

GAHC010239522012



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

Case No. : WP(C)/6080/2012

RAM KUMAR BARUAH
S/O- LT. RAGHU NATH SAHU, R/O- JAPORIGOG, GHY- 5, DIST.- KAMRUP M,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, WATER
RESOURCES DEPTT., DISPUR, GHY- 6, DIST.- KAMRUP M, ASSAM.

2:THE SECY. TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY- 6
DIST.- KAMRUP M
ASSAM.

3:THE ACCOUNTANT GENERAL A and E
ASSAM
BELTOLA
GHY- 29

Advocate for the Petitioner : MRS.S P NAIR

Advocate for the Respondent : MR.C BARUAH

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

14.05.2024

Heard Mr. N.K.Sharma, learned counsel for the petitioner and Mr. R. M. Das, learned standing counsel for the Water Resources Department appearing for respondent nos 1 and 2; Ms. A. Sharma, learned standing counsel for the respondent no. 3.

2. The case of the petitioner is that while serving in the Water Resources Department as Superintendent Engineer, North Lakhimpur, Water Resources Circle, he was suspended by an order dated 29.08.2008. Although the petitioner had filed an appeal against the order of suspension, disciplinary proceedings was initiated against the petitioner by issuance of a show cause notice dated 11.12.2008. The petitioner had submitted his written statement in defence. He had also approached this Court by filing an Writ petition against the continued suspension and this Court by an order dated 20.02.2009 passed in WP(C) 641/2009, directing the respondent authorities to revoke the suspension of the petitioner and the respondents were directed to conclude the departmental proceeding against the petitioner at an early date, which in any case should be within 4 (four) months from the receipt of the said order. Resultantly, the petitioner was reinstated in service by revoking his suspension. However, on 28.02.2009, the petitioner had attained the age of superannuation and retired from service. The retiral benefits of the petitioner was withheld on the ground that departmental proceeding was pending against him and though the petitioner had suffered a brain stroke on 05.06.2010, and a representation was submitted by his wife on 19.06.2010 for release of leave encashment benefits for his treatment, the dues of the petitioner were not released. Accordingly after submitting a representation, the present writ petition has been filed under Article 226 of the Constitution of India and the petitioner has prayed for

quashing of the show cause notice as well as the entire show cause notice dated 11.12.2008 and the departmental proceedings initiated against him, for a direction to regularize the period of suspension w. e. f. 28.08.2008 to 24.02.2009 as on duty and to release all consequential benefits. The petitioner also claims promotion from the prospective effect from the date his juniors were promoted to the Cadre of Additional Chief Engineer, Water Resources Department.

3. At the outset, the learned standing counsel for the Water Resources Department have prayed for an adjournment so as to enable him to obtain updated instructions as to the present status of the departmental proceeding against the petitioner. However, taking note of the fact that this writ petition which was filed on 07.12.2012 is still pending for disposal. Prayer for adjournment was refused.

4. On the perusal of the stand taken in the affidavit-in-opposition filed by the Under Secretary (E) to the Government of Assam, Water Resources Department, it is noted that the said authority by an order dated 24.02.2009 vacated the order of suspension of the petitioner and he was reinstated as Superintendent Engineer. However, on the perusal of the statements made in paragraphs 14,15 and 16 of the said affidavit-in-opposition, it appears that atleast till 20.02.2013 the date when the said affidavit-in-opposition was filed, the disciplinary proceeding against the petitioner was not yet finalised.

5. In the said affidavit, the Under Secretary to the Government of Assam, Water Resources Department has not disclosed as to which power was invoked by the respondent nos. 1 and 2 to continue with the disciplinary proceeding against the petitioner after he had superannuated on 28.02.2009.

6. The learned standing counsel for the respondents could not refer to any provision under the Assam Services (Discipline and Appeal) Rules, 1964 by which an employee/ officer who is under suspension on the charge of misconduct and who attains the age of superannuation shall be deemed to be in service even after attaining the age of superannuation for the specific purpose of continuation and conclusion of disciplinary proceedings. Therefore, in the absence of such deeming provisions, disciplinary proceeding initiated against the petitioner must be deemed to have been terminated on 28.02.2009, the day he superannuated.

7. Nothing has been brought on record that the competent authority had passed any order under section 21 of the Assam Services (Pension) Rules, 1969 not reserving the right to withhold or withdrawal of pension or any part of it. For such an order been passed, the Under Secretary to the Government of Assam, Water Resources Department would have reflected in the affidavit-in-opposition filed on 20.02.2013.

8. Therefore, the Court is of the considered opinion that on superannuation of the petitioner on 28.02.2009, as the respondents have not disclosed passing of any order to deem the petitioner to be on service even after the age of superannuation and as it is not disclosed that any orders were passed by the competent authority to withhold the pension of the petitioner, for all intents and purposes, this disciplinary proceeding instituted against the petitioner deemed to have been terminated on 28.02.2009, the date on which the petitioner was superannuated. Accordingly, it is ordered that the disciplinary proceeding that was instituted against the petitioner by issuance of show cause notice dated 11.12.2008 is deemed to have been terminated on and from 28.02.2009.

9. Resultantly, the petitioner is also found entitled to an order of

regularization of the period of suspension from the period of 28.08.2008 till 24.02.2009 as on duty, and he will be entitled to all pecuniary benefits or any other consequential benefits for the said period.

10. As the disciplinary proceeding against the petitioner is deemed to have been terminated w. e. f. 28.02.2009, the petitioner will not be entitled to any promotion from the date his Junior is promoted till 28.02.2009 as the recommendation of the DPC was in sealed cover which was not opened till 28.02.2009.

11. Accordingly, the respondent nos. 1 and 2 are directed to calculate the pension and other retirement benefits of the petitioner as may be admissible in an accordance with law. The retirement benefit including pension etc shall be released to the petitioner within an outer period of 4 (four) months from the date of receipt of the certified copy of the order. Copies shall be served on the respondent no. 2, the Under Secretary to the Government of Assam, Water Resources Department.

12. Consequentially, the departmental proceeding having been terminated on 28.02.2009, there is no punishment imposed on the petitioner which prevents him to be promoted, the DPC recommendation which is kept in sealed cover is allowed to be opened by the respondent nos. 1 and 2 which is deemed to have been opened on 28.02.2009, and any benefit that has arisen out of the DPC recommendation would be available to the petitioner from 28.02.2009. Accordingly, notional benefit would accrue to the petitioner for the purpose of calculation of his retiral benefit.

13. The writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant