

GAHC010181002022



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

Case No. : WP(C)/5967/2022

RAJIN CHANDRA DAS
S/O LATE HARIRAM DAS, R/O FATASHIL AMBARI, DHIRENPARA,
ITANAGAR, KULA BASUMATARY ROAD, HOUSE NO. 62, GUWAHATI-
781025, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
CO-OPERATION DEPARTMENT, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781006

2:THE DEPUTY SECRETARY TO GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

3:THE TREASURY OFFICER
KAMRUP (METRO DIST) TREASURY
GUWHAATI-781001
DIST-KAMRUP (M)
ASSAM

4:THE DEPUTY COMMISSIONER
(PERSONNEL BRANCH)
KAMRUP
AMINGAON

5:THE CIRCLE OFFICER
RANGIA REVENUE CIRCLE
ASSAM

6:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
BELTOLA
MAIDAMGAON
GUWAHATI-78102

Advocate for the Petitioner : MR P C MAZUMDAR

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 21-02-2023

Heard Mr. Tanmoy Mazumdar, the learned counsel appearing on behalf of the petitioner and Mr. G. Bordoloi, the learned Standing counsel appearing on behalf of the respondent Nos. 1 and 2. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the respondent No.3; Mr. C. S. Hazarika, the learned Standing counsel appearing on behalf of the respondent Nos. 4 and 5; Mr. D. Rabha, the learned Standing counsel appearing on behalf of the respondent No.6.

2. The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to release the arrear pension of the petitioner for the period from 01.04.2006 to 30.04.2018 along with interest. The case of the petitioner herein is that the petitioner retired as an Assistant Registrar of Co-operative Societies, Rangia on 31.03.2001 after rendering 35 years 5 months of service. Pursuant thereto, the Pension Payment Order was issued by the respondent authorities vide PPO No.KAM/85344, Case No. PEN-

1/PR/A/COOP/10/K-21489/02 in favour of the petitioner. Thereupon, the petitioner was drawing his regular pension. Unfortunately, the petitioner was suffering due to medical ailments for the period from 01.04.2006 to 30.04.2018 for which he failed to submit the required Life Certificate for drawing the pension before the authorities. Accordingly, the petitioner was not paid his pension during the said period.

3. The petitioner thereupon after recovering and becoming little stable, approached the respondent authorities vide a letter dated 14.05.2018 for withdrawal of pension and arrear w.e.f. 01.04.2006. The Office of the Deputy Commissioner, Kamrup (M), Guwahati (Treasury Establishment) vide a communication No.KTA/PEN-I/CORR/2018/312 dated 28.05.2018 requested the Principal Accountant General (A&E), Assam to revalidate and return back the both halves of the PPO for necessary payment. Thereupon, the Senior Accounts Officer of the Accountant General vide a communication dated 29.08.2018 informed the Treasury Officer to the effect that he was returning the pensioner's halves of PPO No.KAM/85344 in respect to the petitioner for making necessary arrangement for payment of the current pension w.e.f. 01.05.2018 in terms with Rule 226 of Assam Services (Pension) Rules, 1969. Further to that, it was further mentioned that as the disburser's halves of PPO of the petitioner could not be traced, the Treasury Officer was requested to prepare a duplicate PPO of the petitioner bearing PPO No.KAM/85344 in terms with Rule 225 of the Pension Rules of 1969 to make necessary arrangements for payment. Further, the Treasury Officer was requested to furnish a detailed statement of calculation of the undrawn arrear pension in respect of the petitioner for the period from 01.04.2006 to 30.04.2018 for obtaining necessary sanction from the Government before authorization of the same.

4. Subsequent thereto, the Treasury Officer vide a communication dated 31.10.2018 sent the arrear pension statement of the petitioner amounting to Rs.27,78,112/- only recoverable commuted pension Rs.2,29,536/- only w.e.f. 01.04.2006 to 30.04.2018 and requested for necessary sanction. It further appears from the records that on 17.12.2018, the Senior Accounts Officer issued a communication to the Secretary to the Government of Assam, Co-operation Department to the effect stating inter alia that the undrawn arrear pension amounting to Rs.25,48,576/- in lump for the period from 01.04.2006 to 30.04.2018 has been certified by the Treasury Officer, Kamrup (M) for which a request was made to make necessary arrangement for sanction of the aforesaid undrawn arrear pension for payment to the petitioner. Pursuant to the said communication, the Deputy Secretary to the Government of Assam, Co-operation Department issued a communication to the petitioner to furnish a Life Certificate. The petitioner vide a communication dated 08.03.2021 submitted the Life Certificate. It is however relevant to take note of that in spite of submission of the Life Certificate, the Secretary to the Government of Assam, Co-operation Department had issued a communication to the Deputy Commissioner, Kamrup to conduct an enquiry and submit report on the genuineness of the claim and documentary evidence in support of the claim for non-drawal of pension for such a long period and for further taking action on the matter vide a communication dated 23.09.2021. It further reveals that pursuant to the communication dated 23.09.2021, there was some enquiry being conducted however, as there was a delay in disbursing the arrear pension, the petitioner has approached this Court by filing this writ petition on 08.09.2022 claiming the reliefs as already stated supra.

5. It reveals that this Court vide an order dated 14.09.2022 had issued notice

making it returnable by 3 (three) weeks and the learned Government Advocate was directed to obtain instructions as regards the enquiry so conducted by the Deputy Commissioner, Kamrup regarding the genuineness of the claim of the petitioner. It further appears from the records that the respondent No.2 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that the sanction pertaining to undrawn arrear amounting to Rs.25,48,576/- w.e.f. 01.04.2006 to 30.04.2018 has been processed and the petitioner was asked to furnish all the original documents vide a communication dated 15.07.2019. Further, it was mentioned that the P&P.G Department was requested to offer their views regarding sanction of the undrawn arrear pension in respect to the petitioner and to furnish enquiry report from the concerned Deputy Commissioner regarding genuineness of the case and accordingly, a letter was issued to the Deputy Commissioner, Kamrup dated 06.03.2020. It further appears from the records that on 11.10.2022, the Under Secretary to the Government of Assam, Co-operation Department had also issued another communication to the Deputy Commissioner Kamrup requesting to submit the report on genuineness of the claim and documentary evidence in support of the claim for non-drawal of pension for such a long period.

6. This Court have heard the learned counsels for the parties and have perused the materials on record. It is pertinent to take note of that the right to receive the pension is a vested right upon the pensioner and this right stood vested upon the petitioner herein in terms with the provisions of the Assam Services (Pension) Rules, 1969 which are Rules framed under Article 309 of the Constitution. As such the right to receive the pension of the petitioner is a statutory vested right. No doubt in order to prevent any fraud, the Government have rightly incorporated the necessity of furnishing of the Life Certificate

annually. Therefore, once the Pension Payment Order have been issued, the only requirement which the pensioner has to fulfill is to furnish the Life Certificate annually. It appears from the record that the petitioner pursuant to the communication dated 02.11.2020 has submitted the Life Certificate on 08.03.2021. Not only that, the Office of the Accountant General have also recorded in its order dated 29.08.2018 on the basis of the Life Certificate furnished and thereby directed the respondent No.3 i.e. the Treasury Officer to pay the pension to the petitioner w.e.f. 01.05.2018. Under such circumstances, this Court does not see any reason for conducting any further enquiry in the matter.

7. Accordingly, this Court therefore directs the respondent authorities jointly as well as collectively to take appropriate steps so that the petitioner's arrear pension amounting to Rs.25,48,576/- is disbursed to the petitioner to his Savings Account bearing Account No.20483482879 maintained in the in the State Bank of India, Dhirenpara Branch, IFSC : SBIN0011621 within a period of 60 days from the date of the instant order. It is further mentioned that in case, the respondents fails to make the payment within the said period, the petitioner shall be entitled to further interest @12% upon expiry of the said period of 60 days and till such realization. It is further mentioned that in such circumstances, the interest if so paid, shall be recovered from the salary of the erring officials in question by the Respondent Department.

8. With above observations and directions, the instant petition stands disposed of.

9. Copy of this order be served upon Mr. G. Bordoloi, the learned counsel for the Cooperation Department, Mr. R. Borpujari, the learned counsel for the

Finance Department, Mr. C. S. Hazarika, the learned counsel for the Deputy Commissioner, Kamrup (Rural) and Mr. D. Rabha, the learned counsel for the Accountant General (AE) for expeditious compliance.

JUDGE

Comparing Assistant