

GAHC040005192021

2024:GAU-AP:869



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

Case No. : WA/7/2021

The State of AP and Others
Address - REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF
ARUNACHAL PRADESH

2: THE PRINCIPAL SECRETARY (VIGILANCE)

Age:

Occupation :

GOVT. OF ARUNACHAL PRADESH ITANAGAR

3: THE PRINCIPAL SECRETARY (PERSONNEL)

Age:

Occupation :

GOVT.OF ARUNACHAL PRADESH
ITANAGAR

4: THE DEPUTY COMMISSIONER

Age:

Occupation :

DISTRICT- PAPUM PARE YUPIA

5: THE UNDER SECREATRY (VIGILANCE)

Age:

Occupation :

GOVT.OF ARUNACHAL PRADESH
ITANAGAR

6: THE DEPUTY SUPERINTENDENT OF POLICE-CUM-OFFICER-IN CHARGE
SIC (VIGILANCE)

Age:

Occupation :

DISTRICT-PAPUM PARE PS-CHIMP

VERSUS

Shri A.C. Bauruah
Address - S/O- Late Debeswar Baruah R/O- Pomkia Village P.S- Golaghat, District-
Golaghat, Assam

Advocate for the Petitioner : Mr. Ojing Pada, SPL.P.P., Arunachal Pradesh.

Advocate for the Respondent : Mr. Taba Tagum, Mr. Likha Tabin, Mr. R koyu.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT & ORDER (CAV)

Date : 24-09-2024

(Kardak Ete, J.)

Heard Mr. O. Pada, learned Counsel for the appellant-State. And also heard Mr. T. Tagum, learned counsel for the respondent.

2. This Intra-Court appeal is directed against the judgment and order dated 24.11.2020, passed by the learned Single Judge in WP(C) No.460(AP)/2019, whereby, the writ petition has been allowed by holding that the departmental proceedings and the police investigation against the respondent/petitioner are illegal and *void ab initio*, thereby, setting aside the U.O Note dated 07.05.2015, vide No.SLA/PER-01/2015-16/359 and the Vigilance Inquiry No.SIC(VIG.) P.S. Enquiry No.38/2017 and other consequential orders or proceedings. The learned Single Judge has also directed to pay the pension to the respondent/petitioner.

3. The respondent/petitioner was an Arunachal Pradesh Civil Service cadre officer, who had served in various capacities under the Govt. of Arunachal

Pradesh and has retired from the post of Deputy Secretary (Power and Hydro Power), Govt. of Arunachal Pradesh, on attaining the age of superannuation on 31.12.2017.

4. Genesis of case emanates from the U.O. Note No.SLA/PER-01/2015-16/359, by one Shri Nabam Rebia, the then Speaker of the Arunachal Pradesh Legislative Assembly, to the Chief Secretary, Govt. of Arunachal Pradesh, alleging gross illegality/irregularities in recommendation for issuance of land allotment orders/ Land Possession Certificates ('LPC' in short) in Doimukh area. It has alleged that the respondent/petitioner while serving as Extra Assistant Commissioner, Doimukh during the year 2004 to 2009 had committed gross irregularities in issuing the land allotment orders/LPC in Doimukh area and had also recommended for issuance of LPC against the Block Development Office Complex and other Government buildings and land in exchange of gifts and bribes without following codal formalities.

5. Vide another U.O. Note No.SLA/PER-01/2015/346 dated 09.09.2015 addressed to the Chief Secretary, Govt. of Arunachal Pradesh, while referring to the earlier U.O. Note dated 07.05.2015, it was informed that the complainant had entrusted Panchayat members/leaders and some senior citizens of Doimukh area to cross-check the matter to ascertain the gravity of the allegation. On cross-checking, it was revealed that no such major irregularities have been found against the respondent/ petitioner and therefore, a request was made therein to drop the case against the respondent/petitioner.

Although, the complaint vide U.O. Note dated 07.05.2015 was sought for withdrawal and for dropping of the investigation/enquiry against the

respondent/ petitioner vide U.O. Note dated 09.09.2015, the same was not considered. The Deputy Secretary (Personnel), forwarded the complaint to the Deputy Commissioner, Papum Pare District, Yupia and had directed to conduct the necessary enquiry into the allegation and to submit the report within a fortnight by 20.06.2016. Accordingly, the Deputy Commissioner, Papum Pare District, has conducted an enquiry and had observed that no documents of any kind could be revealed against the respondent/petitioner of alleged land allotment/LPC over the government land after 7(seven) years of his transfer from Doimukh.

6. The inquiry report was submitted on 16.12.2016. Thereafter, the Under Secretary (Vigilance), Govt. of Arunachal Pradesh had endorsed the case to the Officer-in-Charge, SIC (Vig.) Police Station, Chimpu for fresh enquiry vide forwarding letter dated 15.09.2017. On receipt of the letter dated 15.09.2017, the Officer-in-Charge, SIC(Vig.) registered the same being Vigilance Inquiry No.SIC(VIG.) P.S Enquiry No.38/2017 and initiated a fresh enquiry. On completion of the enquiry, the SIC(Vig.) has submitted an enquiry report before the competent authority with a finding that the respondent/petitioner is found liable for prosecution under Section 13(2) of the Prevention of Corruption Act, 1988 and other sections of the Indian Penal Code due to his alleged role in allotment of land and LPCs to private individuals over the government land. Accordingly, a regular case being SIC(VIG.) No.13/2019 under Sections 420/120(B) IPC *read with* Section 13(2) of the Prevention of Corruption Act, 1988 against the respondent/petitioner was registered.

7. A vigilance clearance was sought for by the Under Secretary (Vigilance),

Govt. of Arunachal Pradesh vide letter dated 22.12.2017 in respect of the respondent/ petitioner, on which the Officer-in-Officer, SIC(Vig.), P.S., Chimpu, vide its letter dated 26.12.2017 had furnished the vigilance clearance, reflecting that the enquiry is in progress.

8. It is contended that there is a clear finding of malpractice and illegal gratification in exchange of recommendation of land allotment and issuing of LPCs against the respondent/petitioner, while he was serving as EAC, Doimukh, though no departmental enquiry has been initiated against the respondent/petitioner.

9. The respondent/petitioner after retirement from service on 31.12.2017 applied for release of his regular pension and service gratuity. However, the same was denied as No Objection Certificate (NOC) or vigilance clearance was obtained by the respondent/petitioner from the Vigilance Department. The authorities have denied issuance of NOC/vigilance clearance to the respondent/petitioner on the ground that a criminal case being SIC (Vig.) No/13/2019, under Sections 420/120(B) IPC r/w Section 13(2) of P.C. Act, which was pending against the respondent/petitioner.

10. Aggrieved by the action of the respondent authorities, the respondent/petitioner has filed the present WP(C) No.460(AP)/2019, challenging the impugned action of the State authorities in not releasing the regular pension and service gratuity and prayed for quashing and setting aside the impugned U.O. note dated 07.05.2015; Vigilance enquiry No.38/2017 and other consequential orders/ proceedings thereof. The learned Single Judge disposed

of the writ petition vide the judgment and order dated 24.11.2020, and allowed the prayer of the respondent/ petitioner, and thereby, directed the respondent authorities to pay the pension to the respondent/petitioner within next 3(three) months. Hence, the present writ appeal.

11. Mr. Pada, learned counsel for the appellant-State, submits that the enquiry report clearly reflects various irregularities in the recommendation of the land allotment and LPC over the government land to the private individuals by the respondent/petitioner. As per the enquiry report of SIC(Vig.), the respondent/petitioner while serving as EAC, Doimukh was found liable to be prosecuted under Section 13(2) of P.C. Act and other sections of IPC due to his alleged role in allotment of LPCs to private individuals of the government property. The pension and service gratuity of the respondent/petitioner was withheld because vigilance clearance was not given to him on account of pending regular case being SIC(Vig.) No.13/2019, under Section 420/120(B) of IPC r/w Section 13(2) of P.C Act.

12. Mr. Pada, learned counsel, submits that the learned Single Judge has failed to appreciate the stand taken by the State respondents with regard to the criminal investigation pending against the respondent/petitioner for illegally issuing the land allotment orders and LPCs to the private individuals over the government property. He submits that since the criminal proceedings is pending, no NOC or vigilance clearance can be issued for releasing the pension and service gratuity in favour of the respondent/ petitioner.

13. Mr. Pada, learned counsel, submits that the learned Single Judge has

erroneously held that if the disciplinary proceedings are not instituted against the government servants by the disciplinary authority, while he was in service, then prior sanction of the competent authority is required to institute such proceedings against such person. The learned Single Judge has also erroneously held that it is also clear that such disciplinary proceedings shall not be in respect of an event which take place more than 4(four) years before institution of such disciplinary proceedings and wrongly applied the ratio laid down by the Hon'ble Supreme Court in the case of ***Brajendra Singh Yambem Vs. Union of India***, reported in **(2016) 9 SCC 20**, whereas no disciplinary proceedings have been initiated against the respondent/petitioner.

14. Mr. Pada, learned counsel, further submits that the learned Single Judge has erroneously held that Rule 9(2)(b) of CCS (Pension) Rules, 1972, makes it clear that the entire investigation or enquiry or departmental proceedings that have been going on against the respondent/petitioner is against the law and wrongly held that there is clear finding of some competent authorities that the complaint made against the respondent/petitioner is baseless. Even the complainant has written to the respondents stating that his earlier complaint against the respondent/petitioner is baseless and to drop any enquiry/proceedings. Thereby, held that the departmental proceedings and the police investigation against the respondent/petitioner is illegal and *void ab initio* and set aside the order dated 07.05.2015; vigilance Inquiry No.SIC(Vig.) P.S. Enquiry No.38/2017 and other such consequential orders or proceedings and directed to pay the pension to the respondent/petitioner, as no departmental proceedings has been initiated against the respondent/petitioner. He submits that the NOC or vigilance clearance has been denied to the respondent/ petitioner due to

pendency of criminal proceedings against him. Therefore, Rule 9(2)(b) of CCS (Pension) Rules, 1972 is not applicable. Thus, he submits that the judgment and order dated 24.11.2020, passed by the learned Single Judge under challenge may be set aside and quashed.

15. Mr. T. Tagum, learned counsel for the respondent/petitioner, referring to the provision of Rule 9(2)(b) of the CCS (Pension) Rules, 1972, submits that the government has no authority to institute any enquiry or departmental proceedings against an employee in respect of any matter after 4(four) years of such occurrence. He submits that in the present case, after 6(six) years of alleged occurrence, the complaint was made against the respondent/petitioner and the proceedings was initiated thereafter. He further referred to the sub-rule (4) of Rule 9 of CCS (Pension) Rules, 1972 to project that in the case of Government servant who has retired on attaining the age of superannuation or other wise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

16. Mr. Tagum, learned counsel has heavily relied on the case of **Brajendra Singh Yambem** (supra), wherein the Hon'ble Supreme Court has held that when any disciplinary proceedings are not instituted against the government servants by the disciplinary authority, while he was in service, then prior sanction of the President of India is required to institute such proceedings against such person and further held that such sanction shall not be given in respect of an event which take place more than 4(four) years before institution of such disciplinary proceedings. He submits that since the investigation/ judicial

proceedings is pending and instituted after 6(six) years in respect of an event which take place more than 4(four) years is void. He, therefore, submits that the criminal proceeding against the respondent/petitioner is a nullity and the respondent/petitioner is entitled to be paid the entire pension and other service benefits.

17. We have considered the submissions advanced by the learned counsel for the parties and perused the materials available on record.

18. On consideration, we find that the case revolves around the applicability of the provisions of Rule 9(2)(b) of the CCS (Pension) Rules, 1972, on which the parties have sought to interpret to supports their respective stands. We deem it apposite to refer to the relevant provisions of Rule 9 of the CCS (Pension) Rules, 1972, which are quoted herein below:

“9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of (Rupees Three thousand five hundred) per mensem.]

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before

his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order dismissal from service could be made in relation to the Government servant during his service.

(3) 'Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

*(5) ******

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.”

19. Bare reading of Sub-rule (2)(b) of Rule 9 of the CCS (Pension) Rules, 1972, goes to show that if the departmental proceeding is not instituted while the government servant was in service, whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the President. It shall not be also instituted in respect of any event which took place more than 4(four) years before such institution and shall be conducted by such authority and in such place as the President of India may direct and in accordance with the procedure applicable to departmental proceedings in relation to the government servant during his service.

20. Sub-rule (4) of Rule 9, provides that in the case of government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule(2), a provisional pension as provided in Rule 69 shall be sanctioned.

21. The learned Single Judge has held that Rule 9(2)(b) of CCS (Pension) Rules, 1972, makes it clear that the entire investigation or enquiry or departmental proceeding that have been going on against the petitioner is

against the law. Moreover, there is clear finding of some competent authorities that the complaint made against the petitioner is baseless. Even the complainant has written to the respondents stating that his earlier complaint against the petitioner is baseless. The learned Single Judge further held that in ***Deokinandan Prasad vs. State of Bihar & Ors.***, reported in **(1971) 2 SCC 330**, the Hon'ble Supreme Court has held that right to receive pension is a property under Article 31 (1) of the Constitution of and by mere executive order, the State has no power to withhold the same. The learned Single Judge consequently held that the Departmental Proceeding and the Police Investigation against the respondent/petitioner are illegal and *void ab initio*. Therefore, allowed the writ petition resultantly, set aside the UO. Note No.SLA/Per-01/2015-16/359, dated 07.05.2015, and the Vigilance Inquiry No.SIC (VIG) Police Station Enquiry No.38/2017, and other such consequential orders or proceedings, and directed the appellant to pay the pension to the petitioner within next 3 (three) months.

22. The learned Single Judge by referring to the case of ***Brajendra Singh Yambem*** (Supra) has held that in a similarly situated situation, the Hon'ble Supreme Court has held that if the disciplinary proceeding are not instituted against the government servant by the disciplinary authority, while he was in service, then prior sanction of the President of India is required to institute such proceedings against such person. The Apex Court further held that it is also clear that such sanction shall not be in respect of an event which take place more than 4(four) years before institution of such disciplinary proceedings. Therefore, in the opinion of learned Single Judge, the ratio laid down by the Hon'ble Supreme Court is clearly applicable in the present case.

23. On careful consideration of materials and perusal of the impugned judgment and order dated 24.11.2020 passed by the learned Single Judge, we are of the view that the learned Single Judge has erred in holding that Sub-rule (2)(b) of Rule 9 of CCS (Pension) Rules, 1972 makes it clear that the entire investigation or enquiry or departmental proceedings that have been going on against the respondent/petitioner is against the law.

It is clear from the language of Sub-rule 2(b)(ii) of Rule 9 of the CCS (Pension) Rules, 1972 that it speaks of departmental proceedings only and not of criminal proceedings.

24. The learned Single Judge has failed to take notice of the fact that though no departmental proceedings were initiated against the respondent/petitioner but a criminal case being SIC (Vig.) No.13/2019, under Sections 420/ 120(B) IPC r/w Section 12(3) of P.C. Act, 1988 has been registered against him. Rule 9(2)(b) of the CCS (Pension) Rules bars institution of departmental proceedings against a retired employee where there is no sanction of President and the said proceedings are in respect of any event that took place more than 4(four) years before such institution, but there is no bar in initiating criminal proceeding against an employee. Therefore, we are of the firm view that the learned Single Judge has wrongly placed reliance on the provisions of Rule 9(2)(b) of the CCS (Pension) Rules.

25. The case relied on by the learned counsel for the respondent/petitioner, i.e. **Brajendra Singh Yambem** (supra), and agreed and accepted by the learned Single Judge would not be applicable at all, as in that case, only

disciplinary proceedings was initiated against the government servant in respect of an event which takes place more than 4(four) years before institution of such proceedings and not the criminal proceedings. Thus, we are of the view that the learned Single Judge has misconstrued the ratio of the judgment of the Hon'ble Supreme Court.

26. Having regard to the Sub-rule (4) of Rule 9, as relied on by the learned counsel for the respondent/ petitioner, we are of the view that same is applicable equally in case of departmental proceedings as well as criminal proceedings, and provisional pension is required to be sanctioned as provided under Rule 69 of the CCS (Pension) Rules, 1972 when departmental proceedings or criminal proceedings are instituted against a retired employee.

27. In view of the above discussions made herein above, we are of the view that since no departmental proceedings has been initiated against the respondent/ petitioner, and only criminal proceedings have been instituted against him, the provisions of Rule 9(2)(b) of CCS(Pension) Rules, 1972 cannot be invoked. We are also of the view that the learned Single Judge appears to have misconstrued the ratio of the decision in the case of **Brajendra Singh Yambem** (supra) because same is not applicable in the facts and circumstances of the present case.

28. Consequently, the impugned judgment and order dated 24.11.2020, passed by the learned Single Judge in WP(C) No.460(AP)/2019 stands set aside and quashed.

29. However, taking note of the fact that after passing of the impugned

order the Government has already released the pension of the respondent/petitioner and he is getting his monthly pension, we think it proper to direct the appellants herein to continue the payment of monthly pension to the respondent/petitioner, however, the said payment would remain subject to any decision taken by the competent authority under Rule 9(1) of the CCS (Pension) Rules, 1972 after conclusion of the criminal proceedings initiated against the respondent/petitioner.

30. The writ appeal stands disposed of with the above directions.

JUDGE

CHIEF JUSTICE

Comparing Assistant