

GAHC010271822022



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

Case No. : Cont.Cas(C)/27/2023

HC(B)(EX-S) (RETIRED) SRI CHAKRADHAR DEKA
S/O LATE DHIRMESWAR DEKA, R/O GANMESHNAGAR, GUWAHATI, P.O.-
BAMUNIMAIDAN, P.S.-CHANDMARI, DIST-KAMRUP (M), ASSAM-781021

VERSUS

GYANENDRA PRATAP SINGH, IPS AND 2 ORS
SPL. DIRECTOR GENERAL OF POLICE (BORDER), ASSAM, SRIMANTAPUR,
GUWHAATI-781032

2:VIR VIKRAM GOGOI
APS
SUPERINTENDENT OF POLICE (BORDER)
ASSAM
SRIMANTAPUR
GUWHAATI-781032

3:BHANWAR LAL MEENA
IPS
THE SUPERINTENDENT OF RAILWAY POLICE
ASSAM
PANDU
GUWAHATI-78101

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent : MR. T J MAHANTA (R2)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

15.05.2023

Heard Mr. H. Gupta, learned counsel for the petitioner. Also heard Mr. S. S. Roy, learned counsel for the respondent No.1 and Mr. P. P. Dutta, learned counsel for the respondent No.2.

Alleging wilful disobedience of the order dated 17.06.2022 passed by this Court in WP(C) No.2258/2020 this Contempt Case has been filed inter-alia alleging that after the writ petition was disposed of, not to speak of finalising the provisional pension of the petitioner as per his entitlement in the time scale, even the provisional pension earlier paid to him has been discontinued. Not only that, the respondents have even issued an order for recovery of the amount of provisional pension already paid to the petitioner. Mr. Gupta submits that these are issues which will have to be dealt with in the present Contempt Case in view of the observations made by the learned Single Judge in paragraphs 10, 11 and 12 of the order.

Mr. Roy, on the other hand, submits that the provisional pension was being paid to the petitioner in compliance of the interim order passed by this Court.

However, as per the Service Rules, no pension is payable to be petitioner.

Since the learned counsel for the petitioner has relied upon the observations made in paragraphs 10, 11 and 12 of the order dated 17.06.2022, the observations are reproduced herein below for ready reference :-

“10. A reading of the provisions in the order dated 23.09.2011 makes it discernable that for the employees of the category of the petitioner, although they may be appointed at a fixed scale of pay, but there is an entitlement provided by the said order for time scale of pay.

Accordingly, if the petitioner satisfies the requirement of the order dated

23.09.2011, he would also be entitled to a time scale for the service he had rendered. In view of such conclusion, we direct the respondent no. 2 being the Additional Director General of Police, HQ - Assam to call for the records containing the service particulars of the petitioner and if it is found that he was an ex serviceman and appointed at a fixed pay under the PIF Scheme, a reasoned order be passed for his entitlement for a time scale of pay as provided in the order dated 23.09.2011. If upon verification of the records, the Additional Director General of Police finds anything contrary which may disentitle the petitioner, a reasoned order accordingly may also be passed.

11. The reasoned order be passed within a period of two months from the date of receipt of the certified copy of this order. If the reasoned order results in an entitlement of the petitioner for the time scale of pay for the period of service he had actually rendered notwithstanding that there is a break in service because of the order of discharge, an appropriate calculation be made for his entitlement as per the time scale of pay and the benefits be given to him within a period of another two months thereafter.

12. As the writ petitioner had retired from service and is drawing the provisional pension, if the order for entitlement of time scale goes in his favour, the provisional pension be also accordingly modified.”

After going through the observations made by the learned Single Judge, I do not find any specific direction contained therein adjudicating on the question of entitlement of the petitioner to receive pension and that too, at a particular time scale. Rather, the matter has been left open to be decided by the appropriate authorities on verification of the record. If the respondents have found that the petitioner is not entitled to pension and the amount paid as provisional pension is liable to be recovered, the same, in the opinion of this Court, gives rise to a fresh cause of action which cannot be gone into in a

Contempt Case.

Therefore, by granting liberty to the petitioner to seek redressal of his grievance in an appropriate proceeding, this Contempt Case stands closed.

JUDGE

Comparing Assistant