on payment of fine, the petitioner was released from jail on 10.09.2010. Thereafter, upon making necessary enquiries, he came to be informed that his provisional pension was stopped with effect from 01.06.2007 onwards without serving him any formal order or issuance of any show-cause notice from the Department. The learned counsel for the petitioner submits that pursuant to his superannuation on 31.05.2004 he was paid provisional pension with effect from 01.06.2004 to 31.05.2007. The petitioner represented before the authorities requesting for release of his regular pension by the representation dated 29.09.2010, which has been pending before the Directorate of A.H & V. Department. However, in spite of representation being made before the authorities, his prayer for grant of pensionary benefits have not yielded any result and the petitioner has been

deprived of his pensionary benefits as well as other retirement benefits. Learned counsel for the petitioner referring to Rule 21 of the Assam Services (Pension) Rules of 1969 submits that it is the Governor of the State who reserves the right to himself for withholding or withdrawing of any pension or any part thereof. Learned counsel for the petitioner submits that there is a proper procedure prescribed under Rule 21 of the Pension Rules of 1969 and this Rule 21 of the Pension Rules of 1969 specifically provides that it is the Governor of the State to whom the right of withholding or withdrawing of any pension is reserved. Learned counsel for the petitioner submits that as on date, no specific order for withholding or withdrawing the pension has been passed by the Departmental authorities in terms of Rule 21 of the pension. He submits that because of sheer neglect of the Department to address this issue, the petitioner has been deprived of his right to have the pension as prescribed under the Pension Rules of 1969. Notwithstanding that the petitioner has been convicted in a criminal case and subsequently, the petitioner has served his sentence and the Criminal Appeal no. 15 of 2007 pending before this Court has also been dismissed, and therefore, there is no occasion for the respondent authorities not to release his pension, more particularly, when there is no specific order passed by the Department. Learned counsel for the petitioner has relied upon the judgment of this Court passed in ***Jyotish Chandra Pathak vs. State of Assam*** reported in

2006 (2) GLR 430 whereby the observation was made that under Rule 21 of the Pension Rules of 1969 it is the Governor who is empowered to withhold the pension of any employee.

4] By filing an additional affidavit-in-opposition, Ms. M.M. Katakya, learned Standing Counsel, AH&V Department submits that an opinion of the judicial department was obtained and pursuant thereto the proposal for withdrawal of pension of the petitioner has been submitted before the competent authority. However, no specific order is available in the records to be placed before the Court. In the affidavit-in-opposition 2 (two) communications are referred to by the learned Standing Counsel, namely, communication dated 23.02.2010 and 12.10.2012 pursuant where to the provisional pension of the petitioner has been stopped.

5] Learned counsel for the parties have been heard and pleadings in the records have been perused.

6] It is seen that during the course of the hearing by order dated 23.11.2023, a direction was issued to the learned Standing Counsel, Veterinary Department to produce the relevant records to show the orders that may have been passed for stoppage of withdrawal of pension of the petitioner. In pursuance to that order, the learned Standing Counsel for the Department has produced the

records of the case. Upon careful perusal of the records, no specific order has been seen whereby it was directed to hold the pension of the petitioner. What is seen is that a proposal for stoppage of pension of the petitioner was forwarded by a communication dated 16.05.2013 for necessary approval of the Government as well as approval of the APSC as required under Rule 21 of the Pension Rules of 1969 . However, pursuant to this proposal, no specific orders are seen in the file to show that the Department had considered the issue and passed the necessary orders as required for stoppage or withdrawal of the pension in respect of the writ petitioner.

7] Upon considering the rival submissions of the parties and upon due perusal of the pleadings on record, the mandate of Rule 21 under the Assam Services (Pension) Rules of 1969 is required to be referred to. Rule 21 of the Pension Rules of 1969 is quoted below:

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.”

8] 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.

9] Be that as it may, upon taking into consideration the rival submissions and also upon careful perusal of the records, it is seen that as on date there is no order either by the Department or by the Governor under Rule 21 whereby this pension or provisional pension of the petitioner has been stopped or withdrawn. Under such circumstances, the Department is not able to support their stand as to under what provisions the pension of the petitioner has been stopped. No order to the effect is available in the records of the Department or on the pleadings filed on behalf of the Department. There is no order as mandated under Rule 21 that has been passed by the Governor or by any other appropriate authority in the name of the Governor for withdrawal or stoppage of the pension. As discussed, what is seen is that a proposal has been forwarded by the Director of the Department by its letter dated 16.05.2013 for taking

necessary action in respect of stopping of the pension on which it appears that no specific orders have been passed.

10] In these peculiar facts and circumstances, this Court has to arrive at the conclusion that the stoppage of pension or stoppage of withdrawal of pension of the petitioner has been done contrary to the prescriptions of the Rules of the 1969. In fact, there is no specific order available or issued by the Department as on date for stoppage of pension of the petitioner. Such action cannot be allowed to be sustained in view of specific provisions under the Assam Services (Pension) Rules of 1969.

11] The 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.

12] The Assam Services (Pension) Rules of 1969 was framed under the power

conferred under the proviso to Article 309 of the Constitution of India and in supersession to the Rules in the Assam Pension Manual, 1939. These were published in the Assam Gazette dated 1st October, 1969. These Rules elaborately prescribes the provisions for grant of pension to government employees where applicable. Under Rule 9 of the said Rules, it is provided that the term " *pension*", unless used in contradistinction to gratuity, " *pension*", includes gratuity and debt-cum- retirement gratuity. For a government servant who is eligible for pension, three conditions are prescribed under Rule 31.

- (i) The service must be under the Government;
- (ii). Employment must be substantive and permanent; and
- (iii) The service must be paid by the Government.

Insofar as the petitioner is concerned, there is no dispute that the petitioner is eligible for pension under the criteria prescribed under Rule 31 of the Pension Rules of 1969 and pension includes gratuity and death-cum-retirement gratuity as prescribed under Rule 9 of the same.

13] 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.

14] 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.”*

15] 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.

16] The judgment of Apex Court was again referred in ***Dr. Hira Lal vs. State of Bihar and Ors.*** reported in (2020) 4 SCC 346. It was reiterated by the Apex Court that the action of the State Government in withholding 10% of pension and gratuity on the basis of administrative circulars and Government resolution was unjustified. It was held in the facts and circumstances of the case that the administrative instructions and Executive Orders were not issued in exercise of the power under Article 309 of the Constitution and hence did not have the

force of law.

17] In the present proceedings upon the careful perusal of the relevant records and the pleadings and then, upon due consideration of the submissions rendered by the counsel for the Parties, it is seen that there is no specific order passed under Rule 21 of the Pension Rules of 1969 to withhold the provisional pension and/or gratuity and other retiral benefits payable to the petitioner. The Respondent Department has not been able to place any such order at least akin to any such orders that may have been passed under Rule 21 of the Pension Rules. The Apex Court in the judgments discussed above, has succinctly laid down law that not only the pension but also gratuity is a property and for which a writ of mandamus can be prayed for by the petitioner in the event of non release of his pension, any curtailment or withholding of pension by the employer, namely, the government, will have to be done in strict consonance with the provisions of the statute, namely, the Pension Rules. 1969. As has been discussed above, no such order or notification is placed before the Court to prove that the petitioner's pension has been stopped under Rule 21 of the Pension Rules for which specifies withholding or curtailing the pension and gratuity payable to a government employee. The Rule 21 being very specific that the power for withholding or curtailing the pension, or any part thereof, for any specified period of time is reserved only for the Governor of the State. What

is available before the Court is only a letter no.PI-5417/2013-14/1893 dated 16.05.2013, which is stated to have been forwarded to the appropriate authority seeking withholding of the pension payable to the petitioner under Rule 21 of the Pension Rules of 1969.

18] There is absolutely nothing on records of the Department to show that this proposal has been accepted and an order as required under the provisions of Rule 21 of the Pension Rules of 1969 has been issued withholding the pension of the petitioner.

19] Until and unless an order is passed in terms of Rule 21, it is made clear that the stoppage of pension of the petitioner or the action of the respondents in withholding the pension of the petitioner cannot be allowed to sustain. In view of the discussions held above and in view of the fact that no specific order has been noticed from the records or from the pleadings issued by the Department regarding the stoppage or withdrawal of the pension of the petitioner, this Court is of the considered view that the prayers made in the writ petition ought to be allowed. This Court issues a mandamus to the respondents to process the pension papers of the petitioner and release his pensionary and other retirement benefits including gratuity, found to be payable to the petitioner after making due adjustments with the provisional pension already released to

him and forthwith release the same to the petitioner. The respondents are therefore directed to comply with the directions of this order within a period of 60 (sixty) days from the date of receipt of a certified copy of this order. This direction is issued by the Court both to the Animal Husbandry & Veterinary Department as well as to the Accountant General's Office.

20] Writ petition accordingly stands allowed in terms of the above. No order as to cost.

JUDGE

Comparing Assistant