



THE GAUHATI HIGH COURT

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

Case No. : WP(C)/7135/2018

HAREN KALITA
S/O LATE MAHENDRA KALITA
R/O TOKOBARI, KALIMANDIR
LATE HAREN KALITA PATH, GUWAHATI- 8.
DIST. KAMRUP (M), ASSAM.

VERSUS

THE GAUHATI HIGH COURT AND 2 ORS.
THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH, GUWAHATI,
REP. BY THE REGISTRAR GENERAL, GAUHATI HIGH COURT.

2:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM
NAGALAND
MIZORAM AND ARUNACHAL PRADESH
PRINCIPAL BENCH
GUWAHATI.

3:THE ACCOUNTANT GENRAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI - 781029

Advocate for the Petitioner : MR. B CHOUDHURY,

Advocate for the Respondent : SC, GHC, SC, AG,MR. C BARUAH

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER

Date : 20-11-2024

There is no representation on behalf of the petitioner today on call. When the writ petition was listed earlier on 16.03.2022 and 04.11.2024, there was no representation on behalf of the petitioner on those two occasions also.

2. Mr. N.K. Sarma, learned counsel representing Mr. H.K. Das, learned Standing Counsel, Gauhati High Court [GHC] for the respondent nos. 1 & 2 and Mr. D. Bhattacharjee, learned Standing Counsel, Accountant General [A&E], Assam for the respondent no. 3, who were present on 04.11.2024, are present.

3. The writ petitioner has approached this Court by this writ petition, preferred under Article 226 of the Constitution of India, seeking a direction to the respondent authorities to make payment of compassionate gratuity, as allowed by the respondent no. 2 vide its Letter dated 09.10.2015.

4. The petitioner was an employee of the Gauhati High Court and he initially joined as a Typist. When the petitioner was serving as a Lower Division Assistant [LDA], a Show Cause Notice was issued to him on 02.11.2000 under Rule 23 of the Gauhati High Court Services [Appointment, Condition of Service and Conduct] Rules, 1967 [‘the Rules, 1967’, for short] asking him to show cause as to why any of the penalties, mentioned therein, should not be inflicted upon him and a disciplinary proceeding, Disciplinary Proceeding no. 04/2001 was drawn up against him. On conclusion of Disciplinary Proceeding no. 04/2001, the petitioner was inflicted with a penalty of dismissal from service vide an Order dated 13.03.2006.

5. It is stated that during the pendency of the disciplinary proceeding, the petitioner reached the age of superannuation on 01.02.2006, that is, on a date prior to the infliction of the penalty of dismissal from service vide Order dated 13.03.2006.

6. Aggrieved by the penalty of dismissal from service, the petitioner preferred a writ petition, W.P.[C] no. 694/2007. By a Judgment and Order dated 10.08.2010 passed in the writ petition, W.P.[C] no. 694/2007, the order of penalty of dismissal from service, imposed upon the petitioner, was interfered with and a direction was made to conduct the disciplinary proceeding from the stage of submission of the written statement by the petitioner. Pursuant to the afore-stated direction, the disciplinary proceeding resumed and the Enquiry Officer submitted an Enquiry Report on 30.03.2011 holding that the charges levelled against the petitioner were proved. After consideration of the Enquiry Report dated 30.03.2011 submitted by the Enquiry Officer in connection with Disciplinary Proceeding no. 04/2001, the Disciplinary Authority vide an Order dated 18.07.2011 disposed of the disciplinary proceeding by ordering that the pensionary benefit of the petitioner shall be withheld permanently.

7. Subsequent to the Order dated 18.07.2011, the petitioner submitted an application for release of gratuity before the respondent authorities. On 26.02.2013, it was informed to the Judicial Department, Government of Assam by the respondent no. 2 vide its Letter bearing no. HC.V-108/2000 [pt.]/479/Estt. dated 26.02.2013 that the petitioner's prayer for release of gratuity and leave encashment was placed before the Administrative Committee of the Gauhati High Court and the Administrative Committee after due consideration, was pleased to order release the gratuity and leave encashment in respect of the petitioner. The Judicial Department, Government of Assam was thereby, requested to transmit the aforesaid information to the office of the respondent no. 3 to do the needful. The respondent no. 2 forwarded the necessary papers relating to the petitioner to the respondent no. 3 vide its

Letter bearing no. HC.VIII-113/2005/AC dated 17.05.2013, in reference to its earlier Letter dated 26.02.2013. In response to the said Letter dated 17.05.2013, the respondent no. 3 vide its Letter no. PEN-1/A/K-91464/GHC/64/2012/283 dated 18.06.2013 stated inter alia that as the petitioner's pensionary benefit had been withheld permanently, the pension [including family pension], gratuity and leave encashment would also have to be withheld and in such situation, only compassionate gratuity could be allowed in accordance with Rule 24 of the Assam Services [Pension] Rules, 1969, which reads as under :-

24. No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowances or/and land compassionate gratuity may be granted when they are deserving of special consideration; provided that the allowance/gratuity granted to any officer shall not exceed two-thirds of the pension/gratuity which would have been admissible to him if he had retired on medical certificate.

NOTE 1 - No officer, even if belonging to a class entitled to commute ordinary pension, is entitled to commute a compassionate allowance. A commutation to such an allowance may be sanctioned by competent authority only on proofs that the proceeds of the commutation will be invested for the permanent benefit of the commuter's family.

NOTE 2 - Death-Cum-Retirement gratuity or family pension under rule 135 and rule 137 may not also similarly be granted if the officer is so dismissed or removed. Compassionate grants may however be made under these rules in accordance with above principle and subject to same conditions.

8. The above view was made for the reason that the Rules applicable to the Assam Government Employees in regard to pay, allowances, leave, pension, etc. are applicable mutatis mutandis to the Gauhati High Court Employees as per Rule 21 of the Gauhati High Court Rules. With such observation, the case papers like the service book and pension papers of the petitioner were returned

by the respondent no. 3 with a request to sanction compassionate gratuity under Rule 24 of the Assam Services [Pension] Rules, 1969, if the petitioner was found deserving for the same on special consideration at the end of the employer. It was requested to re-submit the case papers accordingly, thereafter.

9. The respondent no. 2 had, thereafter, vide its Letter no. HC-VIII-113/2005/6166/AC dated 09.10.2015 wrote to the respondent no. 3 stating that the Competent Authority had decided to grant compassionate gratuity, as suggested by the respondent no. 3. The respondent no. 3 was, thereby, requested to calculate the amount of compassionate gratuity as per the computation statement enclosed therewith and to issue authorisation for the same. In the statement enclosed with the Letter dated 09.10.2015 following particulars in respect of the petitioner were mentioned : -

1.	Date of birth	- 01.02.1947
2.	Date of appointment	- 08.06.1972
3.	Date of retirement	- 31.01.2006
4.	Date of dismissal	- 13.03.2006
5.	Qualifying Service	- Y - M - D
	[i] Gross qualifying service w.e.f. 08.06.1972 to 31.01.2006.	-33-07-23
	[ii] Non counting period	-00-00-00
	Total qualifying period or 66 six monthly complete period of service	-33-07-23
6.	Last 10 Months average emoluments	
[A] Pay @ Rs. 8,00/- X 10 w.e.f. 01.04.2005 to 31.01.2006 = Rs. 81,000/- Therefore, last 10 months average emolument = Rs. 8,100/-		

10. The Letter dated 09.10.2015 [supra] was followed by two subsequent letters, viz. [1] Letter bearing no. HC-VIII-113/2005/1034/AC dated 15.02.2016; and [2] Letter bearing no. HC-VIII-113/2005/5348/AC dated 04.08.2016.

11. It was at this stage, the petitioner approached this Court by the present writ petition seeking the relief, mentioned above.

12. During the pendency of the writ petition, the learned counsel for the petitioner, on 18.02.2019, submitted that authorisation for payment of compassionate gratuity amounting to Rs. 1,55,034/- was made vide GPO no. 104060918 dated 12.12.2018. It was further submitted that the petitioner would be entitled to a higher amount. In view of the above submission made by the learned counsel for the petitioner, the office of the Accountant General [A&E], that is, the respondent no. 3 was asked to produce the break-up as to how the respondent no. 3 had authorised payment for Rs. 1,55,034/- to the petitioner towards compassionate gratuity.

13. On the previous date of listing, that is, on 04.11.2024, Mr. Bhattacharjee, learned Standing Counsel, Accountant General [A&E], Assam for the respondent no. 3 has placed a Communication bearing no. Legal Cell/Pen-1/WP[C] No. 7135/2018/398 dated 19.03.2019, addressed to him by the office of the Accountant General [A&E], Assam.

14. As per the said Communication dated 04.11.2024, an amount of Rs. 1,55,034/- as Compassionate Gratuity was authorised by the office of the Accountant General in favour of the petitioner in terms of Rule 24 of the Assam Services [Pension] Rules, 1969 as per the calculation below :-

His Q.S. is 33 yrs 7 mts and 23 days i.e. SMP = 66 His last pay = Rs. 8100/- DA @ 74% = <u>Rs. 5994/-</u> Rs. 14094 x $\frac{66}{4}$ Rs. 2,32,551 x $\frac{2}{3}$ = Rs. 1,55,034/-

It was further clarified therein that in terms of Rule 11[ii] of the Office Memorandum no. PPG[P]88/2010/27 dated 01.06.2010, those who retired on or after 01.04.2009 were entitled to DCRG on Revised Pay under the 6th Assam Pay Commission. In respect of the petitioner, the authorization for the Compassionate Gratuity amount was made by taking into account his Pre-Revised Pay under the 5th Pay Commission only.

15. Both Mr. Sarma, learned counsel appearing for the respondent nos. 1 & 2 and Mr. Bhattacharjee, learned Standing Counsel, A&E for the respondent no. 3 have submitted that with the authorisation of compassionate gratuity amounting to Rs. 1,55,034/-, in the afore-stated manner, the grievance of the petitioner has been *prima facie* and substantially redressed.

16. When the petitioner was found unrepresented on the previous date of listing, 04.11.2024, it was observed that in the event of non-representation on behalf of the petitioner on the next date of listing, appropriate order would be passed presuming that the petitioner was not interested to pursue the writ petition.

17. As it is submitted that the grievance of the petitioner raised in this writ petition is *prima facie* and substantially redressed with the authorisation of compassionate gratuity amounting to Rs. 1,55,034/- and in view of non-representation on behalf of the petitioner on three consecutive occasions, it appears to the Court that the petitioner is no longer interested to pursue this writ petition. In view of such repeated non-representation, this writ petition is liable to be dismissed for non-prosecution. It is accordingly ordered.

JUDGE

Comparing Assistant