



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

Case No. : WP(C)/496/2023

Tobing Lego
S/o Late Pakgong Lego, Junior Engineer, Office of the Superintending
Engineer, Rural Works Department East Siang District, Arunachal Pradesh.
Contact No. 9612105117

VERSUS

The State of AP and 2 Others represented by Secretary, Rural works
Department, Government of Arunachal Pradesh, Itanagar.

2:The Chief Engineer (Coordination)
Age: 0
Occupation :
Rural works Department Government of Arunachal Pradesh Itanagar.

3:The Superintending Engineer
Age: 0 Occupation :
Rural works Department East Siang District Arunachal Pradesh

Advocate for the Petitioner : R. Saikia, L. Nochi, L. Bam, B. Taipodia, I. Bam, H. Ete.

Advocate for the Respondent : Gimi Tarak

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

Judgment and Order (Oral)

Date : 12-03-2024

Heard Mr. R. Saikia, learned counsel for the petitioner. Also heard Mr. G. Tarak, learned Standing counsel, Rural Works Department for the State respondents.

2. The grievance raised by the petitioner in the present proceedings is with regard to his non-release from his services in pursuance to completion of the mandatory period as prescribed in pursuance to the application submitted by him for being granted voluntary retirement.

3. The petitioner while working as a Junior Engineer in the Office of the Superintendent Engineer, Rural Works Department, Pasighat, on completion of about 22 years of service, had submitted an application dated 29.06.2023 before the Chief Engineer (Coordination) Rural Works Department praying for being retired from service on voluntary retirement w.e.f. 30.09.2023. The petitioner, as mandated, had also furnished a No Objection Certificate (NOC) from the Office of the Deputy Commissioner, East Siang District, Pasighat, certifying that the petitioner had not encroached upon any Government land nor has caused any damage or abetted encroachment on Government Land/Public Property by a private person.

4. The application as submitted by the petitioner, dated 29.06.2023 for proceeding on voluntary retirement, w.e.f. 30.09.2023, not having been responded to, he again vide his representation dated 04.10.2023, approached the Chief Engineer (Coordinator), Rural Works Department, Govt. of Arunachal Pradesh, Itanagar, and therein, contended that the mandatory period as prescribed under Rule 48 A(1) & (2) of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as the Rules

of 1972) having elapsed, his Voluntary Retirement Application is to be deemed to have been accepted and accordingly, he prayed that a formal order of release be issued to him, releasing him from his service as Junior Engineer in RWD. The said applications having not evoked any response, the present proceedings were initiated before this Court.

5. The issue arising in the present proceeding as to whether on elapse of the mandatory period of 3(three) months as prescribed under the provisions of *Rule 48 A(1) & (2) of the CCS (Pension) Rules, 1972*, the application for voluntary retirement would be deemed to have been accepted.

6. Provisions of *Rule 48 A(1) & (2) of the CCS (Pension) Rules, 1972*, being relevant, is quoted hereinbelow:

"...48-A.Retirement on completion of 20 years' qualifying service.-

(1) At any time after a Government servant has completed Twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that-.....

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority;

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

7. A perusal of the said Rule would reveal that any Government Servant completing 20(twenty) years of Government Service, can at any time, after such completion of 20(twenty) years of qualifying service, retire from his service by giving a notice of not less than 3(three) months in writing to the appointing authority. Such application, as mandated by the provisions of the said Rule would require an acceptance by the

appointing authority before the same comes into effect. However, the proviso to Rule 48 A (2) of the said Rules of 1972, mandates that where the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period.

8. The Hon'ble Apex Court in the case of ***Dinesh Chandra Sangma vs. State of Assam and Ors.***, reported in ***(1977) 4 SCC 441*** in the context of an application made for voluntary retirement under the provisions of F.R. 56, had held that non-acceptance of such proposal within the stipulated period would amount to the deemed acceptance on expiry of the said period. In the case in hand, the respondent authorities admittedly had not accepted and/or rejected the application submitted by the petitioner on 29.06.2023, on/or before 30.09.2023 and accordingly, the petitioner contends that the voluntary retirement application as submitted by him is to be deemed to have been accepted.

9. The respondents by way of filing an affidavit in the matter have contended that there is a criminal case pending against the petitioner in SIC(Vig) P. S. Case No. 01/2021, under Sections 120(B)/409/420/468/469/471 IPC, read with Section 13(2), 7, 8 of the PC Act and that the Charge-sheet was filed against the petitioner in the year 2022. It is also contended that the competent authority had vide order dated 06.12.2022, granted prosecution sanction under the relevant provisions of the Code of Criminal Procedure, 1993, read with the provisions, thereon, in Prevention of Corruption Act, 1988, for prosecution of the petitioner in connection with the said SIC(Vig) P. S. Case No. 01/2021. Accordingly, it is submitted that the petitioner having not disclosed the above relevant materials in the writ petition it is to be deemed to have been suppressed and accordingly, it is contended that the petitioner on account of his conduct in the matter is not entitled to any reliefs from this Court.

10. On a specific query made by the Court to Mr. R. Saikia, learned counsel for the

petitioner, Mr. Saikia has submitted that the petitioner has not been issued with any summon by the Trial Court and according to his information, the Charge-sheet has not been filed till date. The issue arising in the present proceeding is with regard to the issue as to whether on completion of the mandatory period as prescribed under Rule 48 A of the said Rule of 1972, the application submitted by the petitioner not being rejected by the Departmental Authorities would be deemed to have been accepted.

11. The respondents have in their affidavit taken a plea of pendency of criminal case against the petitioner. The said ground would have been a valid ground for rejection of the application for voluntary retirement as preferred by the petitioner in the matter, however, the respondent authorities having not issued any order within/before 30.09.2023 towards rejecting the application of the petitioner's permission to proceed on voluntary retirement and following the ratio of the decision of the Apex Court in the case of ***Dinesh Chandra Sangma*** (supra), it is to be concluded that the application for voluntary retirement as submitted by the petitioner on 29.06.2023 had on expiry of the period mandated, deemed to have been accepted by the authorities. Accordingly, the petitioner is deemed to have retired from his services on voluntary retirement w.e.f. 30.09.2023.

12. Accordingly, the respondent authorities are required to release the petitioner from his services w.e.f. 30.09.2023 and also compute the pension and pensionary benefits as would be now due to the petitioner on account of the services rendered by him in the Department. It is to be noticed that in the event, the petitioner is released from his services and is also authorised pension and pensionary benefit in the matter, the same shall be subject to future good conduct and in the event, the petitioner is convicted in connection with the criminal case stated to be pending against him, the respondent authorities would be well within their rights to review the order issued towards authorising the pension and pensionary benefits to the petitioner, in accordance with law.

14. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant