

GAHC010016472014



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

Case No. : WP(C)/5307/2014

BHUPEN CHAKRAVARTY
S/O- LT. BRAJA KANTA CHAKRAVORTY, R/O- KARUNAMOYEE
APARTMENT 59, M.C. ROAD, UZAN BAZAR, P.O.- UZAN BAZAR, P.S.-
LATASIL, DIST.- KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS,
REP. BY THE COMMISSIONER and SECY., ELEMENTARY EDUCATION
DEPTT., DISPUR, GHY- 6, ASSAM.

2:THE CHAIRMAN
CHILDREN'S LITERARY TRUST
ASSAM
BAMUNIMAIDAN
GHY- 21
ASSAM.

3:THE SECRETARY
CHILDREN'S LITERARY TRUST
ASSAM
BAMUNIMAIDAN
GHY- 21
ASSAM

Advocate for the Petitioner : MR.B BURAGOHAIN

Advocate for the Respondent : MR.R MAZUMDAR

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

07.03.2024

Heard Mr P J Saikia, learned counsel for the petitioner. Also heard Mr P N Sharma, learned Standing Counsel, Elementary Education Department for the respondent No. 1 and Mr S Borthakur, learned counsel for the respondent Nos. 2 and 3.

2. This petition is filed by the petitioner, who was initially appointed as Production Editor in the office of the Children's Literary Trust, on a part time basis on fixed emoluments. His services were regularized in the year 1990. After rendering his service for about 22/23 years, petitioner superannuated from the post on 31.03.2012. At the time of his superannuation, an amount of Rs. 4,21,334/- (Rupees Four Lacs Twenty One Thousand Three Hundred Forty Four Only, was found to be payable to the petitioner, as arrear salary. That apart, it is the claim of the petitioner that post-retirement benefits, like Leave Encashment and Gratuity etc. were also required to be paid to the petitioner. However, in spite of several representations and petitions, the grievances were not redressed.

3. It is submitted by the learned counsel for the petitioner that the Trust was set up with funding through the grants-in-aid, issued by the Department of Education, Government of Assam, at the relevant point of time. These grants-in-aid are periodically provided by the Education Department for payment of salary and other dues, as permissible.

4. Learned counsel for the petitioner submits that in respect of other employees, there are instances where leave encashment was granted and the same was also enhanced as per the revision undertaken by the Government.

5. Under such circumstances, the petitioner has approached this Court praying for a

writ of mandamus to the respondent authorities, including the Trust for release of the arrear salary and other retiral benefits.

6. The respondent No. 3 has filed its affidavit, admitting to the claims of the arrear salary of the petitioner. However, it disputed the claims of the petitioner that he is entitled to retiral benefits as there is no such provision adopted by the Trust.

7. Learned counsel representing the Trust has taken a plea of maintainability of the writ petition, inasmuch, as that since the trust was not established under any statute no writ can be issued to the Trust. The trust is managed out of the funds received by way of grants-in-aid from the Government as well as out of the sale proceeds.

8. The Education Department did not file any affidavit.

9. Learned counsel for the parties have been heard and pleadings have been carefully perused.

10. Since the matter is being taken up for hearing after admission, the question of maintainability is no longer available, as has been held by a catena of Judgments rendered by the Hon'ble the Apex Court as well as this Court in this connection.

11. Be that as it may, during the course of hearing, learned counsel for the respondent No. 3 submitted that the arrear salary has, in the meantime, been released to the petitioner, to which the learned counsel for the petitioner does not dispute. The only question remains is whether the retiral benefits, if any, are to be granted to the petitioner.

12. Learned counsel representing the respondents submit that w.e.f. 2020, Leave Encashment and Gratuity has been decided to be issued to the employees and for that a particular fund is earmarked by the Trust from the sale proceeds of the books. Learned counsel for the Trust submits that such amount is now periodically determined and kept aside.

13. Upon careful consideration of the submissions made at the Bar, it is seen that the decision to pay Leave Encashment and Gratuity was taken by the Trust in 2020 and a

specific fund out of the sale proceeds of the Trust has also been earmarked. However, there is no dispute on facts that the petitioner superannuated on 31.03.2013 and his arrear salary was also released belatedly.

14. Under such circumstances, considering the fact that the Trust is presently maintaining a fund for release of Leave Encashment and Gratuity, this Court deems it appropriate to permit the petitioner to approach the respondent authorities, i.e., the Chairman, Children's Literary Trust and file an appropriate application seeking the benefit of Leave Encashment and Gratuity. Upon such application being filed, the concerned authorities of the Trust will consider the prayer made by the petitioner sympathetically and thereafter, pass appropriate orders, if possible, by releasing some amount towards Leave Encashment and DCRG.

15. Writ petition, accordingly, stands closed in terms of the above. No order as to cost(s).

16. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant