



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

Case No. : WP(C)/515/2023

Dhanai Ram Verma
S/O Lt. Balram Verma,
a permanent resident of Gaddopur Village,
P.O Didarganj,
P.S Malgaon,
District, Azamgar,
Uttar Pradesh,
and Presently residing at Naharlagun,
P.O/P.S Naharlagun,
Papum Pare District,
Arunachal Pradesh.
Phone No. 919233691729

VERSUS

The State of AP and 4 Others
represented by the Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.

2:The Secretary (Vigilance)
Age: 0
Occupation :
Government of Arunachal Pradesh
Itanagar.

3:The Secretary
Age: 0
Occupation :
Cultural Affairs,
Government of Arunachal Pradesh,
Itanagar.

4:The Director
Age: 0
Occupation :

Department of Audit and Pension
Government of Arunachal Pradesh
Naharlagun.

5:The Director
Age: 0
Occupation :
Department of Art and Culture
Government of Arunachal Pradesh
Naharlagun

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA**

JUDGMENT & ORDER (ORAL)

Date : 29-05-2024

Heard Mr. J. Jini, learned counsel for the petitioner and Mr. S. Tapin, learned Senior Government Advocate appearing for all the respondents.

2. The case of the petitioner, in brief, is that while he was serving as Duftry in the Department of Art and Culture, Naharlagun, a criminal complaint was lodged against the petitioner which was registered as Naharlagun P.S. Case No. 19/2012 alleging that the petitioner has prepared fake allotment orders and the signature of the Director was forged. The petitioner was thereafter placed under suspension by an order dated 10.02.2012, under Rule 10 (1) of the Central Civil Services (Classification and Appeal) Rules, 1965. The order of suspension of the petitioner was extended from time to time. In the meanwhile, the competent authority had also grant sanction for prosecution vide order dated 06.03.2014. It is projected that the petitioner had participated in the inquiry conducted by the Crime Branch, Police Station (SIT). Thereafter, the suspension of the petitioner was not extended and on representation submitted by the petitioner,

by order dated 29.08.2016, the suspension of the petitioner was revoked by the Director, Art & Culture, Government of Arunachal Pradesh. While in service, the petitioner superannuated on 30.04.2023.

3. The petitioner submitted all the relevant documents for processing of his pension. It is projected that the petitioner had applied for grant of No Objection Certificate from the Deputy Commissioner, Capital Complex, Itanagar and Vigilance Clearance Certificate from the Secretary, Department of Vigilance, Government of Arunachal Pradesh. The Deputy Commissioner, Capital Complex issued a No Objection Certificate dated 28.04.2023, to the petitioner and the Under Secretary (Vigilance), Government of Arunachal Pradesh had also issued a Vigilance Clearance Certificate dated 25.05.2023, to the petitioner.

4. However, the Under Secretary (Vigilance), Government of Arunachal Pradesh by another communication dated 16.06.2023, which is impugned in this writ petition, has cancelled the earlier Vigilance Clearance Certificate issued on 25.05.2023 on the ground that the same was issued inadvertently and a SIC (Vig) P.S. Case No. 8/2015 had been registered against the petitioner under Sections 120 B/468/471/34 IPC. Accordingly, the representation filed by the petitioner, having not being addressed, the present writ petition has been filed under Section 226 of the Constitution of India.

5. Per contra, learned Senior Government Advocate by placing reliance on the affidavit-in-opposition filed by the respondent nos. 4 and 5 has submitted that in view of the policy decision of the State vide order No. VIG-71/2014/365 dated 25.02.2020, a guideline has been made by the Commissioner (Vigilance), Department of Vigilance, Government of Arunachal Pradesh which makes it mandatory for a Vigilance Clearance Certificate for release of pension after retirement. In the said context, the learned Senior Government Advocate has submitted that the said order dated 25.02.2020, being a policy decision, which

is not under challenge, the petitioner is disentitled for release of his pension benefit without a Vigilance Clearance Certificate being issued on his favour. It is further submitted that the petitioner is involved in criminal prosecution under Sections 120 B/468/471/34 IPC in connection with SIC (Vig) P.S. Case No. 8/2015 which was earlier registered as Naharlagun P.S. Case No. 19/2012, for which the respondent authorities cannot process his pension papers for want of Vigilance Clearance Certificate.

6. There is no document appended to the affidavit-in-opposition filed by the respondent nos. 4 and 5 to demonstrate that any order has been passed in the name of the Governor of the State of Arunachal Pradesh and/or any other competent authorities, reserving right of the Government to withhold the pension of the petitioner. Therefore, there is no document available on record to show that the competent authorities under the Government of Arunachal Pradesh had exercise right under Rules 9 of the Central Civil Services (Pension) Rules, 1972 and/or under Section 8 of the Central Civil Services (Pension) Rules, 2021.

7. In any case, the petitioner had superannuated from the service on 30.04.2023 and there being no order of the competent authorities passed under the Central Civil Services (Pension) Rules, the Court is of the considered opinion that it would not be open in this case for the respondent authorities to withhold the disbursement of pension and gratuity of the petitioner merely by denying the issuance of Vigilance Clearance Certificate from the Vigilance Department in terms of the order dated 25.02.2020. In this regard, view of this Court finds support from the decision of the Hon'ble Supreme Court of India in the case of *State of Jharkhand & Others Vs. Jitendra Kumar Srivastava & Another, (2013) 12 SSC 210* as well as the decision of this Court in the case of *Jombo Ratan Vs. State of Arunachal Pradesh & Others, (2018) 6 GLR 257 ; 2018 1 GLT 395*.

8. In the case in hand, the petitioner had superannuated from the service on 30.04.2023. By the said time, the Government of India had adopted the Central Civil Services (Pension) Rules, 2021 and by virtue of Rule 87 thereof, the Central Civil Services (Pension) Rules, 1972 had ceased to operate. Even under the repealed Central Civil Services (Pension) Rules, 1972, there was a mandate for provisional pension to be authorised by the Account Officer till the conclusion of the departmental and judicial proceedings and gratuity could be withheld till the conclusion of the departmental or judicial proceedings, but no document of any departmental proceedings or any charge-sheet being submitted in the SIC (Vig) P.S. Case No. 8/2015 has been filed on record. It may be stated that as the State does not have its own Pension Rules, the Central Rules has been adopted by the Government of Arunachal Pradesh.

9. The learned counsel for the petitioner submits that under the Central Civil Services (Pension) Rules, 2021, the power to withhold or withdraw the pension is contained in Rule 8 thereof. In the Clause (c) of Sub-rule 4 of Rule 8 of the said Rules, it is provided that no gratuity shall be paid to a government servant till the conclusion of the departmental or judicial proceedings and issue of final order thereof. However, no judicial proceeding has been drawn up by submission of charge-sheet against the petitioner till date. The Court is of the considered opinion that the said Clause (c) of Sub-rule 4 of Rule 8 of the Central Civil Services (Pension) Rules, 2021 would not empower the respondents to withhold even the gratuity which otherwise be retained till conclusion of the judicial proceedings.

10. In the light of the discussion made above, the Court is of the opinion that the respondent authorities could not have refused to sanction/release the pensionary benefits due to the petitioner on account of non-issuance of Vigilance Clearance Certificate by the Department of Vigilance, Government of

Arunachal Pradesh on the ground that the competent authorities had not reserved their right to withhold the pension payable to the petitioner. Moreover, nothing has been produced before this Court to show that a charge-sheet has been submitted in connection with the herein before referred SIC (VIG) P.S. Case No. 8/2015. Therefore, for all intents and purposes, there is no judicial proceedings pending against the petitioner. Such pendency cannot be presumed by the respondents.

11. In view of the observation made above, the writ petition stands allowed by directing the State respondents to process the payment of pensionary benefits and other entitlements due to the petitioner within an outer period of 4 (four) months from the date of furnishing of a certified copy of this order before the Director, Department of Art & Culture, Government of Arunachal Pradesh (respondent No. 5). However, it is made clear that in the event the Department of Vigilance, Government of Arunachal Pradesh does not issue a Vigilance Clearance Certificate within a period of 3 (three) weeks from the date of furnishing of a certified copy of this order before the Secretary (Vigilance), Department of Vigilance, Government of Arunachal Pradesh (respondent no. 2), the competent respondent authorities shall process the pension papers of the petitioner without insisting on a requirement of the petitioner to produce such Vigilance Clearance Certificate from the Vigilance Department, Government of Arunachal Pradesh.

12. In this case we refrain from imposing cost on the respondents.

JUDGE