

GAHC010215522024



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

Case No. : Review.Pet./194/2024

ASSAM STATE WAREHOUSING CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR PANYAGAR BHAWAN,
CHRISTIAN BASTI, GUWAHATI 781005

VERSUS

DULAL SAIKIA AND 5 ORS
SON OF LATE KHAGESWAR SAIKIA, RESIDENT OF HOUSE NO. 12 (A),
PATARKUCHI, MAIKHULI ROAD, P.S. AND P.O. BASISTHA CHARIALI, DIST.-
KAMRUP (M), ASSAM, PIN- 781029

2:SRI HITESH DEKA
SON OF LATE MOHI RAM DEKA
RESIDENT OF WORD NO.6
PUNANI GORAIBARI
P.O. UDALGURI
DIST.- UDALGURI
ASSAM
PIN- 784509

3:SRI PRATUL BASUMATARY
SON OF MAKHAN LAL BASUMATARY
RESIDENT OF BENGTOLE GATE
P.O. NO.1 CHAPAGURI
DIST.- CHIRANG
ASSAM
PIN- 783380

4:SRI DIBYAJYOTI GOGOI
S/O- LATE DHARMESWAR GOGOI
RESIDENT OF L.K. BARUAH ROAD
P.O. GOLAGHAT

DIST.- GOLAGHAT
ASSAM
PIN- 785621

5:SRI KAILASH MEDHI
SON OF LATE JAGANNATH MEDHI
RESIDENT OF RAMNAGAR
JATIKUCHI DIST.- KAMRUP (M)
ASSAM
PIN- 781040

6:SRI JAGABANDHU DEKA
SON OF LATE JAGNURAM DEKA
RESIDENT OF BENGAPARA
P.O. SARTHEBARI
DIST.- BARPETA
ASSAM
PIN- 78103

Advocate for the Petitioner : MR. R SEKHAR, MR. B D CHOWDHURY, B SONOWAL

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

25.11.2024

(K.R. Surana, J)

Heard Mr. R. Sekhar, learned counsel for the petitioner.

2. This application for review is directed against the order dated 26.06.2024, passed by this Court in W.P(C) 840/2024. In W.P(C) 840/2024, the case projected by the respondents, who are the writ petitioners in the said writ petition, was that they had retired from service under the petitioner corporation vide retirement notices as morefully referred in paragraph 4 of the said order

dated 26.06.2024 and it was claimed that their petitioners CPF, Gratuity and Leave Encashment were not paid. In the proceedings of W.P(C) 840/2024, the petitioner had remained unrepresented. Therefore, the Court was inclined to dispose of the writ petition by directing the respondents herein to submit a fresh representation to the Chairman, Assam State Warehousing Corporation (i.e. respondent no.2 in the writ petition) along with a certified copy of this said order dated 26.06.2024, describing the nature of their claim and it was also provided that in the event the respondents herein have any other claim, it would be open to them to submit a fresh representation quantifying the nature of the claim, if any.

3. Accordingly, the Assam State Warehousing Corporation i.e. the petitioner and its Chairman (i.e. respondent no.2 in the writ petition) were directed that on receipt of a representation from the respondents herein, they would examine the claim of the respondents within a period of 8 (eight) weeks from the date of the receipt of the representation along with a certified copy of the order. It was further provided that if any amount is found due and payable to the respondents herein on account of CPF, Gratuity and Leave Encashment, steps shall be taken to disburse such amount within 4 (four) months thereafter. Accordingly, the writ petition was disposed of.

4. The learned counsel for the review petitioner has submitted that the petitioner corporation is in a very bad financial position and it is submitted that during this financial distress period, many personnel serving with the petitioner corporation have superannuated. It is submitted that as the employees serving with the review petitioner are not covered under the Assam Service Pension Rules, 1964, the petitioner corporation is making payment of retirement benefit

to all the retired personnel in installments and on pro-rata basis. Accordingly, it is submitted that if the claim of the respondents herein is required to be paid in a time bound manner, as provided by the order dated 26.06.2024, passed by this Court in W.P(C) 840/2024, the entire money that may be available with the petitioner corporation would be taken up in paying the dues of the respondents and there would be no amount left for disbursing payment to the other retired/superannuated employees.

5. It is also submitted that the default inappearance of the petitioner in the proceedings of W.P(C) 840/2024 was not deliberate because the petitioner corporation had appointed a learned counsel and he was requested to take steps in the matter on receipt of notice of the proceedings of W.P(C) 840/2024. However, the said learned counsel did not appear and take steps in the said writ proceedings. However, he gave a written opinion vide Advocate's letter dated 02.08.2024. It is submitted that due to non-appearance of their engaged counsel, the review petitioner has also preferred a complaint before the Bar Council of Assam, Nagaland etc. by paying the requisite fees on 27.09.2024. It is submitted that the non-appearance of the petitioner corporation before this Court when the writ petition was taken up for disposal was not willful and therefore, the petitioner corporation be afforded an opportunity to contest the proceedings of W.P(C) 840/2024 by filing its affidavit-in-opposition in the said writ proceedings after its restoration to file.

6. In the present case in hand, the respondents had superannuated/retired from service under the Assam State Warehousing Corporation. As per the order under review, the respondents herein had filed the writ petition claiming non-payment of CPF, Gratuity and Leave Encashment. In

the said context, the learned counsel for the review petitioner had submitted that CPF dues had already been paid in full to the petitioners. It is also submitted that major part of the Leave Encashment has also been paid to the petitioners in installments.

7. Considered the submissions made by the learned counsel for the review petitioner. Also considered the materials available on record.

8. Vide order dated 26.06.2024, passed in W.P(C) 840/2024, the Court had directed that the respondents herein would make a representation before the petitioner corporation and its Chairman and accordingly, the petitioner herein, and its Chairman were granted 8 (eight) weeks time from the date of furnishing of a certified copy of the order to examine the claim of the respondents and 4 (four) months time, thereafter, was granted to disburse the dues.

9. It is not the case of the review petitioner that no amount at all was due to be paid to the respondents on account of their superannuation/retirement from service under the petitioner corporation. It is too well settled that retiral/retirement dues payable to superannuating employee is not a bounty and the dues like CPF, if any, Gratuity, if any and Leave Encashment, if any, is found payable for the superannuating employees, has accrued in course of service.

10. In this case, the Court has granted 8 (eight) weeks time to the petitioner and its Chairman (respondent no.2 in the writ petition) to examine the claim of the respondents herein from the date of receipt of certified copy of the order. Moreover, 4 (four) months time has been granted, thereafter, to the

petitioner corporation and its Chairman to disburse the unpaid CPF, Gratuity and Leave Encashment, if any. Accordingly, on and from 26.06.2024, about 6 (six) months time has been granted to the petitioners to ascertain and to make payment of the retiral dues of the petitioner in form of CPF, Gratuity, and Leave Encashment, if any.

11. As per the cause title of the writ petition, there are four respondents, being 1) Review petitioner; 2) Chairman of the petitioner corporation; 3) The Managing Director of the petitioner corporation; and 4) The State of Assam, represented by the Commissioner and Secretary to the Govt. of Assam, Department of Cooperative (i.e. Corporation). Out of the four respondents in the writ petition, the respondent nos. 2,3 and 4 have not been impleaded in this writ petition either as co-petitioners or as respondents. Therefore, the said order has attained finality so far as the said three respondents are concerned.

12. Under such circumstances, the Court is of the considered opinion as there is no error apparent in the impugned order on the face of the record, no case has been made out by the petitioners for exercising review jurisdiction of this Court. Accordingly, the Court does not find there be any good grounds for exercising review jurisdiction and for interfering with the order dated 26.06.2024, passed in W.P(C) 840/2024.

13. It may be reiterated that in this review petition, it is not the projected case of the review petitioner that no amount at all is due and payable to the petitioners on account of statutory liabilities like CPF, Gratuity and Leave Encashment or to the extent payable, after adjustment of payment already released so far.

14. Merely because the petitioner corporation in making delayed and/or deferred payment of such dues to others, in the absence of any agreement between the petitioner corporation and the respondents herein for a deferred payment of the retiral dues, payment of such dues in installments to others could not be a good ground for entertaining a review petition.

15. Accordingly, this review petition is not entertained and same is dismissed without issuance of notice on the respondents.

JUDGE

Comparing Assistant