

GAHC010082142022



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

Case No. : WP(C)/2915/2022

KAMALESWAR BORDOLOI
S/O- LT. ANANDA BORDOLOI, R/O- NOTBAMA HOUSEFED COMPLEX,
QUARTER NO. M-I (A)/B, HATIGAON, GUWAHATI- 38, DIST.- KAMRUP(M),
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, GENERAL
ADMINISTRATION DEPTT., DISPUR, GHY-06

2:THE UNDER SECRETARY TO THE GOVT. OF ASSAM
GENERAL ADMINISTRATION (B) DEPTT.
DISPUR
GHY.-06.

3:THE ACCOUNANT GENERAL
ASSAM
MOIDAMGAON
BELTOLA
GHY.-29.

4:ESTATE OFFICER
PWD(BLDG)
DISPUR
GHY.-06

Advocate for the Petitioner : MR. A J DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

11.01.2024

Heard Mr. K. Bhuyan, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned Standing Counsel, PWD for the respondents No. 1 & 2; Mr. J.K. Goswami, learned Addl. Sr. Government Advocate for the State and Mr. Rabha, learned Counsel appears on behalf of Mr. A. Hasan, learned Standing Counsel, Accountant General.

This petition has been filed by the petitioner who rendered his services under the Commissioner and Secretary to the Government of Assam, Secretariat Administration (Establishment) Department, Dispur, Guwahati. The petitioner superannuated from service on 30.06.2020. While he was working as Junior Administrative Assistant in the Pension & Public Grievance Department, a criminal proceeding was initiated against the petitioner corresponding to G.R. Case No. 5416/2008. The competent criminal Court by order dated 14.02.2020 acquitted the petitioner from all the charges levelled against him. In view of the criminal proceedings initiated against the petitioner, he was placed under suspension and a departmental enquiry was also conducted. Show cause notice was issued with three charges and the petitioner replied to the same. The proceedings were initiated and the Enquiry Officer conducted the enquiry. In view of the departmental proceedings having been initiated against him, he was also placed under suspension by order dated 12.04.2007. Subsequently, by order dated 03.01.2014, he was reinstated in service with effect from the date of his joining. The Enquiry Officer concluded the enquiry proceedings and on the basis of the evidence adduced held that the charges have been proved against the petitioner. The findings of the Enquiry Officer were accepted by the disciplinary authority and by order dated 19.11.2020, the disciplinary authority having accepted the findings of the Enquiry Officer imposed a penalty of withdrawal of pension at the rate of Rs. 500/- (Rupees Five Hundred Only) per month for the period of one year under Rule 21 of the Assam Services (Pension) Rules 1969 and the Departmental Proceedings have been held to be disposed of. In view of the order imposed by the Commissioner & Secretary dated 19.12.2020, the petitioner having retired, was not granted his pension and other retiral benefits although he was granted provisional pension.

The learned counsel for the petitioner submits that the writ petition has a limited prayer in as

much as that his suspension period was never regularized as a consequence thereof his pension papers could not be finalized and he has not received his pension after being retired for more than three years. He, however, submits that he has been receiving provisional pension. The learned counsel for the petitioner submits that he did not prefer any statutory appeal as provided for under the Assam Discipline and Appeal Rules, 1969 against the order of imposition of penalty. However, he had filed a representation before the Commissioner and Secretary, Secretariat Administration (Establishment) Department, Dispur requesting for regularizing his period of suspension in order that he may be entitled to his pensionary benefits. It is submitted by the learned counsel for the petitioner that although an order dated 20.12.2021 has been issued by the Department, whereby his period of suspension with effect from 11.04.2007 to 03.01.2014 is to be treated as on duty for the purpose of pensionary benefit only but the salary for the period is limited to the subsistence allowance as entitled. However, his period of suspension was not been regularized as a consequence whereof he has been deprived of his pensionary benefits.

Mr. P. Nayak, learned Government Advocate for the respondents No. 1 & 2 submits that since the writ petitioner has a limited prayer namely for regularization of his period of suspension, the matter can be disposed of directing the respondent authority to consider his claim and pass appropriate orders.

Having heard the learned counsels for the parties and upon careful perusal of the pleadings, it is seen that although several prayers are made before this Court, the petitioner at present has only a limited prayer of regularizing his period of service under suspension so as to enable him to get his retiral benefits.

The learned counsel for the respondent does not have instructions as to the status of the representation dated 09.02.2021.

Under such circumstances without expressing any view on the merits of the case, the writ petition is closed with a direction to the Commissioner and Secretary, Government of Assam, Secretariat Administration (Establishment) Department, Dispur, Guwahati-6 to expeditiously consider and dispose of the representation dated 09.02.2021 stated to have been filed by the petitioner, if not already considered and disposed of. If any order in the meantime has been issued by the Department then a copy thereof shall be furnished to the petitioner.

With the above observations, the writ petition stands closed.

The respondent authority will dispose of the representation within a period of thirty (30) days from the date of receipt of certified copy of this order.

JUDGE

Comparing Assistant