

GAHC010258002023



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

Case No. : WP(C)/6642/2023

MD DORSAD ALI
SON OF LATE MONSER ALI,
RESIDENT OF VILLAGE- SIALEKHATI GAON,
P.O.- KOCHARIHAT, P.S.- GOLAGHAT,
DIST.- GOLAGHAT, ASSAM.
PIN- 785702.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOLAGHAT
ASSAM
PIN- 785621.

4:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

18.11.2023

1. Heard Mr. P.K. Das, learned counsel for the petitioner, who submits that the petitioner retired from service from the Office of the District Elementary Education Officer, Golaghat on 31.10.2019, where he had worked as Senior Assistant. The pension papers of the petitioner were duly submitted by the respondent no.3 to the Office of the Accountant General, Assam, vide letter dated 27.08.2109 and the Office of the Accountant General, Assam finalised the pension proposal of the petitioner. The Pension Payment Order (PPO) No.913211260455 was issued by the Office of the Accountant General, Assam and the same was duly communicated to the Treasury Officer, Golaghat.

2. The petitioner's counsel submits that though all the other pensionary benefits payable to the petitioner had been paid to the petitioner, the petitioner has not been paid his regular monthly pension due to the drawal/non-drawal certificate regarding provisional pension/family pension and gratuity, not having been issued by the respondent no.3.

3. The petitioner's counsel submits that the respondent no.3 had issued a letter dated 11.09.2023 to the petitioner regarding some clarifications to be made in respect of the discrepancy in the Cash Book and non-

disbursement/disbursement of Cash that was kept in the office of the respondent no.3. The petitioner, vide letter dated 22.09.2023, had clarified the issues while making his reply to the respondent no.3's letter dated 11.09.2023. The petitioner's counsel submits that as there is no departmental proceeding or criminal proceedings initiated against the petitioner till today and as all the issues needing clarifications in terms of the letter dated 11.09.2023, having been clarified by the petitioner, the respondent no.3 should be directed to issue the drawal/non-drawal certificate and the respondents should be made to pay the monthly pension to the petitioner.

4. Mr. N.J. Khataniar, learned counsel for the Education Department and Ms. J. Das, learned counsel appearing on behalf of Mr. R. Ahmed, learned counsel for the respondent no.4 submit that they have got no comments to make, inasmuch as, they have not received any instructions in the matter.

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

6. Rule 21 of the Assam Services (Pension) Rules, 1969 provides that the whole or part of any pension can be withheld for the purpose of recovery of any pecuniary loss caused to the Government, if the Government servant is found guilty of grave misconduct or negligence during the period of his service. However, in the present case no departmental/criminal proceeding has been initiated against the petitioner even till today, i.e., more than 4 years after his retirement.

7. Rule 21(c) of the Assam Services (Pension) Rules, 1969 provides that no

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.

8. In the present case, despite the petitioner having retired more than 4 years ago, no criminal proceeding has been initiated against the petitioner. As such, there is no justification for the respondent no.3 not to issue drawal/non-drawal certificate to the petitioner as is required in pursuance to the letter no.PR-2/EDN/13/062352/2019 dated 19.11.2019, issued by the Senior Accounts Officer, Office of the Accountant General (A&E), Assam and addressed to the Treasury Officer, Golaghat.

9. In view of the above reasons, the respondent no.3 is directed to issue the drawal/non-drawal certificate immediately and submit the same to the Treasury Officer, Golaghat to enable the petitioner to receive his regular monthly pension. The respondents shall consequently release the regular monthly pension to the petitioner.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant