GAHC010243302023

2026:GAU-AS:15546

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

Case No. : WP(C)/6256/2023

RUBUL GOGOI
S/O- RADHAKANTA GOGOI,
R/O- DEMOW CHUKAFA NAGAR,
P.S- DEMOW,
DIST- SIBSAGAR,785662, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FINANCE DEPARTMENT, (ESTT.-B) ASSAM,
DISPUR, GUWAHATI-6.

2:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
(ESTT.-B) ASSAM

DISPUR
GUWAHATI-6.

3:THE UNDER SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
(ESTT.-B) ASSAM

DISPUR
GUWAHATI-6.

4:THE DIRECTOR OF AUDIT (LOCAL FUND)
GUWAHATI-06
ASSAM

5:THE ASSISTANT DIRECTOR (LOCAL FUND)
SIVASAGAR CIRCLE OFFICE
SIVASAGAR
ASSAM

6:THE DIRECTORATE OF PENSION
REP. BY ITS DIRECTOR

HOUSEFED COMPLEX
LAST GATE
GUWAHATI
781005
KAMRUP METRO ASSAM

7:THE ACCOUNTANT GENERAL
(A AND E)
BELTOLA
GUWAHATI-29
ASSAM

8:THE TREASURY OFFICER
SIVASAGAR
ASSA

:::BEFORE:::

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocates for the petitioner : Mr. D.P. Borah.

Advocates for the respondents : Mr. R. Borpujari, SC Fin, Assam.
Ms. N. Das, on behalf of Mr. S.K. Medhi, SC, AG (A&E) Assam.

- B E F O R E -

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date of hearing and judgement : 13/10/2026.

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. B.P. Borah, learned counsel for the petitioner. Also head Mr. R. Borpujari, learned Standing Counsel, Finance Department, Assam, appearing for the respondent nos. 1 to 5 & 8 and Ms. N. Das, learned counsel appearing on behalf of Mr. S.K. Medhi, learned counsel for the AG (A&E), Assam. None appears for the respondent no. 6.

2. The genesis of this petition under Article 226 of the Constitution of India rests upon the arrest of the petitioner on 28/03/2001 in connection with Dispur P.S. Case No. 79/2001. Since he had been detained in police custody for more than 48 hours and had been released on bail on 10-04-2001, the petitioner, by the orders of the Commissioner and Secretary to the Government of Assam, Finance Department, had been placed under deemed suspension with effect from 28-03-2001 under Rule 6(1) of the Assam Services (Discipline and Appeal) Rules, 1964.

3. The Trial of the petitioner commenced in the Court of the Special Judge, Assam, Guwahati in Special Case No. 4/2008 and by the judgement dated 28-10-2011, the petitioner and another co-accused were found guilty of having committed offences under Section 7 & Section 12 of the Prevention of Corruption Act, 1988, respectively. The petitioner was sentenced to undergo rigorous imprisonment of 3 (three) years and 6 (six) months with a fine of Rs 25,000/-, with a default clause, while the co-accused was sentenced to undergo rigorous imprisonment for 3 (three) years with a fine of Rs 2,000/-, with a default clause.

4. It is a matter of record, which is not disputed by the respondents in the writ petition, that by order dated 29-01-2018, passed in Criminal Appeal No. 187/2011, which was taken up with Criminal Appeal No. 214/2011, the petitioner herein and the co-convict had been acquitted by this Court. This Court, while acquitting the petitioner herein, had observed that the prosecution had failed to discharge the initial burden

regarding the demand and acceptance of illegal gratification.

5. In the meantime, the departmental proceedings against the petitioner had been drawn up by a notification dated 04-09-2001, issued by the Deputy Secretary of the Government of Assam, Finance Department, wherein specific charges had been framed, supported by the statement of allegation, list of documents and the list of witnesses. The petitioner herein had submitted his reply to the show-cause notice on 18-09-2001. The Disciplinary Authority, not being satisfied with the reply of the delinquent officer, had appointed the State Inquiry Officer, Assam, as the Inquiry Officer by a notification dated 28-05-2002 and by another notification of even date, a presenting officer was also appointed.

6. The Inquiry Report in the present case had been submitted on 15-09-2012, wherein the Inquiry Officer had come to a finding that the charges at charge no. 2 of the charge sheet was found to have been proved and the charge at charge no. 3 was found to be not proved. The Inquiry Officer could not make any comment on the allegations levelled under charge no. 1, since till that time, the Inquiry Officer did not have the pronouncement of judgement by the Appellate Court.

7. At this juncture, a reference to the charges levelled against the petitioner would be useful and the same are reproduced herein below for ease of reference :-

> "*Description of the Charge No. 1:*
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> *That while the Delinquent Officer was serving as Audit Officer (Local Fund), in the Office of the Assistant Director of Audit (L.F.), Sivasagar Circle, he was deputed to check the arrear nil bills of the Office of the Block Elementary Education Officer, Amguri, Nazira Block under Education Department in Sivasagar District for the period from 01-01-1996 to 31-07-1998, In course of checking the bills in the office of the Deputy Commissioner, Sivasagar, in Room No. 27, the Delinquent Officer had accepted illegal gratification of Rs.1000/- (Rupees one thousand) from one Sri Pranab Jyoti Bharali, Assistant Teacher of Kalugaon Girls' M.E.School and was caught red handed by Sri Ankur Bharali, ACS, E.A.C. & E.M. Sivasagar at around 3.30 p.m. on 28-03-2001, who had been deputed by Sri G.M. Hazarika, ACS, A.D., C.*

Sivasagar District, to be present at the time of Checking the Bills. A case bearing No.79/01 under section 161 IPC against the Delinquent Officer was also registered in Police Station, Sivasagar.

The Delinquent Officer is, therefore, charged with receiving illegal gratification, doubtful integrity and misconduct, while discharging his Official duties violating the provisions of the Assam Civil Services (Conduct) Rules, 1965.

Description of the Charge No. 2:

That while the Delinquent Officer was serving as Audit Officer (Local Fund) under Sivasagar C'irele Office, he was remanded and sent to the Jail on the charges of taking bribe. He was in Police Custody (in jail) up to 10-04-2001, which meant he was in Jail custody for a period of over ten days which is unbecoming of a Government servant. It is also found that the Delinquent Officer had submitted Casual Leave applications covering the period of Police Custody (29-03-2001. 02-04-2001. 07-04-2001 and 09-04-2001) violating the Office procedure / concealing the facts to the superior authority violating Rule 3 of Assam Civil Services (Conduct) Rules 1965.

The Delinquent Officer is, therefore. charged with irresponsibility/misconduct and attempting to mislead the Government while discharging his official duties with higher responsibility.

Description of the Charge No. 3:

While the Delinquent Officer was serving as Audit Officer (Local Audit) under Sivasagar Circle Office, Government Vide W.T. Message No. FEB.34/2001/206-A dated 15-06-2001 placed him under suspension with effect from 28-03-2001 on the charges of taking bribe, arrest and subsequent detention in Jail custody for a period of more than 10 days. The above Message was conveyed through the Assistant Director of Audit (L.F.), Sivasagar Circle and Assistant Director (L.F.) has served the message to the Delinquent Officer through official Messenger vide his letter No. SIV/Estt/15/2000-01/47/89, dated 21-6-2001 with instruction to hand over charge. But the Delinquent Officer refused to receive the same from the Official Messenger. Thereafter, the Delinquent Officer received the letter of release Order issued by the Assistant Director of Audit (1.F.). Sivasagar Circle Office, Sivasagar vide letter No. SIV/Estt/15/2000-01/48 (A), dated 22-06-2001, issued through Peon Book but the Delinquent Officer refused to acknowledge the receipt.

The Delinquent Officer was, therefore, charged with insubordination /becoming of aGovernment servant disobedience, misuse of official position, deliberately ignoring the official procedure which at the same time tentamounts misconduct too."

8. The learned counsel for the petitioner has submitted that upon receipt of the copy of the Inquiry Report, the petitioner had submitted his representation upon the same. However, he submits that the receipt copies of the same had not been retained, although he is under instructions that replies had been filed in the year 2012 and in the year 2016. When matters stood thus without the Disciplinary Authority passing any orders on the proceedings drawn up against the petitioner, who had, in the meantime, superannuated from his services on 31-01-2019, the petitioner preferred an application on 31-08-2021, specifying that the petitioner was facing financial crisis in maintaining his family and he requested the appropriate authority not to delay the matter further and prayed for fixation of pay and pension orders to be issued in favour of the petitioner at the earliest.

9. A public notice was thereafter issued through newspapers on 20-09-2023 calling for the attention of the petitioner, wherein the Deputy Secretary of Government of Assam, Finance (Establishment- B) Department, had given notice to the petitioner to offer his comments on the Inquiry Report furnished by 22/08/2013 and subsequent reminder on 28-09-2016, within 10 days of publication of the notice, failing which the departmental proceeding would be concluded *ex parte*. The petitioner thereafter submitted his response to the inquiry report by the communication dated 28-09-2023.

10. At this juncture, the petitioner has preferred this writ petition on 17-10-2013, praying for setting aside of the departmental proceeding, setting aside of the inquiry report, restraining the respondents from giving effect to or acting upon the inquiry report dated 15-09-2012, praying for directions to the respondent authorities to pass appropriate orders under provisions of FR 54-B(1)(a) & (b), regularizing the

petitioner's period of suspension from 28-03-2001 to 08-04-2003 and for treating the aforesaid period as having been spent on duty for all purposes, directions to the respondent authority to revise the pay of the petitioner with effect from 01-01-2006 and release all consequential benefits to the petitioner, including arrear salaries and for further directions for release of the regular pension and other pensionary benefits to the petitioner consequent to his superannuation from service on 31-01-2019.

11. Mr. Borah, learned counsel for the petitioner has submitted that the prolonged continuation of the disciplinary proceedings, which was initiated in the year 2001 and continued, post his retirement in the year 2019, has caused undue hardship to the petitioner herein and, therefore, the impugned departmental proceedings deserve interference of this Court. He has submitted that the petitioner has not been paid his regular pension and, in fact, the petitioner, at present, is not being paid his provisional pension also. The learned counsel for the petitioner has submitted that since the petitioner has already replied to the inquiry report on 28-09-2003, there was no reason for the respondents to have delayed the passing of the final orders on the departmental proceedings. He has accordingly prayed that the writ petition be allowed and the prayers made by the petitioner be granted.

12. Mr. R. Borpujari, learned counsel for the respondents (Finance Department) has submitted that the enquiry had already culminated in an inquiry report and the petitioner had also submitted his response to the same on 28-09-2003 and it is only due to the restraint imposed by orders of this Court on 19-10-2023, that the departmental proceedings could not be finalised. He has submitted that, given an opportunity, the departmental proceedings can be concluded within a stipulated/reasonable period of time, giving finality to the grievance of the petitioner.

13. I have considered the submissions made, and the documents relied upon in the pleadings and I have also considered the grounds taken in the affidavit-in-opposition and in the affidavit-in-reply along with the documents annexed thereto.

14. There is no quarrel at the Bar that the inquiry has culminated in an inquiry report and the petitioner has also submitted his response to the same. The enquiry did not proceed due to the stay orders imposed by this Court on 19/10/2023. It is not in dispute at the Bar that the criminal proceeding against the petitioner have also culminated in the orders passed by this Court in Crl. Appeal No. 187/2011 and nothing has been stated that any further appeal by the State had been preferred.

15. Keeping in view the fact that the petitioner had submitted his reply to the inquiry report, in the present situation, I do not find it a fit case to quash the disciplinary proceeding against the petitioner, when there are materials on record to show that the Department had awaited the submission of the representation by the petitioner to the inquiry report upto the year 2023 and the petitioner has not been able to bring on record any documentary evidence that the representation on the inquiry report, had been preferred at an earlier point of time.

16. Therefore, in my considered opinion, the respondents are required to be given the liberty to conclude the inquiry proceedings against the petitioner, in accordance with law. However, I am also of the considered opinion that a time frame to be stipulated for the Department to take appropriate decision on the inquiry proceedings, since it is a matter of undisputed record that the petitioner had retired from service in the year 2019 and during the interregnum, from 08/04/2003, the petitioner had been allowed to discharge his duties in the Department itself.

17. Accordingly, this writ petition is disposed of by giving liberty to the Disciplinary Authority to take a final decision on the disciplinary proceedings pending against the petitioner by taking into account all relevant facts and circumstances, including the decision of this Court in the criminal appeal preferred by the petitioner, the findings and opinion rendered by the Inquiry Officer and also the representation filed by the petitioner on the inquiry report, within a period of 90 (ninety) days from

today.

18. It is provided that in the event, the Disciplinary Authority fails to conclude the departmental proceeding in accordance with the liberty granted herein above, it would be deemed that the Departmental Authorities are not interested in exercising the liberty granted by this Court and the departmental proceedings would be deemed to be closed without further *ado* on the closure of 90th from today. In the event, the Disciplinary Authority passes final orders on the departmental proceeding within time frame specified, the Disciplinary Authority shall also pass necessary orders on the entitlement of the petitioner to the consequential benefits, in the event he is exonerated. In the event, the petitioner is found to be guilty, the Disciplinary Authority would be at liberty to pass such orders, imposing such penalties that may be allowed in law.

19. The learned counsel for the petitioner has submitted that the petitioner has not been paid his provisional pension during the pendency of this writ petition. It is needless to say that till a final decision is arrived at by the Disciplinary Authority, in accordance with the liberty granted by this order or the disciplinary proceeding are deemed to be closed on expiry of the time frame fixed, the petitioner would be entitled for payment of provisional pension and it would be illegal for the respondent authorities to withhold the same without following the due process of law.

20. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant