

GAHC010162282024



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

Case No. : WP(C)/4095/2024

KAMALESH DEKA
S/O- LATE ARABINDA DEKA,
R/O- H.NO-3,
F.A ROAD, KUMARPARA,
P.S- BHARALUMUKH, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE
GOVERNMENT OF ASSAM, PUBLIC WORKS (ROADS) DEPARTMENT,
DISPUR, GUWAHATI, ASSAM. PIN- 781006

2:THE UNDER SECRETARY
TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS (ROADS) DEPARTMENT

DISPUR
GUWAHATI
ASSAM. PIN- 781006

3:THE STATE ENQUIRY OFFICER
ASSAM
ASSAM SECRETARIAT (CIVIL)

DISPUR
GUWAHATI
ASSAM. PIN- 781006

4:THE ACCOUNTANT GENERAL
BELTOLA
MAIDAMGAON

GUWAHATI
PIN-781029
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. T K MISRA, MR. A. GAYAN,MR. P K MUNIR

Advocate for the Respondent : SC, PWD, GA, ASSAM,SC, AG (A AND E)

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

23.10.2024

Heard Mr. P. K. Munir, learned counsel for the petitioner. Also heard Ms. S. Sarma, learned Standing Counsel, PWD appearing for the respondent Nos.1 and 2 and Mr. R. K. Talukdar, learned Standing Counsel, office of the Accountant General (A & E), Assam appearing for the respondent Nos.4 and 5. Mr. C. K. S. Baruah, learned Govt. Advocate, Assam is present on behalf of respondent No.3.

2. The petitioner herein has retired from service as Executive Engineer under the Public Works Department on attaining the age of superannuation with effect from 30.09.2017. As per the rules, the petitioner is entitled to receive pension. However, the grievance of the petitioner is that due to the pendency of the departmental proceeding initiated against him vide show cause notice dated 25.09.2018, the pension of the petitioner has not been settled till today.

3. By referring to a decision of the Supreme Court rendered in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi and another** reported in **(2015) 16 SCC 415** Mr. Munir has argued that a departmental proceeding cannot be kept pending indefinitely so as to deny pensionary benefit to a retired

Government employee. He submits that if it is not possible for the employer to conclude the departmental enquiry within a time-frame then the same is liable to be quashed.

4. The respondents have not filed any affidavit in this case. However, from the submissions made by Ms. S. Sarma, learned Standing Counsel, PWD, it is apparent that the departmental proceeding initiated against the petitioner vide notice dated 25.09.2018 is yet to be concluded. The learned departmental counsel, however, could not apprise this Court as to the reason for delay of nearly 6 years in concluding the departmental enquiry.

5. Be that as it may, law is well settled that a departmental proceeding/enquiry initiated against a delinquent employee cannot be kept pending indefinitely. In the case of **Prem Nath Bali** (supra) the Hon'ble Supreme Court has observed that every employer should make a sincere endeavour to conclude the departmental proceeding within a reasonable time and where it is not possible to conclude the enquiry due to certain unavoidable causes, then effort should be made to conclude the same within a reasonably extended period depending upon the cause and nature of the enquiry but the same should not be more than one year.

6. In this case, as has been observed herein above, no reason is discernible to indicate as to why the departmental proceeding initiated against the petitioner way back in the year 2018 is yet to be concluded. We find that on 09.01.2024 the respondent No.3 had issued a communication to the Under Secretary to the Government of Assam, Public Works Department, *inter-alia* indicating that the departmental proceeding initiated against some of the employees including the writ petitioner has been fixed for preliminary hearing

on 12.02.2024. However, what transpires thereafter is not available on record nor is the learned departmental counsel in a position to apprise this Court in that regard. At the same time, it is established that due to pendency of the aforesaid departmental proceeding the pension of the petitioner has not been settled till today.

7. Situated thus and by balancing the equities, this writ petition is hereby disposed of by granting 60 (sixty) days time, with effect from today, to the departmental authorities to conclude the enquiry proceeding initiated against the writ petitioner. If for any reason the departmental enquiry is not concluded within the aforesaid time-frame, then the authorities shall be duty bound to process the claim of the petitioner for grant of provisional pension in accordance with law, within a further period of 60 days thereafter.

With the above observation, the writ petition stands disposed of.

JUDGE

Comparing Assistant