GAHC010054952024

2026:GAU-AS:16123

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

Case No. : WP(C)/1512/2024

ABHINANDAN DUTTA
S/O- C.K.DUTTA, R/O- NEW AMOLAPATTY, P.O. AND P.S. GOLAGHAT, DIST.- GOLAGHAT, ASSAM- 785621

VERSUS

ASSAM POWER GENERATION CORPORATION LTD AND 2 ORS
REPRESENTED BY ITS CHAIRMAN, BIJULEEBHAWAN, PALTAN BAZAR, GUWAHATI- 781001

2:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEEBHAWAN
PALTAN BAZAR
GUWAHATI- 781001

3:THE GENERAL MANAGER (HR)
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEEBHAWAN
PALTAN BAZAR
GUWAHATI- 78100

Advocate for the Petitioner : MR. S BISWAS, MS S BORUAH,MS D DEVI

Advocate for the Respondent : SC, APGC,

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. S. Biswas.

Advocate for the respondent(s): Mr. D Nath, Sr. G.A, Assam
Date on which judgment was reserved :**NA**

Date of pronouncement of judgment : **02.11.2026**

Whether the pronouncement is of the :

operative part of the judgment? : **NA**

Whether the full judgment has been : **Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

Heard Mr. S Biswas, learned counsel appearing for the petitioner. Also heard Mr. D Nath, learned Senior Government Advocate, appearing on behalf of the APGCL.

2. By this application, the petitioner has raised the grievance pertaining to his leave encashment benefit, which was paid in accordance with Rule 39 (6)(a)(ii) of Central Civil Service (Leave) Rules, 1972 (hereinafter, referred to as '1972 Rules'), instead of Rule 39 (D) of the said Rules, for the leave period, while he worked in the Assam Power Generation Corporation Limited (shortly, hereinafter, as 'APGCL') and who resigned from the said services and joined the services under NLC India Ltd.

3. The case of the petitioner is that he was serving in the office of the APGCL for more than 7 years as Deputy Manager (Civil), and he was looking for a better employment. During the said tenure, he came across an advertisement issued by NLC India Limited, Chennai, being advertisement No. 07 of 2022, and looking into the conditions/qualifications appended therein, he found himself eligible, and as such, applied for the services under the said Company. It is his further case that he submitted his technical resignation before the respondent authorities and that on 11.01.2023, the respondent authorities issued No

Objection Certificate in favour of the petitioner by permitting him to appear in the interview for the post of Executive Engineer (Civil) at NLC India Limited. The petitioner further stated that the Board of Directors of APGCL in its meeting held on 13.02.2023, issued an office memorandum for the resigned employees of APGCL for their Leave Encashment benefits. The petitioner, thereafter, stated that on 22.05.2023, the Deputy General Manager, NLC India Limited, by a letter, intimated the General Manager (HR), APGCL, about the selection of the petitioner as Executive Engineer (Civil) in the said Company, and that along with the said letter, the Company had also forwarded the petitioner's appointment order with the request to the respondent authorities to serve the appointment order upon the petitioner. It is also the case of the petitioner that he wrote a letter to the General Manager (HR) of APGCL to release his Leave Encashment benefits and other benefits. The petitioner also intimated that the notice period for his resignation from the service at APGCL would be completed on 04.07.2023.

4. The petitioner, thereafter, stated that on 04.07.2023, the General Manager (HR), APGCL, issued an order releasing the petitioner from the service and that the petitioner on 07.07.2023, joined the NLC India Limited, as an Executive Engineer (Civil). It is also stated by the petitioner that he made a representation to the respondent authorities on 12.07.2023, to release his leave encashment benefits in accordance with Rule 39 (D) of the 1972 Rules. However, he stated that on 01.08.2023, the respondent authorities issued an approval letter granting leave encashment benefits to the petitioner, but only a half of the leaves accumulated as per Rule 39 (6) (a) (ii) of the 1972 Rules, was allowed. It is this order that the petitioner has put to challenge in the present writ petition.

5. The learned counsel for the petitioner submits that the present case is not a case where the petitioner had tendered his resignation simpliciter or has quit his job from the APGCL, but the present case is a case where the petitioner, in order to seek better employment, had responded to the advertisement issued by NLC India Limited, for appointment as an Executive Engineer (Civil) in the said Company. He, as such, submits that in case of the petitioner, Rule 39 (6) (a) (ii) of the 1972 Rules is not applicable, rather Rule 39 (D) of the 1972 Rules would be applicable. According to the learned counsel, under Rule 39 (6) (a) (ii), it is provided that if a Government Servant resigns from his service, the competent authority would grant leave encashment to the extent of half of such leave at his credit, subject to a maximum of 150 days, whereas, under Rule 39 (D) of the 1972 Rules, it is provided that if a Government Servant is permitted to be absorbed in a service or post under some other department or a corporation or a Company, then the competent authority would grant leave cash equivalent of leave salary in respect of Earned Leave at his credit, subject to a maximum of 300 days. He further submits that the only rider appended to the said provision, i.e., Rule 39 (D) is that the Government servant, while taking up employment in other Company, should have applied through proper channel and resign from the Government service to take up the subsequent appointment. He submits that the petitioner, before the interview had intimated the authorities in the APGCL, to give him a No-Objection-Certificate and that a No-Objection-Certificate was given to him, on 11.01.2023. He further submits and placed reliance on the office memorandum dated 24th of November, 2022, wherein it was provided that resignation will be treated as technical resignation when a Government employee applies through proper channel for the post, in some other Department and on being selected, tenders resignation to his previous

post. Relying on the said memorandum, he further submits that petitioner had given intimation and obtained NOC from APGCL and after he was selected by NLC India Limited, he tendered his resignation on 06.04.2023, and as such, he submits that his case will come within Rule 39 (D) of 1972 Rules and that the leave encashment should have been paid to the petitioner equivalent to his leave salary in respect of his earned leave at his credit.

6. On the other hand, Mr. D Nath, learned Senior Government Advocate, submits that the petitioner had not applied for his job in the NLC India Limited, through proper channel and as such, he submits that the petitioner was rightly given leave encashment to the extent of half of his leave at his credit as per Rule 39 (6) (a) (ii) of 1972 Rules. He relied on an office memorandum dated 24th of November, 2022, wherein certain guidelines were provided with regard to forwarding of applications of Government Servants, for taking up posts within the Central Government, State Government or any autonomous body. He, by relying on the said memorandum, submits that the Government reserves the right to refuse the employee to leave the Department and take up a post in other Department, if his service is found to be in public interest. He further submits that it is further provided in the memorandum that the employees would be given four opportunities in a year to apply for outside posts, but in case, the employee is found to be working in strategic post, he will not be allowed. He, therefore, submits that the petitioner should have apprised the authorities in the APGCL before or at the time of applying for the post of Executive Engineer (Civil) in NLC India Limited that he has applied for outside post. He further stressed on the point that the last date for submission of application before the NLC India Limited, was 24th of September, 2022 and the

petitioner had apprised the authorities in the APGCL, only in the last part of the year, 2022, which shows that the petitioner had not applied through proper channel, and as such, he submits that the order dated 01.08.2023, allowing the petitioner with a leave encashment benefit under Rule 39 (6) (a) (ii) of 1972 Rules is correctly given. To substantiate his argument, he placed reliance on a judgment delivered by the Supreme Court in ***Union of India & Another Vs. V.R. Chadha,*** reported in **(1997) 11 SCC 242*.***

7. I have heard the learned counsels appearing for the parties and have carefully perused the documents connected with the case.

8. It is noticed that the petitioner had worked as the Deputy Manager (Civil), in the Department of APGCL, for a period of more than 7 years. It is to be stated here that APGCL is a public sector undertaking, wholly owned by the Government of Assam, and is a State Public Sector Company registered under the Companies Act, 1956. It is also an undisputed position that the respondent Company had adopted various provisions of the Central Civil Service Rules from time to time, to regulate the service conditions of its employees for pension, leave etc. Initially, it was the Assam State Electricity Board (ASEB) and it got bifurcated after unbundling of ASEB into three independent companies and APGCL is one of them, and the Assam Electricity Grid Corporation Limited had issued an office memorandum dated 09.03.2023, with regard to application of leave encashment benefits to the resigned employees of the same.

9. In the instant case, the petitioner had admittedly applied for the post of Executive Engineer (Civil) in NLC India Limited, on the strength of the advertisement issued by the said Company, while working in the APGCL, and that before the interview he had applied for the No-Objection Certificate (NOC)

by the APGCL, and the said No-Objection Certificate was granted by the APGCL, on 11.01.2023. It has been stated in the said NOC that APGCL has no objection to the petitioner appearing in the interview/written examination, for the post of Executive Engineer (Civil) in NLC India Limited, Chennai. Thereafter, the petitioner appeared in the selection and he got selected by order dated 20th of January, 2023, to be appointed as the Executive Engineer (Civil) in the said Department. Thereafter, the petitioner submitted his resignation on 06.04.2023, by further declaring that he would serve his notice period w.e.f. the said day of 6th of April, 2023, and the General Manager (HR) APGCL, by letter dated 28.04.2023, apprised the petitioner that his resignation was accepted by the competent authority and accordingly, the petitioner was put on notice period w.e.f. 06.04.2023 to 04.07.2023, and that he would be released from APGCL service on 04.07.2023. Accordingly, the petitioner states that he had joined his services in the NLC India Limited thereafter.

10. Now, the question that needs to be adjudicated is as to whether the petitioner is entitled for leave encashment under Rule 39 (6) (a) (ii) or Rule 39 (D) of 1972 Rules. Rule 39 (6) (a) (ii) is reproduced hereinunder: -

> "*(ii) If a Government servant resigns or quits service, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of cessation of service, to the extent of half of such leave at his credit, subject to a maximum of 150 days.*…"

A simple reading of the aforesaid provisions makes it abundantly clear that if a Government Servant resigns or leaves his service, the competent authority, on

its own, will grant leave encashment equivalent to the earned leave at the employee's credit, to the extent of half of such leave, subject to a maximum of 150 days. The said provision did not speak of a situation where the employee resigns in order to take up a job in another Department. This provision simply speaks of resignation simpliciter. This is, however, not the case here.

11. It is now imperative to look into the provisions of Rule 39 (D) of the 1972 Rules, which is reproduced hereinunder:

> ***39-D. Cash equivalent of leave salary in case of permanent absorption in Public Sector Undertaking/Autonomous Body wholly or substantially owned or controlled by the Central/State Government***. –
>
> *A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or State Government or in or under a body controlled or financed by one or more than one such Government, shall be granted suo motu by the authority competent to grant leave cash equivalent of leave salary, in respect of earned leave at his credit on the date of absorption subject to a maximum of 300 days. This will be calculated in the same manner as indicated in Clause (b) of sub-rule (2) of Rule 39.*

A bare perusal of the aforesaid provision makes it further clear that a Government Servant who is allowed to be absorbed in a service or post in another Department or Company etc., the competent authority, on its own, should grant leave encashment, equivalent to the leave salary, in respect of

Earned Leave at the employees' credit, subject to a maximum of 300 days. However, a note is appended to the aforesaid provision which is again reproduced below:-

> "*Note-The expression 'permanent absorption' used in Rule 39-D shall mean the appointment of a Government servant in a Public Sector Undertaking or an Autonomous Body, for which he had applied through proper channel and resigns from the Government service to take up that appointment.*"

12. The said note makes it crystal clear that leave encashment would be paid equivalent to leave salary only in case of "permanent absorption" which was resorted to, by applying through proper channel and further that, the Government employee had resigned to take up that appointment.

13. In the instant case, the petitioner had applied for the appointment and had intimated the authorities in the APGCL, for their No-Objection. The office memorandum dated 24th of November, 2022, relied on, by the learned Government Advocate, did not speak of the requirement that an employee, on applying for a post in another Department for better opportunities, should intimate the authorities of the erstwhile Department, before applying for the same. The said memorandum provides that the Government may refuse to allow the employee to take up other post in another Department in public interest. It also provides that where a Government Servant desires to apply for a post in a private concern, he should submit his resignation before applying for private employment. In the present case, the NLC India Limited, Chennai, is a public sector enterprise and is not a private concern. The petitioner had resigned from the post in APGCL, only to take up the post in another public sector enterprise

and that he had not resigned simply from the post in the APGCL. As such, it is the considered opinion of this Court that the case of the petitioner would be covered by Rule 39 (D) of 1972 Rules. Further, in the office memorandum dated 24th of November, 2022, issued by the Government of India, Ministry of Personnel, Public Grievances and Pension Department of Personnel and Training, it is provided that a resignation given by a Government Servant, who had applied through proper channel for the post in some other Department, on selection, should tender his resignation and the said resignation will be considered as technical resignation. In the instant case, the petitioner has applied for No-Objection before the selection, which was accordingly given and after selection, he tendered his resignation. The authorities in the APGCL could have denied No-Objection, had his post been considered in public interest, as per Memorandum dated 24th of November, 2022, regarding forwarding of application. The concerned authorities, had, in fact, allowed No-Objection to the petitioner, enabling him to appear for the selection to the post of Executive Engineer (Civil) at NLC India Limited. As such, it cannot be said that the petitioner did not apply through proper channel as required under Section 39 (D) of 1972 Rules. Having applied through proper channel, and having resigned from the service of APGCL, which was allowed with three months' notice period, the case of the petitioner comes within Rule 39 (D) of 1972 Rules. Accordingly, the petitioner is entitled for leave encashment equivalent to his leave salary in respect of earned leave at his credit on the date of absorption, subject to a maximum of 300 days. As such, the order dated 01.08.2023, passed by the General Manager (HR), APGCL, qua the petitioner is set aside. The concerned authority is directed to allow leave encashment benefit to the petitioner by following Rule 39 (D) of 1972 Rules.

14. Petition is as such allowed and disposed of.

JUDGE

Comparing Assistant