

GAHC010284072023



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

Case No. : WP(C)/7416/2023

DIP PHUKAN
S/O LATE HAREN PHUKAN, R/O DOHOBARI KACHARI GAON, P.O.-
KACHARI, NAZIRA, DIST-SIVASAGAR, PIN-785701

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY, HOME
DEPARTMENT, DISPUR-06

2:COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVT. OF ASSAM
DISPUR-06

3:DIRECTOR GENERAL OF POLICE
ULUBARI
GHY-07

4:INSPECTOR GENERAL OF POLICE (ADMINISTRATIVE)
ULUBARI
GHY-06
KAMRUP (M)

5:SUPERINTENDENT OF POLICE
SIVASAGAR
ASSAM
PIN-78564

Advocate for the Petitioner : MR MINTU SAIKIA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

16-07-2024

Heard Shri M. Saikia, learned counsel for the petitioner. Also heard Shri D. Borah, learned State Counsel appearing on behalf of the respondent nos. 1, 3, 4 & 5 as well as Shri R. Borpujari, learned Standing Counsel, Finance Department for the respondent no. 2.

2. The projected facts in the petition is that the father of the petitioner, Haren Phukan was working as a AB Constable with the Assam Police at Sivasagar. Though a departmental proceeding was drawn against him, the same did not culminate in any order of penalty. However, the father of the petitioner was discharged from his service in the year 2009. The father of the petitioner had thereafter expired in 2011. The grievance of the petitioner is that no pension or any post retirement benefit was granted to the father during his life time after discharge and no family pension has been granted to the petitioner till the age of attaining majority.

3. Shri Saikia, the learned counsel has submitted that Discharge, as such is not a prescribed penalty under the ***Assam Services (Discipline and Appeal) Rules Regulation, 1964***. Under Rule 104 of the Police Manual III Discharge has been stated which is not a penalty and which will not preclude a government servant from the pensionary benefits. The learned counsel clarifies that the aspect of Discharge as such is not the subject matter of challenge and the petitioner is only concerned with the post discharge benefits namely pension

and subsequently the family pension till the petitioner had attained the age of majority. The learned counsel has clarified that the petitioner was aged about 13 years when his father had passed away and his year of birth is 1998.

4. Shri D. Borah, the learned State Counsel on the other hand by referring to the affidavit-in-opposition filed on 05.02.2024 has submitted that a disciplinary proceeding was initiated against the father of the petitioner for unauthorized absence vide letter dated 15.02.2009 and the proceeding was registered as 09/2009. By referring to the averments made in paragraph-6, the learned State Counsel has submitted that based on the findings of the Enquiry Officer, the father of the petitioner was discharged from service on 06.09.2009. The stand of the respondents which appears from the affidavit-in-opposition is that owing to such discharge, the government servant was not entitled to any pensionary benefit.

5. Shri R. Borpujai, the learned Standing Counsel, Finance Department has submitted that the petitioner has not annexed any documents like next of kin and other documents to stake his claim. He also submits that though the expression discharge has been used, the same has been imposed after completion of a departmental proceeding and therefore the stand of the Department may not be found fault with.

6. The rival submissions have been duly considered.

7. The ***Assam Services (Discipline and Appeal) Rules, 1964*** lays down the nature of penalties. Under Rule 7, Discharge, as such is not one of the prescribed penalties either minor or majority. On the other hand, Rule 104 of the Police Manual-III which is in connection with Discharge would make it clear that after such discharge, the government servant would still be entitled for

pensionary benefit. What propelled the disciplinary authority to discharge the government employee after the disciplinary proceeding is not revealed from the records. However, going by the materials appearing from the records including the affidavit-in-opposition, there is no manner of doubt that the disciplinary authority, in its wisdom had discharged the government employee after their disciplinary proceeding.

8. As indicated above, the Rules of 1964 do not envisage discharge as a penalty. That being so, it will not be proper or justified to withhold the pensionary benefits and other post retirement benefits to the government servant or his family members when claiming family pension.

9. Under the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that the pensionary benefit from the date of discharge i.e. 06.09.2009 till the date of death of the father of the petitioner, the respondent no. 5 is required to pay the pensionary benefits and other post retirement benefits to the father of the petitioner. Additionally, since the petitioner was a minor at the time of the death of the father and claims to be the sole legal heir, he would be entitled to family pension till the age of attaining majority.

10. At this stage, the requirement of the necessary documents which were highlighted by the learned counsel for the respondents is also considered.

11. Accordingly, the petitioner is directed to furnish all the relevant documents including documents pertaining to his date of birth and the next of kin certificate along with a forwarding letter to the respondent no. 5. On furnishing the same, the respondent no. 5 (SP, Sivasagar) may verify the said testimonials and

release the aforesaid amounts to the petitioner within a period of 6 (six) months from the date of submission of the same.

12. The petitioner may accordingly obtain a certified copy of this order and furnish the same along with the application that has been directed to be submitted as above.

JUDGE

Comparing Assistant