



GAHC010036522023

Page No.# 1/6



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

Case No. : WP(C)/1065/2023

RAJAT SUBHRA BHATTACHARJEE
RETD. CHIEF ACCOUNTS OFFICER ZILA PARISHAD HAILAKANDI S/O LT. R
K BHATTACHARJEE R/O VILL. HOUSE NO 20 SANGHATI LANE DAS
COLONY SILCHAR PIN 788005 DIST. CACHAR ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSA FINANCE
DEPTT. DISPUR GUWAHATI 6

2:THE SECRETARY
TO THE GOVT. OF ASSAM FINANCE ESTT. B DEPTT. DISPUR GUWAHATI 6

3:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON BELTOLA GUWAHATI 2

For the Petitioner :

Mr. N. Borah, Adv.

For the Respondents:

Mr. A. Chaliha, SC, Finance.
Mr. R.K. Talukdar, SC, AG (A&E), Assam.

BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 12/05/2023.

Date of judgement : 12/05/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. N. Borah, learned counsel for the writ petitioner. Also heard Mr. A. Chaliha, learned Standing Counsel, Finance Department, Assam, appearing for the respondent nos. 1 & 2 and Mr. R.K. Talukdar, learned Standing Counsel, AG(A&E), Assam, representing the respondent no. 3.

2. The writ petitioner herein, was serving as the Senior Finance & Accounts Officer in the Animal Husbandry and Veterinary Department under the Government of Assam. He was also holding the additional charge of Finance & Accounts Officer, in the Directorate of Social Welfare. The petitioner retired from service, on attaining the age of superannuation, with effect from 30/11/2021. While in service, an FIR was lodged against the petitioner, based on which, ACB PS case No. 19/2016 was registered under sections 120(B)/468/420/409 of the Indian Penal Code (IPC) read with sections 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988, on charges of corruption. The petitioner was arrested on 27/02/2017 in connection with the ACB PS case No. 19/2016. However, by order dated 29/05/2017 passed by this Court in Bail Application No. 513/2017, the petitioner was enlarged on bail. After retirement, a departmental proceeding was initiated against the petitioner by issuing the memorandum of charge dated 30/05/2022. The respondent No.2 had accordingly, called upon the petitioner to submit his statement of defense within 10(ten) days. The two allegations brought against the petitioner were pertaining to negligence in duty and gross violation of financial procedure and rules.

3. Assailing the memorandum dated 30/05/2022, the writ petitioner has approached this Court by filing this writ petition on twin grounds. Firstly, that in view of Rule 21(b)(ii) of the Assam Services (Pension) Rules, 1969 (for short "Rules of 1969"), no departmental proceeding could have been initiated against the petitioner after his retirement in respect of events which took place more than 4 (four) years before the institution of the departmental proceeding. Secondly, there is no valid ground for the authorities to withhold the pension of the petitioner years after his retirement. Hence, a writ of mandamus has been prayed for.

4. Mr. Bora has argued that the departmental proceeding is barred by limitation. In support of his above stand, Mr. Borah, learned counsel for the petitioner has invited attention of this Court to the provisions of Rule 21 of the Rules of 1969 and has also relied upon a decision of the Supreme Court rendered in the case of ***State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another*** reported in **(2013) 12 SCC 210** as well as another decision of this Court rendered in the case of ***Sushil Kumar Baruah Vs. State of Assam and others*** reported in **2007 (1)GLT 533**, to argue that the departmental proceeding initiated against the petitioner was not maintainable in the

eyes of law. Mr. Borah further submits that the respondents cannot refuse to settle the pension of the petitioner since there is no valid legal proceeding drawn up against the petitioner wherein, he has been found to be guilty.

5. Mr. A. Chaliha, learned counsel for the respondent nos. 1 & 2, on the other hand, has fairly submitted that there was delay in initiation of departmental proceeding against the petitioner due to non-receipt of relevant documents from the Social Welfare Department but according to Mr. Chaliha, if three months time is granted by this court, than in that event, the departmental proceeding drawn against the petitioner will be concluded.

6. Mr. Talukdar, learned counsel for the respondent No. 3 did not make any submission responding to the plea raised in the writ petition.

7. After hearing the submissions of learned counsel for both the sides, this court is of the opinion that the core issues that would arise for consideration in this case are as to whether, the departmental proceeding drawn against the petitioner vide charge memo dated 30/05/2022 was maintainable in the eyes of law and if not, whether there is any valid ground for the authorities to withhold the pension of the petitioner.

8. There is no dispute in this case that the event referred to in the Memorandum of Charge dated 30/05/2022 took place more than 4(four) years prior to the institution of the departmental proceeding against the writ petitioner. It is submitted at the Bar that the incident referred to in the Memorandum of Charge relates to 16/10/2014. However, the departmental proceeding was drawn up against the petitioner only on 30/05/2022 i.e. after the lapse of more than seven years. It is also the admitted position that although the criminal case was registered against the petitioner in the year 2016 yet, no progress has been made in respect thereof. In any event, the petitioner has not been found guilty by any court.

9. Rule 21 of the Rules of 1969 permits the Governor of Assam to withhold or withdraw pension or any part of it, whether permanently or for a specified period and also the right to order for recovery from pension any pecuniary loss caused to the Government exchequer if in a departmental proceeding or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement. Rule 21(b) & (c), however, imposes certain restrictions if such departmental proceeding or judicial proceeding is sought to be initiated against the employee after his retirement. Rule 21 (b) & (c) of the Rules of 1969 lay down the conditions which are extracted herein below for ready reference :-

“21.(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) *Shall be conducted 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 even which took place more than 4 years before such institution."*

10. From a plain reading of the provisions of 21(b) (i) (ii) & (iii) as well as (c), it is apparent that no legal proceeding or departmental proceeding can be instituted against a pensioner in respect of an event or cause of action which took place more than 4 years before such initiation.

11. In the case of ***State of U.P vs Shri Krishna Pandey*** reported in ***AIR 1996 SC 1656*** the departmental proceeding was initiated against the pensioner after his retirement on charges which included embezzlement of fund and his pension was withheld. However, there was no such provision in the relevant Rules either to institute or continue with such proceeding after retirement of the employee. Rule 351-A of the Rules also contains a similar provision which lays down that departmental proceeding cannot be initiated against an employee after his retirement in respect of an event which took place more than four years before institution of such proceeding. The retired employee in that case had approached the Allahabad High Court seeking an order for release of his pension which was allowed. The order of the High Court was challenged by the State of U.P. before the Supreme Court. The apex court had, however, dismissed the appeal filed by the State of U.P. By interpreting Rule 351-A of the relevant Rules, the Supreme Court has observed that since there was no provision in the rules to institute departmental proceeding after the retirement of the pensioner and too in respect of an event that took place more than four years prior to the initiation of the proceeding, the same would not be maintainable in law even if the alleged misconduct might have caused financial loss to the Government.

12. Rule 43(b) of the Bihar (Pension) Rules contain *pari materia* provision as in rule 21(b) of the Rules of 1969. By interpreting the provisions of Rules 43(b) of the Bihar (Pension) Rules, the

Supreme Court has observed in the case of **State of Jharkhand and others (supra)** that the proceedings will have to be initiated within the period of limitation prescribed under the Rules.

13. In the case of **Sushil Kumar Baruah (Supra)**, this Court, after interpreting the relevant provisions of Rule 21(b)(ii) of the Rules of 1969 has held as follows :-

“14. As stated above, in the instant case, the institution of departmental proceedings against the petitioner for the incident which took place in the year 1992 cannot be initiated long after the petitioner had retired in superannuation and the contemplated departmental enquiry or proceedings against the petitioner is forbidden by clause (ii) of sub-rule (b) of Rule 21 of the Assam Services (Pension) Rules, 1969.”

14. By placing reliance on the decision in **Shri Krishna Pandey (supra)** a similar view has been in an earlier decision of this Court rendered in the case of **Nabam Rameshwor Singh Vs. State of Manipur and others** reported in **2001 (2) GLT 640**, wherein, by interpreting the *pari materia* provision of Rule 9(2)(b) of the Manipur Civil Services (Pension) Rules, 1977, it was observed as follows :-

“ 6. In view of the above legal issue and position which has been settled by the Apex Court and also the provisions of law laid down under Rule 9 (2) (b) of Central Civil Services (Pension) Rules, 1977,1 hereby opined that the alleged events took place more than 4 years before the institution of the said department proceeding as against the petitioner which is not permissible under the law as discussed above. Though the Court is of the view that the State-respondents under certain circumstances had disabled itself by their deliberate omissions to take appropriate legal action against the petitioner.”

15. From a careful analysis of the ratio laid down in the aforementioned decisions, it is crystal clear that Rule 21(b)(ii) of the Rules of 1969 would not permit initiation of a departmental proceeding against a pensioner after his retirement if the event and/or cause of action had occurred more than 4 years before institution of the departmental proceeding. There is no provisions in the Rules to condone the delay. If that be so, this court is of the un-hesitant opinion that the departmental proceeding instituted against the writ petitioner by issuing the memorandum dated 30/05/2022 was barred by time. The memorandum dated 30/05/2022 is, accordingly set aside.

16. Since the writ petitioner has not been found guilty in any departmental proceeding or judicial proceeding for grave misconduct or negligence, powers under Rule 21 also cannot be invoked so as to withhold his pension. Therefore, a writ of mandamus would lie in this case directing the



respondents to take necessary steps for finalizing the pension of the petitioner.

17. For the reasons stated above, this writ petition stands allowed.

18. The respondent Nos. 1 & 2 are hereby directed to forthwith take steps for finalizing the pension of the petitioner and for release of his other retirement dues, if any, in accordance with law. The aforesaid direction be carried out within a period of 3 (three) months from the date of receipt of a certified copy of this order. It is, however, made clear that this order would not come in the way of further proceeding connected with ACB PS case No. 19/2016.

Writ petition stands disposed of.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant