

GAHC010224402023



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

Case No. : WP(C)/5910/2023

GAKUL CHANDRA SARMA
S/O- LATE DHARANIDHAR SARMA, R/O- KUSUMPUR, P.O. HINGULEE, P.S.
KAMALPUR, DIST. KAMRUP(R), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
REVENUE (REFORMS) DEPARTMENT, DISPUR, GHY-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-781006.

3:THE DIRECTOR OF LAND RECORDS AND SURVEYS ETC.
ASSAM
RUPNAGAR
GHY-781022.

4:THE DIRECTOR

PENSION ETC
DEPARTMENT OF ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-781006.

5:THE TREASURY OFFICER
KAMRUP(R)
AMINGAON
DIST. KAMRUP

ASSAM

6:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GHY-781029
ASSA

Advocate for the Petitioner : MR. D BHUYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 10.04.2024

Heard Mr. D. Bhuyan, learned counsel for the petitioner. Also heard Mr. C. S. Hazarika, learned Government Advocate; Mr. D. Bhattacharyya, learned Standing Counsel, Accountant General; Mr. J. Handique, learned Standing Counsel, Revenue Department and Mr. B.B. Gogoi, learned Additional Public Prosecutor.

2. This writ petition is filed by the petitioner who had served as Assistant Machine Operator in the office of the Director of Land Records and Surveys etc., Government of Assam. During the period of his service, the petitioner was placed under suspension on 21.06.1999 by order dated 28.06.1999, pending drawal of the departmental proceedings following his arrest in connection with Paltanbazar Police Station Case No. 189/1999. Thereafter, on 14.06.2006, the petitioner was reinstated in service, although regularization of the period of his suspension in abeyance till disposal of the criminal case. Pursuant thereto, the petitioner superannuated from service on 31.10.2020. The petitioner had approached this Court earlier by filing WP(C)/589/2022, seeking a direction for

release of his pensionary dues. The earlier writ petition came to be disposed of by a Co-ordinate Bench, holding that as the criminal proceeding is pending against the petitioner, there is no infirmity that can be noticed not releasing the final pension to the writ petitioner. The respondents were, however, directed to release the provisional pension to the petitioner.

3. In terms of the order dated 09.11.2022, passed in WP(C)/589/2022, the respondents were directed to continue to pay the provisional pension to the writ petitioner. In terms of that the petitioner was paid his provisional pension. However, his final pension papers have not been settled, as according to the respondents that there is a criminal proceeding pending against the petitioner. There being no finality in the criminal proceedings, the present petitioner has approached this Court again. The petitioner approached this Court again by filing the present writ petition praying for direction that the respondents to release his pensionary benefits including gratuity, leave encasement salary with interest.

4. Pursuant to issuance of notice in this matter, an affidavit was filed by the Additional Director of Land Records. It is stated therein that the following benefits have been released to the petitioner:-

“1. Provisional Pension as admissible @ of Rs.17,250/- vide this office order EP-29/93/160 dated 20/04/2021 w.e.f 01/11/2020.

2. GIS accumulation of Rs.51,557/- vide this office order EP-29/93/159 dated 20/04/021.

3. Final GPF payment an amounting to Rs.204390/- vide Bill No. Bill/202122/DISLRS001/00369 dated 22/12/2021.”

The affidavit further stated that as per the information received from the

investigating authority, Final Report/Charge-Sheet pertaining to Paltanbazar Police Station Case No. 189/1999 has been submitted. However, report from the police authority to that extent was not received. The period of suspension has also not been regularised awaiting the outcome of the criminal case. It is stated in the affidavit that as per the Notification No. PPG(P) 7/2012/8 dated 21.06.2012 no DCRG will be paid to him until conclusion of the proceedings and the issue of final orders thereon.

5. Learned counsel for the petitioner submits that in spite of efforts being made by the petitioner to obtain the information from the concerned police station, no information is forthcoming as to the status of the criminal proceedings relating to Paltanbazar Police Station Case No. 189/1999. This case was filed about 24 years back and the charge sheet was stated to have been filed on 30.07.2014, but no copy of the charge sheet has been provided to the petitioner till date.

6. The departmental counsels representing before the Court also did not have any instructions as to the status of the criminal proceedings arising out of Paltanbazar Police Station Case No. 189/1999. Accordingly, this Court directed a report to be called for from the Chief Judicial Magistrate, Kamrup (Metro) before which Court the charge sheet was stated to have been filed. In deference to the order passed by this Court by communication dated 6th March 2024, the learned C.J.M, Kamrup (Metro) intimated the Registrar (Judicial) and IT of the Gauhati High Court that although the Officer-in-charge of the Paltanbazar Police Station has submitted a report stating that the charge sheet vide charge sheet No. 121/2014 dated 30.07.2014 has been filed and the same is recorded in the Receipt Register of the charge sheet lying in the P.I office of the Kamrup (Metro), Guwahati, the office of the CJM, Kamrup (M) could not verify whether

the said charge sheet was actually sent or placed before the Court. It is further stated that there is no evidence of receipt of the said charge sheet by the P.I Office or by the Court of the CJM, Kamrup (M). Subsequent thereto another report was called for by this Court. In deference to that order, the learned CJM, Kamrup (M) by communication dated 19th March 2024 intimated the Assistant Registrar of the Gauhati High Court that with regard to the case record relating to Paltanbazar Police Station Case No. 189/1999, the charge sheet of the said case is yet to be enclosed to the case record. The case is presently pending before the court of CJM, Kamrup, Metro in search of the charge sheet. A photocopy of the aforesaid case record has also been enclosed for perusal by the Court. The report along with the photocopy of the case record are placed before the court. A careful perusal of the photocopy of the case record does not indicate anywhere that the charge sheet number 121/2014 dated 30.07.2014 stated to have been filed before the Court as per the Receipt Register of Charge sheet in the P.I. office, Kamrup, Metro, is not reflected anywhere.

7. Under such circumstances, it has to be concluded that as on date no charge sheet stated to have been filed by the O/C Paltanbazar Police Station in connection with Paltanbazar Police Station Case No. 189/1999 has been found in the office of the learned CJM, Kamrup(Metro) or has it been placed before the Court or connected to the corresponding case records. Under such circumstances as on date, it is seen that there is no order passed by the learned competent Court taking cognizance of any charge sheet in connection with Paltanbazar Police Station Case No. 189/1999.

8. A reference to Rule 21 of the Assam Services (Pension) Rules, 1969 is relevant for the purposes of this case. Under Rule 21, the right of withholding or withdrawing a pension or any part thereof, whether permanently or for a

specified period, is reserved for the Governor of Assam. The right of recovery from a pension of the whole or any part of any pecuniary or any part thereof for any pecuniary loss caused to the government may be ordered, if in a departmental or judicial proceedings, the pensioner is found to be guilty of grave misconduct or negligence during his period of service, including service rendered upon reemployment after retirement. Rule 21 of the Assam Services (Pension) Rules, 1969 is extracted below:-

“21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that-

(a) such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

["Explanation— The continuation of the proceeding after the final retirement of the officer shall be automatic under sub-rule (a) of Rule 21 and no fresh decision of the Governor and/or the Appointing authority nor any show-cause notice to the person concerned shall be necessary.

The powers under rule 21 shall be exerciseable not only in case of causing pecuniary loss to Government but also in all other cases';

(b) such departmental proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the / Governor of Assam;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place . as the Governor of Assam may direct and in accordance with procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such 'judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the Assam Public Service Commission shall be consulted before final orders are passed.

Explanation— For the purpose of this rule-

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of a criminal proceeding, on the date on which the

complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

NOTE 1- This applies also to recoveries from death-cum-retirement gratuity and family pension sanctioned under Chapter VIII.

NOTE 2- Under the above rule, besides the right of ordering recovery from a pension of the amount of any pecuniary loss caused to Government, the Governor of Assam has also reserved to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period. The authority which institutes proceedings of the nature referred to in the above rule, should without delay intimate the fact to the Audit Officer concerned.

It has also been decided that in a case in which a pension as such is not withheld or withdrawn but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted.”

9. A careful perusal of Rule 21 of the Assam Services (Pension) Rules, 1969 reveals that except by way of a department proceedings or by judicial proceedings instituted against the pensioner, the recovery of pension of the whole or any part thereof for any pecuniary losses caused to the government cannot be ordered. In the present proceedings, no departmental proceeding was instituted. So therefore the portion of the Rule relating to institution of departmental proceeding is not applicable. In so far as judicial proceedings are concerned, the explanation '(b)' under Rule 21 provides that a judicial

proceeding shall be deemed to be instituted (i) in case of criminal proceedings on the date on which the Magistrate takes cognizance on the complaint or the report of the police officer..

10. As such, mere filing of an FIR will not be constituted or understood to be a judicial proceeding for the purposes of Rule 21 of the pension Rules. There must be a cognizance taken by the competent Court of criminal jurisdiction pursuant to which it can be deemed to be a judicial proceeding instituted. From a careful perusal of the reports called for from the office of the learned, CJM, Kamrup (Metro), as well as the photocopies of the case records of the concerned Paltanbazar Police Station Case No. 189/1999 enclosed, there is no material to show that the learned Court of CJM, Kamrup, Metro had taken cognizance in respect of any charge sheet that has been filed. The copy of the charge sheet stated to have been filed has also not been produced before the Court by the O/C or the I/O of Paltanbazar Police Station. A communication addressed to the learned Additional Public Prosecutor, who was requested to assist the Court, reflects that there is no document or relevant charge sheet or even case record pertaining to Paltanbazar Police Station Case No. 189/1999 which is found in the Paltanbazar Police Station. The statement that the charge sheet number 121/2014 dated 30.07.2014 was stated to be filed by the Paltanbazar Police Station in connection with Paltanbazar Police Station Case No. 189/1999 is on the basis of the Receipt Register available in the P.I office of Kamrup (Metro). However, the report of the learned CJM Kamrup, Metro clearly reveals that such a copy of the charge sheet stated to have been received by the P.I office, Kamrup, Metro as found recorded in their Receipt Register has not been placed before the Court of the competent jurisdiction nor is it connected to the case records arising out of or relating to Paltanbazar Police Station Case No.

189/1999.

11. Under such circumstances as on date no charge sheet has been placed before the learned Court of CJM, Kamrup (Metro) and no cognizance thereon has been taken by the learned Court of C.J.M, Kamrup, (Metro), consequently, for the purposes of Rule 21 (C), it has to be held that there is no judicial proceeding pending at present requiring withholding or recovery of any amount from his pensionary benefits payable to the petitioner. As already discussed above, there is no dispute that there is no departmental proceedings pending against the writ petitioner.

12. In view of all the discussions made, this Court is of the view that there should be no further delay in the release of pensionary benefits and other retired benefits, including, gratuity, leave encasement . The same be released forthwith and the period under which the petitioner was placed under suspension also is directed to be regularized since there was no consequential departmental proceedings initiated against him. The respondent authorities are forthwith directed to regularize the period of suspension of the writ petitioner by considering the said period to be "on duty" and thereafter release whatever outstanding retired benefits are found to be payable to the petitioner, including leave encasement salary and gratuity and release the final pension to the writ petitioner.

13. This exercise be carried out by the respondent authorities within a period of 60 (sixty) days from the date of receipt of the certified copy of this order.

14. Writ petition is accordingly allowed and disposed of.

15. This Court expresses its gratitude to the learned Additional Public Prosecutor for due assistance in the Court as the learned Addl. P.P appeared at

the request of the Court.

JUDGE

Comparing Assistant