

GAHC010121922023



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

Case No. : WP(C)/3348/2023

RAJASHREE SHARMA
DAUGHTER OF LATE B.N. SHARMA,
RESIDENT OF F-2, JANGPURA,
NEW DELHI. PIN- 110014.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, GUWAHATI, KAMRUP(M),
PIN- 781006.

2:THE ADDITIONAL CHIEF SECRETARY
ASSAM ENVIRONMENT AND FOREST DEPARTMENT
GUWAHATI
PIN- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI
KAMRUP(M)

PIN- 781037

ASSAM.

5:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (WILDLIFE) AND
CHIEF WILDLIFE WARDEN

ASSAM
PANJABARI
KAMRUP(M)

GUWAHATI- 781037
ASSAM.

6:THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
GUWAHATI- 781028
KAMRUP(M)
ASSAM.

7:THE DIRECTOR OF PENSION
OFFICE OF THE DIRECTOR OF PENSIONS

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.

8:THE PRINCIPAL SECRETARY
ADMINISTRATIVE REFORMS TRAINING PENSION AND PUBLIC
GRIEVANCES DEPARTMENT

BLOCK-A
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 12.03.2024

Heard Mr. S. Dutta, learned Senior counsel assisted by Ms. I. Das, learned

counsel for the petitioner. Also heard Mr. I. Borthakur, learned counsel appearing on behalf of Mr. D. Gogoi, learned standing counsel, Environment and Forest Department; Mr. R. K. Talukdar, learned standing counsel, Accountant General for the respondent No.6 and Mr. C.K. S. Baruah, learned Govt. Advocate for the respondent Nos. 7 and 8.

2. The petitioner while serving as Wildlife Research and Education Officer in the Forest Department was given voluntary retirement by a Notification dated 2nd of November, 2012 issued by the Deputy Secretary to the Govt. of Assam, Environment and Forest Department. While the voluntary retirement was granted to the petitioner, Disciplinary Proceeding was pending against her and a Show Cause Notice was also issued in the year 2010. As the pensionary benefits and monthly pension of the petitioner was not settled despite lapse of considerable time after taking the voluntary retirement, the petitioner approached this Court by way of WP(C)/3311/2022 for release of her pensionary benefits and monthly pension. During the pendency of the said writ petition, it was informed before this Court that the Environment and Forest Department by Notification dated 12th of September, 2022 had withdrawn the voluntary retirement granted to the petitioner vide Notification dated 02.11.2012. Thereafter, by a Notification dated 05.04.2023, the Disciplinary Proceeding against the petitioner was recommenced. Accordingly, this Court by order dated 26.04.2023 permitted the petitioner to withdraw the WP(C)/3311/2022 with liberty to file afresh.

3. The present writ petition has been filed challenging the Notification dated

12th of September, 2022 and the Notification dated 05th of April, 2023 on the ground that as the petitioner has been granted voluntary retirement w.e.f 02.11.2012, the withdrawal of the voluntary retirement by the Notification dated 12th of September, 2022 and the recommencement of the inquiry against the petitioner by the Notification dated 05th of April, 2023 after a lapse of more than 10(ten) years is illegal and not tenable in the eye of law.

4. No affidavit has been filed by the Environment and Forest Department. The respondent No.8, i.e., Administrative Reforms Training Pension & Public Grievances Department has filed affidavit, wherein, it is stated that the P&PG Department being a referral Department can only offer its views on pension matters if Administrative Department seek views sending the proposals in file. The relevant portion as stated in paragraph 6 of the affidavit is reproduced herein below:

“That with regard to the statement made in Paragraph 30 of the Writ Petition the deponent begs to state that P&PG Department being a referral Department can only offers its views on pension matters if Administrative Department seek views sending the proposal in file. In the present case no proposal under Rule 54 of the Assam Service (Pension) rules, 1969 is received from Environment and Forest Department till date.”

5. The learned standing counsel ,Forest Department has no explanation with regard to the delay in recommencement of the Disciplinary Proceeding against him nor with regard to the withdrawal of the voluntary retirement against the petitioner. In fact, the learned standing counsel relies on a Communication dated 14.02.2024 written by the Under Secretary to the Govt. of Assam, Environment and Forest Department and submits that subsequently it was

found that there were some anomalies while granting the VRS and the views of the Judicial Department were sought for and the Judicial Department advised to withdraw the VRS. The communication dated 14.02.2024 is reproduced herein below:

“GOVERNMENT OF ASSAM

ENVIRONMENT & FOREST DEPARTMENT

DISPUR :: GUWAHATI-06

ECF. No.446236/625

Dated Dispur, the February, 2024

To : Shri Dikshit Gogoi, Advocate,

Standing Counsel, Environment and Forest Department.

Sub : Instructions regarding WP(C) 3348/2023 (Rajashree Sharma Vs. State of Assam).

Sir,

With reference to the subject cited above, I am directed to inform you that Smti. Rajashree Sharma who was posted as WLR & EO, O/o CCF (W/L) was on unauthorized leave from 15.02.2005 to 20.03.2021 (beyond 5 years). She was granted VRS w.e.f. 20.03.2012 by Environment and Forest Department. Subsequently, it was found that there were certain anomalies while granting VRS. Hence, the view of Judicial Department were sought for and the Judicial Department advised to withdraw the VRS. Accordingly, the VRS was withdrawn.

Yours faithfully,

Signed by

Trinayan Das

*Under Secretary to the Govt. of Assam
Environment and Forests Department."*

6. On consideration of the affidavit-in-opposition filed by the respondent No.8 as well as the Communication dated 14.02.2024 relied upon by the learned standing counsel, this Court does not find any reason as to why the voluntary retirement of the petitioner was withdrawn by the Notification dated 12th of September, 2022. Further there is no explanation as to why the Disciplinary Proceeding was recommenced against the petitioner by the Notification dated 05th of April, 2023. It is more than 10(ten) years after the voluntary retirement was granted to the petitioner that the respondents have decided to withdraw the voluntary retirement and to recommence the Disciplinary Proceeding. There is no plausible explanation given by the respondents with regard to the action taken against the petitioner vide Notification dated 12th of September, 2022 and 5th of April, 2023.

7. This Court is of the considered opinion that permitting the respondents to proceed further with the departmental proceeding against the petitioner at this belated stage would be prejudicial to the petitioner and would not be in the interest of justice.

8. The Show Cause was issued as early as in the year 2010 and no action was taken against the petitioner since 2010. This Court is therefore of the view that it will be unfair to permit the Departmental Inquiry to proceed against the

petitioner at this stage particularly after the respondents had permitted the petitioner to proceed on voluntary retirement.

In that view of the matter, the Notification dated 12th of September, 2022 by which the voluntary retirement granted to the petitioner was withdrawn and the Notification dated 5th of April, 2023 by which the Departmental Proceedings against the petitioner was recommenced are set aside and quashed.

9. The respondents particularly the Officials in the Forest Department are directed to verify the period of absence of the petitioner while he was serving as Wildlife Research and Education Officer and thereafter, the period of absence of the petitioner shall be regularized by way of granting extra ordinary leave. Thereafter, the pension papers of the petitioner be finalized and pensionary benefits and monthly pension of the petitioner be released at the earliest but not later than 2(two) months from the date of receipt of a copy of the order of this Court.

10. With the above observations and directions, this Writ petition is disposed of.

JUDGE

Comparing Assistant