

GAHC010125802017



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

Case No. : WP(C)/1924/2017

SOLEMAN KHANDAKER
W/O LT. MOKBUL HUSSAIN VILL- BARAIKANDI, P.O. KANAIMARA
P.O.SOUTH SALMARA DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM and 6 ORS.
THROUGH THE COMMISSIONER and SECRETARY TO THE GOVT. OF
ASSAM, EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

PENSION and PUBLIC GRIEVANCE DEPARTMENT
DISPUR
GUWAHATI -06.

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE ACCOUNTANT GENERAL

ASSAM BELTOLA
GUWAHATI-29

5:THE DIRECTOR OF PENSION

ASSAM
DISPUR
GUWAHATI-06.

6:THE INSPECTOR OF SCHOOLS

D.D.C.
DHUBRI
DIST. DHUBRI
ASSAM

7:THE TREASURY OFFICER
DHUBRI
ASSA

Advocate for the Petitioner : MR.R ALI

Advocate for the Respondent : SC, SECONDARY EDUCATION

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (ORAL)

Date : 19-12-2023

The petitioner by way of the present writ petition has inter alia prayed for release of his pension and pensionary benefits along with the regularization of his period of absence w.e.f. 16.03.2009 to 29.02.2016 as on duty.

2. The petitioner was appointed as an Assistant Teacher of Kanaimara High School vide order dated 22.10.1989. The said school was thereafter provincialised w.e.f. 19.11.1991. The services of the petitioner were also provincialised along with the other eligible teachers of the school. The petitioner on 16.03.2009 submitted an application before the Director of Secondary Education, Assam seeking voluntary retirement. The said application was followed by a second application and the same was forwarded by the jurisdictional Inspector of Schools to the Headmaster of Kanaimara High School

seeking a detailed report thereon along with the service book of the petitioner. In the forwarding letter dated 08.07.2009, it has been noted that the petitioner had prayed for voluntary retirement for the purpose of contesting elections. The Director of Secondary Education, Assam vide communication dated 24.02.2010 required the jurisdictional Inspector of Schools to submit the non-liability certificate in respect of the petitioner in view of the application for voluntary retirement and further sought information as to whether the petitioner was attending school after submission of his application for voluntary retirement. The said application came to be forwarded to the Headmaster of Kanaimara High School for doing the needful.

3. The Inspector of Schools vide his communication dated 23.06.2010 requested the Director of Secondary Education to allow the petitioner to go on voluntary retirement and that he had no liabilities in the school. Thereafter, the Director of Secondary Education, Assam vide communication dated 22.07.2010 requested the Government in the Secondary Education Department to examine the prayer of the petitioner of voluntary retirement and to issue necessary instructions in this connection. In the said communication, it was held by the Director of Secondary Education, Assam, that the pension and pensionary benefits would be computed taking the period of his service w.e.f. 22.10.1989 to 02.03.2009 and accordingly the qualifying service of the petitioner would be 19 years 4 months 9 days.

4. Pending consideration of the application for voluntary retirement submitted by the petitioner, he on reaching his age of superannuation retired from his services on 29.02.2016. Pursuant to the retirement of the petitioner on 29.02.2016, the Director of Secondary Education, Assam initiated a disciplinary proceeding against the petitioner under Rule 9 of the Assam Services (Discipline

and Appeal) Rules, 1964 (for short 'the Rules of 1964') vide show cause notice dated 05.10.2016 basing on two charges. The charges levelled against the petitioner being relevant are extracted hereinbelow:

“1. That while, you were working as Asstt. Teacher of Kaniamara High School, Dist- Dhubri, you applied for V.R.S. on 16.03.2009 seeking V.R.S. w.e.f. 02.03.2009, as reported by the I/S, Dhubri.

As per F.R.56(C) Govt. servant has to submit V.R.S. application before 3 months previous Notice to the appointing authority.

Therefore, you are charged with violation of Govt. Rule.

2. That while, you were serving as Asstt. Teacher of Kanaimara High School, Dist- Dhubri, you submitted your nomination for contesting Parliamentary Election from 4No. Dhubri H.P. Constituency before acceptance of V.R.S. as reported by the I/S Dhubri.

Therefore, you are charged with violation of Govt. Rules.”

5. Thereafter, vide an order dated 06.10.2016, the Director of Secondary Education, Assam rejected the application submitted by the petitioner for proceeding on voluntary retirement. It is to be noted here that after issuance of the show cause notice dated 05.10.2016, no proceeding has been instituted in pursuance thereof till date.

6. I have heard Mr. R. Ali, learned counsel for the petitioner and Mr. R. Mazumdar, learned standing counsel for the respondent Nos. 1, 3 and 6, being the authorities in the Secondary Education Department. Also heard Mr. R. Talukdar, learned counsel for the respondent No. 4, being the Accountant General (A&E), Assam and Mr. P. Saikia, learned Junior Government Advocate for the respondent Nos. 2 and 5.

7. Mr. R. Ali, learned counsel for the petitioner by referring to the averments made in the writ petition submits that the voluntary retirement application made by the petitioner was so made in compliance with the provisions of FR56(C) and that the same was required to be accepted by the authorities, however on a

technical ground that the petitioner had not given a notice of three months, the said application was kept pending and ultimately the petitioner retired from services on 29.02.2016.

8. Mr. R. Ali, learned counsel for the petitioner further submits that the voluntary retirement application of the petitioner having not been accepted, the petitioner is deemed to be in service w.e.f. 16.03.2009 to 29.02.2016 and the same has to be regularized as on duty with all consequential benefits, including pay is to be released to the petitioner. It is the contention of Mr. R. Ali, learned counsel for the petitioner that the said period was also required to be considered as qualifying service for the purpose of computing his pension and pensionary benefits.

9. Mr. R. Ali, learned counsel for the petitioner further submits that the departmental proceedings which was instituted against the petitioner vide the show cause notice dated 05.10.2016, have remained in suspended animation till date and no proceeding worth has been held in pursuance to the issuance of the said show cause notice dated 05.10.2016. Mr. R. Ali by referring to the order dated 06.10.2016 by which the voluntary retirement application of the petitioner was rejected, has contended that the said rejection would naturally lead to the show cause notice dated 05.10.2016 to be rendered redundant.

10. Mr. R. Mazumdar, learned counsel for the respondents in the Secondary Education Department has contended that the petitioner has submitted his application for proceeding voluntary retirement w.e.f. 16.03.2009, but the same was not submitted in terms of the provisions of FR56(C) which mandates that such application of an eligible employee must be so made by giving three months prior notice, which is absent in the case of the application submitted by the petitioner. It is also the contention of Mr. R. Mazumdar that the school in

question having been provincialised only w.e.f. 19.11.1991 and the petitioner having become a regular Government servant only w.e.f the said date, he had not completed 20 years of regular service as mandated for proceeding voluntary retirement on the date the application was so submitted.

11. Mr. R. Mazumdar further submits that the action on the part of the petitioner in contesting the Parliamentary elections from No. 4 Dhubri H.P. Constituency without his application for voluntary retirement being accepted is a misconduct and the same cannot be condoned in any manner. It is also the contention of Mr. R. Mazumdar that w.e.f. 03.03.2009 till 29.02.2016, the petitioner had not attended his duty and there is no application seeking leave for the said period of absence from duties.

12. I have heard the parties to the proceeding and also considered the materials available on record.

13. The petitioner whose services were provincialised w.e.f. 19.11.1991 in Kanaimara High School was continuing therein as an Assistant Teacher and he on 16.03.2009 had submitted an application praying for voluntary retirement w.e.f. 02.03.2009. The petitioner admittedly had contested election before acceptance of his voluntary retirement application and accordingly, a departmental proceeding came to be instituted against the petitioner vide show cause notice dated 05.10.2016. The charges as levelled against the petitioner in the show cause notice dated 05.10.2016 pertained to the application made by him for proceeding on VRS without giving the three months mandatory notice required under the provisions of FR56(C). The second allegation pertains to the submission by him of his nomination for contesting Parliamentary elections from 4 No. Dhubri H.P. Constituency before acceptance of his VRS application.

14. As revealed from the order dated 06.10.2016 issued by the Director of Secondary Education, Assam, the petitioner's VRS application dated 16.03.2009 seeking VRS w.e.f. 02.03.2009 was rejected. In other words, the application of the petitioner for proceeding on VRS w.e.f. 02.03.2009 was never accepted by the competent authorities of the Education Department. However, the petitioner on his own notion decided not to attend his services w.e.f. 16.03.2009 i.e. the date on which he submitted his application for voluntary retirement and did not attend to his duties till 29.02.2016 i.e. the date of his retirement on attaining the age of superannuation.

15. The application as submitted by the petitioner for voluntary retirement having been rejected and the said rejection not being under challenge in the present proceedings, the said issue need not be considered by this Court. The effect of the said rejection of the VRS application, although after the petitioner had superannuated from his services, is that the petitioner was unauthorisedly absent w.e.f. 02.03.2009 to 29.02.2016. This aspect of the matter would have a bearing while considering the reliefs the petitioner would be entitled to in the present proceedings. The petitioner having continuously served in the school from the date of provincialisation of the school i.e. 19.11.1991 and having completed the requisite qualifying service, the petitioner would be entitled to pension and pensionary benefits under the provisions of the Assam Services (Pension) Rules, 1969 (for short 'the Rules of 1969'). However, what is to be considered here is the effect of the show cause notice dated 05.10.2016 issued to the petitioner drawing up departmental proceeding against him under Rule 9 of the Rules of 1964. The proceedings as initiated under the said Rules having not being concluded, the petitioner would not be entitled to regular pension and pensionary benefits and in terms of Rule 22 and would be entitled to only a

provisional pension, during pendency of the said proceedings.

16. Accordingly, the Director of Secondary Education, Assam, is required to take a call with regard to the departmental proceeding pending against the petitioner in pursuance to issuance of the show cause notice dated 05.10.2016. In the event the Director of Secondary Education, Assam decides that the said proceedings have to be continued with, he shall permit the petitioner to submit his written statement in defence and thereafter proceed with the matter in accordance with the procedure prescribed under Rule 9 of the Rules of 1964. The said proceeding shall necessarily be concluded within a period of six months from the date of receipt of certified copy of this order.

17. In the event, the Director on examination is of the opinion that in view of rejection of the application for VRS submitted by the petitioner on 16.03.2009, the departmental proceedings initiated vide show cause notice dated 05.10.2016 are to be dropped, he shall pass necessary orders in this connection. In such an eventuality, the petitioner would be eligible to his pension and pensionary benefits. However, the respondent authorities shall only treat the period from 19.11.1991 to 02.03.2009 as the qualifying service and the pension and pensionary benefits of the petitioner shall be computed taking only that period of service i.e. w.e.f. 19.11.1991 to 02.03.2009. The petitioner shall be released the pension and pensionary benefits as computed within a period of three months from the date of receipt of certified copy of this order.

18. It is clarified that the petitioner shall not be entitled to any salaries for the period w.e.f. 02.03.2009 to 29.02.2016, however, pension and pensionary benefits of the petitioner be released w.e.f. 01.03.2016 only.

19. In the event the departmental proceedings are proceeded with the

petitioner under Rule 22 of the Rules of 1969, the petitioner shall be authorized a provisional pension till conclusion of the said departmental proceedings. Thereafter, the benefits of pension and pensionary benefits that would be accruable to the petitioner shall be so computed and paid in terms of the orders that would be passed on conclusion of the proceedings against the petitioner.

20. It is made clear that the petitioner cannot be subjected to departmental proceedings for the unauthorized absence w.e.f 16.03.2009 to 29.02.2016 in view of the bar as contained in Rule 21 of the Rules of 1969, which bars initiation of departmental proceedings basing on an incident which occasioned four years prior to the date of such institution. No proceeding having been instituted with regard to the said unauthorized absence period of the petitioner till date, no proceeding in that connection can be initiated hereinafter.

21. In view of the conclusions, following directions are hereby issued:

(i) The Director of Secondary Education shall examine as to whether the disciplinary proceedings instituted against the petitioner vide the show cause notice dated 05.10.2016 is required to be continued with.

(a) In the event the Director of Secondary Education decides that the disciplinary proceedings instituted vide the show cause notice dated 05.10.2016 are to be continued with, the same be proceeded in terms of Rule 9 of the Rules of 1964 and concluded within a period 6(six) months from the date of receipt of certified copy of this order. The petitioner shall also be permitted to file his written statement in the matter, if not already filed.

(b) In the event the Director of Secondary Education on examination of the matter decides to drop the said show cause notice dated 05.10.2016, he will pass a reasoned order in this connection and furnish the same to the petitioner.

(ii) The petitioner shall be entitled to pension and pensionary benefits and for the said purpose, the qualifying service of the petitioner will be reckoned from 19.11.1991 to 02.03.2009 only. In other words, the pension and pensionary benefits of the petitioner shall be calculated by reckoning the period from 19.11.1991 to 02.03.2009 to be qualifying service.

(iii) In the event the departmental proceeding against the petitioner is continued in terms of the directions at (i)(a) above, the petitioner shall be authorized a provisional pension in terms of Rule 22 of the Rules of 1969.

(iv) On conclusion of the departmental proceedings instituted against the petitioner, his pension and pensionary benefits shall be released by computing the same reckoning the period of service of the petitioner w.e.f. 19.11.1991 to 02.03.2009 and the due amount shall be released to the petitioner within 3(three) months thereof after providing for the penalty that may be imposed upon the petitioner in the departmental proceedings.

(v) In the event the departmental proceedings against the petitioner are dropped, his pension and pensionary benefits shall be processed and computed by reckoning the period of service from 19.11.1991 to 02.03.2009 and the amount be released to him w.e.f. 01.03.2016.

(vi) It is clarified that for the unauthorized absence of the petitioner w.e.f. 02.03.2009 to 29.02.2016, he shall not be subjected to any departmental proceeding for such unauthorized absence for the said period inasmuch as, Rule 21 of the Rules of 1969 bars initiation of departmental proceedings basing on incident which occasioned four years prior to the date of such institution.

22. With the above directions, writ petition stands disposed of.

23. No order as to cost.

JUDGE

Comparing Assistant