



GAHC010155342022

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

Case No. : WP(C)/5206/2022

ANIL DEKA
S/O- RATIA RAM DEKA,
R/O- HOUSE NO-2, GAROKUCHI PATH, BELTOLA BAZAR,
P.S- BASISTHA, GUWAHATI-781028,
DIST- KAMRUP (M), ASSAM

VERSUS

THE GUWAHATI MUNICIPAL CORPORATION AND 3 ORS.
REPRESENTED BY ITS COMMISSIONER, PANBAZAR, GUWAHATI-1.

2:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI-1.

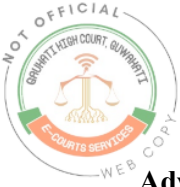
3:THE MUNICIPAL SECRETARY
GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI-1.

4:THE DEPUTY COMMISSIONER
WEST ZONE
GUWAHATI MUNICIPAL CORPORATION

GUWAHAT

Advocate for the Petitioner : MR. Y S MANNAN



Advocate for the Respondent : SC, GMC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 26.04.2023

Heard Mr. Y. S. Mannan, the learned counsel appearing on behalf of the petitioner. Mr. P. Nayak, the learned counsel appears on behalf of the respondent Nos.1 to 4.

2. The case of the petitioner herein is that the petitioner was initially appointed as a Majdoor in the Assessment Branch, Zoo Road in the respondent No. 1-Corporation. Thereupon the petitioner was appointed as a LD Assistant (Assessment Branch), GMC vide an order dated 26/12/1987 issued by the Commissioner, GMC. Subsequent thereto, by the order dated 20/06/2013, the petitioner was promoted as a Deputy License Officer at Dispur Zone of the Respondent-Corporation.

3. On 19/1/2015, the Commissioner, GMC vide an order had placed the petitioner under suspension pending drawal of departmental proceedings with immediate effect.

At this stage, it is relevant to take note of that an FIR was filed against the petitioner before the Dispur Police Station and on the basis thereof Dispur P.S. Case No.112/2015 was registered under Section 409 of the Indian Penal Code.

4. Subsequent to the petitioner's suspension on 19/1/2015, a show cause notice dated 19/3/2015 was issued to the petitioner under Rule 9 of the Assam Services(Discipline and Appeal) Rules 1964 (hereinafter for short referred to 'as the Rules of 1964') read with Article 311 of the Constitution as to why the penalties prescribed under Rule 7 of the Rules of 1964 should not be inflicted on the charge of gross negligence of duties and misappropriation of money.



5. The petitioner submitted a representation on 8/4/2015 stating inter alia that due to some inadvertent mistake, an amount of Rs.24,000/- was misplaced which the petitioner was ready to refund along with interest and also requested the respondent authorities to revoke the suspension order and allow him to join his duties. A month thereafter the petitioner submitted another representation dated 8/5/2015 praying for release of subsistence allowance and also that the petitioner was not allowed to inspect the documents which the petitioner had a right to do in terms with Rule 9 of the Rules of 1964.

6. Three months thereafter, the Commissioner, GMC accorded sanction for payment of subsistence allowance at the rate of 50% as per FR 53 of the FR & SR applicable to the State of Assam for the period of three months w.e.f. 19/1/2015 to 18/4/2015. Subsequent thereto, it is the case petitioner that the petitioner was not paid the subsistence allowance.

7. The petitioner being aggrieved by the continuation of the suspension order filed a writ petition being W.P.(C) No. 7632/2015 challenging the order of suspension. This Court vide an order dated 3/3/2016 disposed off the writ petition with a direction to the Commissioner, GMC to revoke the suspension order dated 19/1/2015 within a period of 30 days from the date of receipt of a certified copy of the order. Thereupon in compliance to the order dated 3/3/2016, on 28/4/2016, the petitioner was reinstated to his service and upon his reinstatement the petitioner was transferred and posted as Deputy Rank Officer, Central Registry Branch, GMC and the petitioner joined upon reinstatement on 28/4/2016 itself. It is the further case of the petitioner that he continued to render his service in his place of posting and retired on 31/3/2020. It is the further case of the petitioner that although the concerned Respondent Authorities had sanctioned the subsistence allowance @ 75% vide an order dated 3/6/2016 but the said subsistence allowance was not paid i.e. for the period from 19/4/2015 to 27/4/2016.



8. In the meantime, the Dispur P.S. Case No. 112/2015 was chargesheeted and thereupon a case being G.R. Case No. 614/2015 was registered. Vide the judgment and order dated 11/2/2022, the Court of the Additional Chief Judicial Magistrate, Kamrup(metro) at Guwahati held that the prosecution failed to prove the case against the accused person beyond reasonable doubt and accordingly the petitioner was acquitted of all charges and set on liberty forthwith.

9. It is relevant to take note of that the petitioner in the meantime continuously pursued his claim as regards the subsistence allowance @ 75% for the period abovementioned. The Commissioner, Gauhati Municipal Corporation however, vide a communication dated 27/3/2019 informed the petitioner that as the criminal proceedings were going on against the petitioner in the Court of law, the application of the petitioner for his outstanding dues could not be considered till the disposal of the said Court case.

10. It further appears from the records that pursuant to the judgment and order dated 11/2/2022 passed by the Additional Chief Judicial Magistrate, the petitioner submitted yet again another representation dated 23/2/2022 drawing the attention of the Commissioner of the GMC that the petitioner had been acquitted and as such to release his legitimate dues at the earliest. At this stage, it is also relevant to take note of that the petitioner in the meantime retired on 31/3/2020 and the petitioner thereupon have not been paid his pension as well as other pensionary benefits. This predicament of the petitioner still continues.

11. Pursuant to the representation submitted on 23/2/2022, the Commissioner, Gauhati Municipal Corporation, taking into account the show cause notice issued on 19/3/2015, passed an order on 7/6/2022, after a lapse of seven years from the date of issuance of the show cause notice for proceeding with the enquiry in terms with Rule 9 of the Rules of 1964 and accordingly appointed one Sri Pankaj Chakrabarty, ACS, Joint Commissioner-2, GMC as the Enquiry Officer.



12. The petitioner being aggrieved by the re-initiation of the enquiry proceedings after a hiatus of 7 years as well as for non-payment of his outstanding dues on account of subsistence allowances for the period abovementioned as well as his pension and other pensionary benefits had approached this Court by filing the instant writ petition.

13. This Court vide an order dated 12/8/2022 issued notice making it returnable by 4 weeks. Thereupon it appears that the Respondents were granted time to file affidavit on 2/11/2022, 5/12/2022 and till date no affidavit has been filed. When the matter was listed on 25/4/2023, this Court put a specific query upon the learned counsel appearing on behalf of the GMC as regards the status of the enquiry proceedings so initiated against the petitioner. Today when the matter is taken up, the learned counsel appearing on behalf of the respondent Nos. 1 to 4 submitted that the Enquiry Officer who was appointed vide the order dated 7/6/2022 had been transferred out of the respondent-Corporation in the month of December, 2022 itself and thereupon there has been no appointment of an Enquiry Officer till date. He however submits that steps are being initiated for appointment of an Enquiry Officer.

14. Be that as it may, from the perusal of the materials on record, it is apparent that the petitioner in terms with FR 53 of the FR & SR as applicable to the State of Assam was entitled to the subsistence allowance during the rate suspension period after the initial period of 3 months which ended on 18/4/2015. Thereupon the petitioner had a vested statutory right to the subsistence allowance from 19/4/2015 to 27/4/2016. This right to get the subsistence allowance could not have been deprived by the respondent authorities on the basis of the pendency of a criminal proceedings or even a departmental proceedings. More so, when already the amount stood sanctioned by the order dated 3/6/2016. Deprivation of the subsistence allowance would amount to a penalty that too without following the due process which would render the action of deprivation arbitrary, unreasonable and illegal.



15. Taking into account the same, this Court therefore is of the opinion that this is a fit case for a direction upon the respondent No. 2 to forthwith release the outstanding amount on account of the subsistence allowance for the period from 19/4/2015 to 27/4/2016 within a period of 30 days from the date a certified copy of this judgment is served upon the respondent No. 2.

16. Now coming into the question of the continuation of the departmental enquiry against the petitioner, it is the case of the petitioner herein that the enquiry was initiated on the basis of an FIR being filed against the petitioner. The said criminal proceedings having reached a quietus upon the petitioner being acquitted vide the judgment and order dated 11/2/2022 by the Additional Chief Judicial Magistrate, the re-initiation of the departmental proceedings against the petitioner that too after the retirement of the petitioner is nothing but an abuse of the powers by the respondent authorities.

17. Mr. P. Nayak, the learned counsel appearing on behalf of the GMC submitted that an acquittal in a criminal proceedings cannot be regarded that the petitioner has been exonerated in a departmental proceedings and this aspect of the matter is no longer res integra. He further submitted that pursuant to the criminal proceedings, the department proceedings was initiated and it was on account of the transfer of the earlier Enquiry Officer for which the enquiry proceedings could not be brought to a logical conclusion. The learned counsel further submitted that steps are being taken for appointment of an Enquiry Officer so that the departmental enquiry could be completed within a stipulated period of time. He further submitted that the right of pension as well as the other pensionary benefits would depend upon the outcome of the enquiry proceedings and as such the question of issuing any direction at this stage does not arise pending disposal of the departmental proceedings.

18. I have heard the learned counsels for the parties, perused the materials on record as well as given my due consideration to dispute involved in respect to the



continuation of the departmental proceedings.

19. The learned counsel appearing on behalf of the petitioner vehemently submitted that the departmental proceedings was initiated on 19/3/2015 and thereupon the petitioner had replied to the show cause notice way back in 2015 itself. The respondent authorities as per the learned counsel for the petitioner was under an obligation to complete the departmental enquiry but instead remained silent in respect to the departmental proceedings. It is only after a period of 7 years, the said department proceedings was re-initiated by appointment of an Enquiry Officer on 7/6/2022. The said submission seems palatable at the first glance but one aspect of the matter cannot be lost sight off that an acquittal in a criminal proceedings and an exoneration in a departmental proceedings are completely two different aspects of the matter inasmuch as in a criminal proceedings the yardstick applied for evidence is beyond reasonable doubt, which is however different in the case of a departmental proceedings. The departmental proceedings though initially initiated on 19/3/2015 but no action was taken in view of the pendency of the criminal proceedings. Thereupon when the respondent authorities were informed about the judgment and order dated 11/2/2022 passed in the criminal proceedings, the respondents took steps vide the order dated 7/6/2022 to appoint the Enquiry Officer. It is the opinion of this Court that the respondent authorities have a right to continue with the said departmental proceedings after the criminal proceedings was over in as much as a departmental proceedings once initiated has to brought to a logical conclusion either by way of steps taken by the Disciplinary Authority or the same has to be terminated/set aside in accordance with law.

20. On the other hand, it is also relevant to take note of that the petitioner had retired as on 30/3/2022 and for the last more than 3 years, the petitioner has been without any pension or any other pensionary benefits. Delay in bringing the department proceedings to a logical conclusion would consequently lead to delay in the finalisation of the pension and pensionary benefits. This would violate the rights of

the petitioner to continue a retired life with dignity which is a facet of Article 21 of the Constitution. This delay in completion of the departmental proceedings and corollary thereto the delay in the finalisation of pension and other pensionary benefits has to be telescoped with the right guaranteed under Article 14 of the Constitution which also promises justness, fairness and reasonableness in procedural matters.

21. Consequently, this Court is therefore of the opinion that interest of justice would be met by permitting the respondent authorities to continue with the departmental proceedings so that the departmental proceedings can be brought to a logical conclusion within a stipulated period. This Court is further of the opinion that in the facts of the instant case a period of two months from the date of service of a certified copy of the instant judgment upon the respondent No. 2 would be sufficient and reasonable for bringing the departmental proceedings to a logical conclusion.

22. It is made clear that if the departmental proceedings, for no fault of the petitioner, cannot be brought to a logical conclusion within a period of 2 months as stipulated hereinabove, it is the further opinion of this Court that the further continuation of the departmental proceedings would be violative of Article 14 & 21 of the Constitution and accordingly the Disciplinary Authority has to close the departmental proceedings and process the pension and pensionary benefits of the petitioner immediately forthwith.

23. Accordingly the instant writ petition stands disposed off with the following observations and directions.

(i) The petitioner would be entitled to subsistence allowance for the period from 19/4/2015 to 27/4/2016. The Respondent No. 2 is directed to release the said outstanding arrears within a period of 30 days from the date a certified copy of this judgment is served upon the Respondent No. 2. Any delay thereafter shall entitle the petitioner to interest @ 12% per annum from the date of such default.

(ii) The Disciplinary Authority i.e. the respondent No. 2 is given the liberty to bring the



departmental proceedings to a logical conclusion within a period of two months from the date a certified copy of this judgment is served upon the Respondent No. 2. It is further directed that in case, for no fault of the petitioner, the departmental proceedings cannot be brought to a logical conclusion within the period mentioned herein, the disciplinary authority is directed to pass necessary order(s) for dropping the disciplinary proceedings against the petitioner forthwith upon completion of the period mentioned hereinabove.

(iii) The Respondent Authorities are directed thereafter to immediately process the proposal of pension and pensionary benefits of the petitioner on the basis of the outcome of the steps directed to be taken in terms with Clause (ii) herein above i.e. upon completion of the two months period from the date a certified copy of this judgment is served upon the Respondent No. 2 and the said exercise be completed within 3 months therefrom. Any delay thereafter would entitle the petitioner to interest @ 12% per annum from the date of such default on his entitlement.

(iv) In the peculiar facts of the case, this Court is not inclined to award costs.

JUDGE

Comparing Assistant