

GAHC010112092024



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

Case No. : WP(C)/2956/2024

DHIRESWAR HAJONG
SON OF LATE KIRAN HAJONG,
R/O- VILL- SEWRAGURI,
P.O.- DHANUA,
DIST.- SOUTH SALMARA MANKACHAR,
PIN- 783135.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
COOPERATION DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PENSION AND PUBLIC GRIEVANCES
DISPUR
GUWAHATI-06.

4:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI-29.

5:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM

KHANAPARA
GHY-22.

6:THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
SOUTH SALMARA MANKACHAR
AT HATSINGIMARI
PIN- 783135.

7:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
SOUTH SALMARA MANKACHAR
AT HATSINGIMARI
PIN- 783135.

8:THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
CACHAR
AT SILCHAR
PIN- 788001

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR

Advocate for the Respondent : SC, CO OP, SC, AG,GA, ASSAM,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 28.11.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. G. Bordoloi, learned Standing Counsel, Co-operation Department appearing for the respondent nos. 1, 5, 6, 7 & 8 and Mr. P. Nayak, learned Standing Counsel, Finance Department for the respondent no. 2; Mr. R. Dhar, learned Addl. Senior Government Advocate appearing for the respondent no. 3; as well as Mr. S. K. Medhi, learned Standing Counsel, Accountant General, Assam appearing for the respondent no. 4.

2. The petitioner in the present proceeding has raised a grievance with regard to the action on the part of the respondent authorities in not finalizing his pension

and other pensionary benefits, including the non-release of his arrear salaries for the period w.e.f. February, 2016 to January, 2024.

3. As projected in the writ petition, the petitioner was initially appointed as a Lower Division Assistant vide an order dated 30.09.1986, issued by the Deputy Registrar of Co-operative Societies, Dhubri and he was so posted in the establishment of the Assistant Registrar of Co-operative Societiesv (ARCS), Hatsingimari. The petitioner was thereafter, vide order dated 31.03.1995, promoted to the post of Junior Inspector-cum-Auditor and continued to remain posted in the Office of the ARCS, Hatsingimari.

4. The petitioner was thereafter, transferred and posted in the interest of public service from the Office of the ARCS, South Salmara, Hatsingimari to the Office of the Deputy Registrar of Co-operative Societies (DRCS), Cachar, Silchar vide an order dated 30.01.2016, issued by the Registrar of Co-operative Societies, Assam. It is further contended in the writ petition that before the petitioner could undertake the transfer and posting as ordered vide the order dated 30.01.2016, the petitioner was deputed for the election duty for the Assembly Election, 2016 by the Deputy Commissioner-cum-District Election Officer, South Salmara, Mankachar vide an order dated 23.02.2016. The petitioner had accordingly, performed his election duties entrusted to him and upon conclusion of the election duties, the ARCS, Hatsingimari, vide an order dated 02.03.2016, released the petitioner from his office, enabling him to join at his due place of posting in the Office of the DRCS, Silchar. It is contended that the petitioner was thereafter, released from the election duty by the Deputy Commissioner-cum-Election Officer, South Salmara, Hatsingimari w.e.f. 12.04.2016.

5. The petitioner has further contended that on being released from the election duty by the Deputy Commissioner-cum-Election Officer, South Salmara, Hatsingimari w.e.f. 12.04.2016, the petitioner could not join at his transferred

place of posting at Silchar, due to severe illness, which he contends to have been informed to his superiors at Hatsingimari. The petitioner, thereafter, filed representations and also instituted a writ petition being WP(C)/3721/2017 before this Court. However, the said writ petition was withdrawn by the petitioner without liberty on 20.06.2017.

6. The materials brought on record in the writ petition further reveals that the petitioner after being released from his election duties from Hatsingimari on 12.04.2016, had not joined his services at his transferred place of posting and the place of posting of the petitioner at Silchar, were never modified by the respondent authorities. The petitioner continued to remain out of service w.e.f. 12.04.2016 and thereafter, on 31.01.2024, on reaching the age of superannuation, the petitioner retired from his services. The petitioner, on retiring from his services w.e.f. 31.01.2024, approached the respondent authorities for finalization of his pension and other pensionary benefits as well as the arrear salaries for the period February, 2016 to January, 2024.

7. Mr. M. Khan, learned counsel for the petitioner after reiterating the facts as noticed herein above, has submitted that the petitioner admittedly, had not discharged his duties after being released from the establishment of the ARCS, South Salmara, Hatsingimari and had received his salaries till January, 2016. Mr. Khan, learned counsel has further submitted that the respondent authorities had not initiated any departmental proceedings against the petitioner and the period of his absence has not been held to be unauthorized absence and accordingly, the petitioner would be entitled to release his arrear of salary for the period w.e.f. February, 2016 till 31.01.2024 i.e. the date of his superannuation. Mr. Khan, learned counsel further submits that the period of his absence w.e.f. February, 2016 till January, 2024 is now required to be so reckoned by the respondent authorities as 'qualifying service' and accordingly, his pension and pensionary

benefits due to him in pursuance to his superannuation from service on 31.01.2024 is to be computed and released to the petitioner.

8. Mr. G. Bordoloi, learned Standing Counsel for the Co-operation Department has submitted that the petitioner after being released from the establishment of the ARCS, South Salmara, Mankachar had not reported to duties at his transferred place of posting and accordingly, the salaries of the petitioner w.e.f. February, 2016 were not released to him. Mr. Bordoloi, learned Standing Counsel has further submitted that the contentions as raised in the writ petition would go to reveal that the petitioner after being released from the establishment of the ARCS, South Salmara, Mankachar, had never resumed his services in his transferred place of posting and the transfer and posting order as issued in respect of the petitioner vide the order dated 30.01.2016, was also never modified by the respondent authorities. However, Mr. G. Bordoloi, learned Standing Counsel has admitted to the fact that no departmental proceeding came to be instituted against the petitioner for his unauthorized absence from service for such a long period of time.

9. Mr. Khan, learned counsel for the petitioner, in view of the submissions made by Mr. G. Bordoloi, learned Standing Counsel in the matter, has submitted that the petitioner is in urgent need of his pension and pensionary benefits, inasmuch as, the petitioner is having no other means of livelihood to sustain himself and his family members. Mr. Khan, learned counsel has accordingly submitted that this Court would be pleased to direct the respondent authorities to consider the petitioner to be in service till 12.04.2016 and accordingly, to compute the petitioner's pension and pensionary benefits for the said period only.

10. The said submission of the learned counsel for the petitioner, Mr. M. Khan has not been objected to by Mr. G. Bordoloi, learned Standing Counsel for the Co-operation Department.

11. In view of the submission made by Mr. Khan, learned counsel for the petitioner in the matter and the petitioner, admittedly not having discharged duties after 12.04.2016 by further appreciating the fact that the respondent authorities had not instituted any proceeding against the petitioner for his unauthorized absence after being released from the establishment of the ARCS, South Salmara, Mankachar, on 12.04.2016 till the date of his superannuation occasioning on 31.01.2024, this Court is of the considered view that the petitioner would be entitled to have only his service w.e.f. the date of his initial appointment in the department i.e. w.e.f. 04.10.1986 till 12.04.2016, reckoned for the purpose of determining his 'qualifying service' for computing his pension and pensionary benefits.

12. It is to be noted that in view of the submission made by the learned counsel for the petitioner, the petitioner would not be entitled to any salaries w.e.f. 12.04.2016 till 31.01.2024 and further, the said period would also not be reckoned as 'qualifying service' for the purpose of computation of pension and pensionary benefits in respect of the petitioner herein.

13. In view of the above position, the petitioner is directed to submit a representation in the matter before the Registrar of Co-operative Societies, Assam and therein, to undertake that he would be confining his prayer for being released his pension and pensionary benefits by reckoning the period of service rendered by him w.e.f. 04.10.1986 till 12.04.2016.

14. The Registrar of Co-operative Societies, Assam, on receipt of such representation from the petitioner shall compute the petitioner's pension and pensionary benefits and for the said purpose, shall treat the period of his service w.e.f. 04.10.1986 till 12.04.2016 and thereafter, on ascertaining the qualifying service of the petitioner during the period of service as rendered by him w.e.f. 04.10.1986 to 12.04.2016, proceed to finalize the proposal of pension and

pensionary benefits receivable by the petitioner and forward the same to the Office of the Accountant General, Assam for disbursal of his pension and pensionary benefits.

15. It is further provided that the qualifying service of the petitioner on being determined, he would be released with a provisional pension, if not already released, and the same would be continued till the date of issuance of the PPO in favour of the petitioner by the Accountant General, Assam.

16. The petitioner would also be at liberty to pray for release of his salaries in arrears, till 12.04.2016 and the same would also be considered by the Registrar of Co-operative Societies, Assam, and if it is found that the petitioner is required to be released any arrears of his salary, till the period of his service rendered by him i.e. till 12.04.2016, the same would also be so computed and released to the petitioner.

17. The petitioner shall submit his representation as required herein above, before the Registrar of Co-operative Societies, Assam, within a period of 45(forty five) days from today and the Registrar of Co-operative Societies, Assam, on receipt of such representation along with a certified copy of this order, shall process the pension and pensionary claim of the petitioner and submit a proposal in this connection to the Office of the Accountant General, Assam, within a period of 2(two) months thereafter.

18. The Accountant General, Assam, on receipt of the complete proposal in respect of the pension and pensionary benefits required to be released to the petitioner from the Registrar of Co-operative Societies, Assam, shall finalize the same and issue the PPO to the petitioner within a period of 2(two) months from the date of receipt of such proposal from the Registrar of Co-operative Societies, Assam.

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

JUDGE

Comparing Assistant