



GAHC010134092020

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

Case No. : WP(C)/4060/2020

FAYJUL ISLAM
S/O LATE MAYAZUDDIN SHEIKH
RESIDENT OF HOUSE NO 1, SWARAJ NAGAR, SARUMOTIRIA, PO ASSAM
SACHIVALAYA, PS DISPUR, GUWAHATI 781006 DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, PENSION AND PUBLIC GRIEVANCE CELL, DISPUR GUWAHATI
781006

2:THE SECRETARY
TO THE GOVT. OF ASSAM
AGRICULTURE DEPARTMENT
DISPUR GUWAHATI 781006

3:THE DIRECTOR
PENSION AND PUBLIC GRIEVANCE CELL
GUWAHATI ASSAM

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON. BELTOLA
GUWAHATI 78102

Advocate for the Petitioner : MR. JUNM LASKAR

Advocate for the Respondent : GA, ASSAM



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 13-12-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. KP Pathak, learned senior counsel for the petitioner, Ms. R Bora, learned counsel for the respondents in the Agriculture Department, Mr. JK Goswami, learned Additional Senior Government Advocate for the respondents No. 1 and 3 being the authorities in the Pension and Public Grievance Department and Mr. RK Talukdar, learned counsel for the respondent No. 4 being the Accountant General (A&E), Assam.

2. The petitioner, who was an Executive Engineer (Agriculture) in the Agriculture Department of the Government of Assam, retired from service upon attaining the age of superannuation on 31.01.2019. It is stated that after retirement from service, the petitioner is being paid the provisional pension, but the final pension had been withheld. With the aforesaid grievance, this writ petition is instituted.

3. The respondents in the agriculture department refers to ACB Case No. 08/2012 under sections 13(1)(d)/13(1)(e)/13(2) of the Prevention of Corruption Act, 1988 that had been registered against the petitioner and takes a stand that because of the registration of the aforesaid ACB Case No. 08/2012, the pension of the petitioner had been withheld in exercise of the powers under Rule 21 of the Assam Services (Pension) Rules, 1969 (in short Rules of 1969).

4. In the circumstance, we examine the provisions of Rule 21 of the Rules of 1969, which is extracted as below:-

“21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified

period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if , in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that-

(a) such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the office, be deemed to be a proceeding under this rule shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

Explanation- *The continuation of the proceeding after the final retirement of the officer shall be automatic under sub-rule (a) of Rule 21 and no fresh decision of the Governor and/or the Appointing authority nor any show-cause notice to the person concerned shall be necessary.*

The powers under rule 21 shall be exercisable not only in case of causing pecuniary loss to Government but also in all other cases”];

(b) such departmental proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Governor of Assam,

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) more be concluded by such authority and in such place as the Governor of Assam may direct and in accordance with procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the Assam Public Service Commission shall be consulted before final orders are passed.

Explanation- *For the purpose of this rule-*

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

- (b) *a judicial proceeding shall be deemed to be instituted-*
- (i) *in the case of a criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and*
- (ii) *in the case of a civil proceeding on the date of presentation of the plaint in the Court.”*

5. Rule 21 of the Rules of 1969 inter-alia provides that the Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if , in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. But the said provision is again circumscribed by providing that no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

6. In view of the provision of Rule 21(c) of the Rules of 1969 that if such judicial proceeding had not been instituted while the officer was in service, whether before his retirement or during his re-employment, in respect of a cause of action which arose or an event which took place more than four years before such institution, we are required to examine the meaning of the expression 'judicial proceeding' vis a vis the registration of the ACB Case No. 08/2012 against the petitioner. If the registration of ACB Case No. 08/2012 itself be an institution of a judicial proceeding, perhaps, the respondents can withhold the pensionary benefits of the petitioner in exercise of powers under Rule 21 of

the Rules of 1969.

7. As a corollary to it, if the institution of ACB Case No. 08/2012 is not an institution of a judicial proceeding, such pension cannot be withheld.

8. Mr. KP Pathak, learned senior counsel for the petitioner refers to explanation (b) to Rule 21 of the Rules of 1969, wherein it is provided that a judicial proceeding shall be deemed to be instituted in the case of a criminal proceeding on the date on which the magistrate takes cognizance on the complaint or the report of the police officer. Accordingly, the learned senior counsel for the petitioner raises the contention that in the instant case, merely because the ACB Case No. 08/2012 had been registered, the same by itself would not be a judicial proceeding because the stage is yet to come where the magistrate had taken cognizance of any complaint or the report of a police officer being submitted before the competent Court pursuant to such ACB Case No. 08/2012. Accordingly, the factual situation has to be understood that there is no such cognizance by the magistrate.

9. The learned senior counsel for the petitioner also refers to a judgment of the Hon'ble Supreme Court rendered in General Officer Commanding, Rashtriya Rifles –vs- Central Bureau of Investigation and another, reported in (2012) 6 SCC 228, wherein in paragraph 29, a distinction had been made between the phrase 'legal proceeding' and that of 'judicial proceeding'. Paragraph 29 of the judgment in Rashtriya Rifles (supra) is extracted below:-

“29. The phrase "legal proceeding" connotes a term which means the proceedings in a court of justice to get a remedy which the law permits to the person aggrieved. It includes any formal steps or measures employed therein. It is not synonymous with the term "judicial proceedings". Every judicial proceeding is a legal proceeding but not vice versa, for the reason that there may be a "legal proceeding" which may not be judicial at all e.g. statutory

remedies like assessment under the Income Tax Act, the Sales Tax Act, arbitration proceedings, etc. So, the ambit of expression "legal proceedings" is much wider than "judicial proceedings". The expression "legal proceeding" is to be construed in its ordinary meaning but it is quite distinguishable from the departmental and administrative proceedings e.g. proceedings for registration of trade marks, etc. The terms used in Section 7 i.e. "suit", "prosecution" and "legal proceedings" are not interchangeable or convey the same meaning. The phrase "legal proceedings" is to be understood in the context of the statutory provisions applicable in a particular case, and considering the preceding words used therein."

10. A reading of the afore-extracted proposition laid down in paragraph 29 of *Rashtriya Rifles (supra)* makes it discernible that legal proceeding is a much wider term than the term judicial proceeding and every judicial proceeding although a legal proceeding, but not the vice versa. A reading of the aforesaid proposition makes it discernible that the expression 'legal proceeding' may include all such steps that may be required to be taken under law after the registration of a police case, but every such steps may not be a judicial proceeding till such complaint or report of a police officer is taken cognizance of by the magistrate concerned.

11. Reference is also made to an earlier judgment of this Court rendered in *Madan Mohan Baruah –vs- State of Assam and others*, reported in (2006) 2 Gauhati Law Reports 736, wherein in paragraphs 3 and 4, it had been held that where a departmental proceeding under Rule 21 (b) had not been initiated while the Government servant was in service, it cannot be initiated in respect of an event that may have taken place more than four years prior to the institution of such departmental proceeding and likewise under Rule 21(c) a judicial proceeding if not instituted while the Government servant was in service, cannot be instituted in respect of a cause of action which arose or an event which took place four years prior to such institution. The implication thereof was that if



such departmental proceeding or judicial proceeding was not initiated as per the requirement of Rule 21(b) and 21(c) respectively, such proceeding including a judicial proceeding cannot be instituted in respect of any cause or event that took place prior to four years of such institution.

12. In the instant case, we take note of the factual aspect that the ACB Case No. 08/2012 was registered in the year 2012, meaning thereby it must be in respect of an event that took place either in the year 2012 or prior to it and as, as of now i.e. till the year 2022 no judicial proceeding has been instituted against the petitioner, even if any judicial proceeding is now initiated, it would be in respect of a cause or an event that took place prior to four years of the institution of such judicial proceeding.

13. From such point of view, we conclude that in the facts of the present case, under Rule 21 of the Rules of 1969, as no judicial proceeding had been initiated against the petitioner nor such proceeding can be initiated in respect of any cause or event that took place prior to four years of such institution, the entitlement of the petitioner to the pensionary benefits cannot be withheld or withdrawn by the respondent authorities by referring to Rule 21 of the Rules of 1969.

14. Accordingly, the petitioner is held to be entitled to receive his complete pensionary benefits under the Rules of 1969. The respondents are accordingly directed to process the final pension of the petitioner and bring the same to its logical end within a period of two months from the date of receipt of a copy of this judgment.

15. As a matter of clarification, we further add that having provided that no judicial proceeding had been instituted against the petitioner nor can it be



instituted in respect of any event that took place prior to four years of the date of such institution, it shall not be construed to mean that there is a legal bar imposed by this judgment on the respondents to initiate any such judicial proceeding against the petitioner, if so advised. All we mean is that even if such judicial proceeding is initiated, it will not debar the petitioner from being paid the complete pension under Rule 21 of the Rules of 1969.

The writ petition is allowed to the extent as indicated above.

JUDGE

Comparing Assistant