

GAHC010006552022



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

Case No. : Review.Pet./34/2022

THE DEPUTY COMMISSIONER, KAMRUP (M)
PANBAZAR, GUWAHATI 781001, ASSAM

VERSUS

GAUTOM BORO AND 3 ORS.
S/O LATE SONESWAR BORO,
RESIDENT OF VILLAGE BALAIBIL, PO AND PS CHANGSARI, DIST
KAMRUP R ASSAM

2:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

FINANCE ESTABLISHMENT
DISPUR GUWAHATI 06

3:THE OFFICER ON SPECIAL DUTY
FINANCE DEPT. ESTABLISHMENT
B DISPUR GUWAHATI . ASSAM

4:THE TREASURY OFFICER

KAMRUP (M) TREASURY
GUWAHATI 01
ASSA

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : MR. B P SINHA

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA**ORDER****Date : 16-02-2024**

Heard Mr. D. Borah, learned Government Advocate for the review petitioner. Also heard Mr. B.P. Sinha, learned counsel for the respondent no.1 and Mr. B. Gogoi, learned standing counsel for the Finance Department, representing the respondent nos. 2 to 4.

2) By filing this application under Chapter-X of the Gauhati High Court Rules read with Order XLVII, Rules 1 and 2 CPC, the petitioner has prayed for review of the judgment and order dated 15.09.2021, passed by this Court in W.P.(C) No. 5739/2015.

3) The learned Govt. Advocate has submitted that the petitioner, i.e. Deputy Commissioner, Kamrup (M) is aggrieved by that part of the judgment and order dated 15.09.2021, whereby though the Court had dismissed the writ petition seeking appointment of the respondent no. 1 on compassionate ground, it was ordered that the petitioner would pay compensation of Rs.1,00,000/- (Rupees one lakh only) to the respondent no. 1 herein on the failure of DLC, Kamrup (M) District to hold its meeting once in two months in terms of directions contained in the case of *Achyut Ranjan Das & Ors. v. The State of Assam & Ors., 2006 (4) GLT 674*, and specifically not communicating the orders dated 11.07.2007 and 04.06.2015, passed by the District Level Committee for Compassionate Appointment, Kamrup (M) District, rejecting the application of the petitioner for appointment on compassionate ground. The compensation was ordered to be paid into the bank account of the respondent no. 1 herein within a period of 1 (one) month from the date of receipt of the certified copy of

the order.

4) The learned Govt. advocate had submitted that in this review application, it is projected that the outcome of the District Level Committee meeting held on 11.07.2007 was duly communicated to the Commissioner and Secretary to the Govt. of Assam, Finance (Estt-B) Department vide letter no. KPE-6/2007/34 dated 18.08.2007 along with a copy to the Department concerned. It was further submitted that the said fact could not be placed before this Court when the judgment and order in reference was being passed by this Court despite exercise of due diligence. Accordingly, the learned Govt. Advocate has pressed all the grounds for review as urged in the review petition and he has prayed for revoking the direction to pay compensation to the respondent no. 1, i.e. the writ petitioner.

5) It is seen that pursuant to the order dated 27.03.2023, passed by the Court, the respondent no.2 i.e. the Commissioner and Secretary to the Govt. of Assam, Finance Estt. Department has filed an affidavit-in-opposition on 22.05.2023 through Smt. Sanghamitra Bhagawati, Deputy Secretary to the Govt. of Assam, Finance (Estt.-B) Department, and in para-3 thereof, it has been denied that there is no record of the receipt of the letter no. KPE-6/2007/34 dated 18.08.2007 of the Deputy Commissioner, Kamrup (M) District in the Finance (Establishment-B) Department.

6) This matter was thereafter, adjourned on 27.06.2023, 02.08.2023, 27.09.2023, 29.11.2023 and 22.01.2024. However, the petitioner has not filed any affidavit to bring on record the proof of service of the herein before referred letter no. KPE-6/2007/34 dated 18.08.2007 to the Finance (Estt.B) Department. In this regard, upon instructions, the learned Govt. Advocate has submitted that in the meantime, the Office of the Deputy

Commissioner, Kamrup (M) was shifted from Panbazar, Guwahati to Hengrabari, Guwahati and that as informed to him, the 16 year old records could not be traced out. He has placed on record the letter no. KPE-49/2015/Pt/594 dated 17.10.2023, issued by the Branch Officer, i/c. Personnel Branch-Cum- Election Officer, Kamrup (M) District. The said letter has been made a part of the record.

7) Be that as it may, in this case a responsible officer from the Finance (Establishment-B) Department has filed an affidavit on 22.05.2023, stating that there was no record of receipt of the letter no. KPE-6/2007/34 dated 18.08.2007 from the Deputy Commissioner, Kamrup (M).

8) Therefore, in the absence of production of record of service of the said letter no. KPE-6/2007/34 dated 18.08.2007 to the Finance (Estt.B) Department, the Court is of the considered opinion that the petitioner has not been able to make out any case for review of the directions for payment of compensation to the respondent no.1 herein, vide order dated 15.09.2021, passed by this Court in W.P.(C) No. 5739/2015.

9) Although the learned Govt. Advocate had forcefully submitted that the petitioner has the record of the letter sent to the Finance (Estt.B) Department, but the dak-book was inadvertently not preserved, yet in the absence of record of service, the petitioner has failed to establish that the said order was vitiated by error apparent on the face of record. The Court is unable to accept the submissions forcefully made by the learned Govt. Advocate.

10) Therefore, this review petition fails and the same is dismissed. Consequently, the interim order dated 25.03.2022, passed in this case, thereby suspending the payment of compensation stands vacated. The time for making payment of compensation stands extended for a further period of 30 (thirty)

days from the date of this order.

11) Although the Court was inclined to award cost of litigation to the respondent no.1, but on the prayer made by the learned Govt. Advocate, we refrain from doing so. Thus, the parties are left to bear their own cost.

JUDGE

Comparing Assistant