(2018) 01 GAU CK 0002

In the Gauhati High Court

Case No : 4719 of 2016

BANAMALI BORA APPELLANT

Vs

THE STATE OF ASSAM AND ORS RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0002

Hon'ble Judges : SUMAN SHYAM

Bench : Single Bench

Advocate : N DEVI, P P DUTTA, A. C. Sarma, C. Bhattacharjee

Final Decision : Disposed

Judgement

1. Heard Mr. A. C. Sarma, learned counsel appearing for the writ petitioner. I have also heard Mr. C. Bhattacharjee , learned Standing Counsel,

Secondary Education Department, Assam, appearing for the respondent Nos.1 to 3 as well as Mr. P. P. Dutta, learned counsel representing the

respondent No.4.

2. The writ petitioner herein has retired as the In-charge Principal of Nonoi Higher Secondary School in the district of Nagaon upon attaining the

age of superannuation with effect from 31.01.2012. Since the service of the petitioner is pensionable, hence, the departmental authorities have

sanctioned provisional pension to the petitioner which he is receiving regularly. But the grievance of the petitioner is that the authorities have not

finalised his pension even after the lapse of nearly six years from the date of his retirement apparently on account of the fact that the respondent

No.4, i.e., the In-charge Principal of Nonoi Higher Secondary School has not issued the No Objection Certificate (NOC).

3. By inviting the attention of this Court to the communication dated 13.02.2013 issued by the Inspector of Schools, NDC, Nagaon, i.e. the

respondent No.3 requesting the respondent No.4 to act on the application submitted by the petitioner for issuance of NOC for the purpose of

settlement of his pension and DCRG, Mr. Sarma, learned counsel for the petitioner, submits that there is absolutely no valid reasons for the

respondent No.4 to withhold the NOC. Notwithstanding the same, a completely arbitrary and illegal stand has been adopted by the school

authority with a malafide intent of causing injury to the interest of the writ petitioner.

4. By referring to the statements made in paragraph 5 of the counter-affidavit filed by the respondent No.4, Mr. Sarma submits that two allegations

have been levelled against the petition citing the same as ground for non-issuance of the NOC but from a perusal of the audit report relied upon by

the respondent No.4, it would be apparent that none of the grounds are available to the respondent No.4 for withholding the NOC.

5. Referring to Rule 21 of the Assam Services (Pension) Rules, 1969, Mr. Sarma submits that although his client has stoutly denied the allegations

levelled against him, yet, even assuming for the sake of argument that there was any substance in those allegations, no action can be taken against

the petitioner in the matter since four years have already elapsed since he has retired as a government servant. Mr. Sarma, therefore, submits that

viewed from any angle, the authorities cannot withhold the pension of the petitioner on the grounds stated in the counter affidavit filed by the

respondent No.4.

6. In support of his aforesaid argument, Mr. Sarma has placed reliance upon the following decisions of this Court :-

1) Eyakub Hussain Vs. The Secretary to the Government of Assam, Public Works Department Dispur & others, reported in 1984 2 GLR 424.

2) Aruna Sadhanider (Saikia) Vs. State of Assam and others, reported in 2002 (2) GLT 322.

3) Aroti Das Vs. State of Assam and others, reported in 2003(3) GLT 171.

4) Harinath Vs. State of Assam and others, reported in 2007 3 GLR 648.

7. The respondent Nos.1 to 3 have not filed any counter affidavit but the learned Standing Counsel, Secondary Education Department, Assam,

Mr. C. Bhattacharjee, submits that the only reason why the pension of the petitioner could not be settled is on account of non-availability of NOC

from the school authority.

8. Mr. P. P. Dutta, learned counsel representing the respondent No.4, submits that there are allegations of financial irregularity against the writ

petitioner and therefore, the Principal of the School is not in a position to issue the NOC as per the decision of the SMDC. Mr. Dutta has,

however, fairly submitted that neither any criminal proceeding nor any departmental proceeding has been initiated against the writ petitioner,

demanding recovery of any particular sum of money. In fact, Mr. Dutta, submits that save and except informing the matter to the respondent No.3,

no action has been taken by the SMDC in the matter till today.

9. I have perused the materials available on record and have also considered the submissions made by learned counsel for the parties.

10. It is not in dispute that the petitioner took over as the In-charge Principal of Nonoi Higher Secondary School on 26.05.2009 and continued in

the said post till 31.01.2012 i.e. the date of his retirement. It is also not in dispute that the only reason why the petitioner''s pension has not been

settled till date is on account of nonsubmission of the NOC by the respondent No.4. The stand of the respondent No.4 is projected in paragraph 5

of the counter-affidavit which is reproduced herein below :-

5. That during the tenure of the petitioner as Principal In-charge of the School cum Member Secretary of the SMDC, allegation of various

financial anomalies were come into light during the annual audit conducted by the Audit Officer (Local Fund) Assam, office of the Assistant

Director of Audit (Local Fund), Assam, Nagaon Circle. The Audit Report was submitted vide No.ADN/24/92-93/779 dated 27/6/12 by the

Assistant Director of Audit (Local Fund), Assam, Nagaon Circle wherein objection in respect of received amount of Rs.13,43,778/- by the school

from the Four Lane Construction Authority, Non-deposit of Admission Fee to the government amounting to Rs.2,48,720/- non maintenance of

Stock register against purchased articles, materials etc. irregular maintenance of Cash book were raised.

In the said counter affidavit, the respondent No.4 has also categorically admitted that no proceeding has been initiated against the petitioner either by the Government or by the school authorities.

11. The stand of the respondent No.4, as projected in the counter affidavit, has been strongly refuted by the petitioner by filing rejoinder affidavit

wherein it has been mentioned that the audit report dated 27.06.2012 does not indicate any irregularity in the matter of utilisation of the funds

received from the Four Lane Construction Authority. Insofar as the second allegation regarding non-deposit of the admission fees is concerned, it

has been categorically stated by the petitioner that during his tenure as In-charge Principal of the school a total amount of Rs.1,70,160/- had been

received as tuition fees out of which a sum of Rs.87,410/- had been deposited in the Government Treasury and the balance amount of Rs.82,750/-

was utilised in renovation work of the school building as per the authorisation of the School Management Committee through its resolution No.3

adopted in the meeting held on 28.12.2010. The petitioner has also annexed a copy of the said resolution as Annexure- B to the affidavit-in-reply.

12. From the scrutiny of the rival stand taken through the pleadings, I find that although the draft audit report for the Nonoi Higher Secondary

School prepared for the period from 01.04.2007 to 31.01.2012 has been relied upon by the respondent No.4 in support of the allegations levelled

against the petitioner, yet, insofar as the allegation No.1 regarding misuse of the fund received from Four Lane Construction Authority is

concerned, the audit report has clearly mentioned that ""the entire amount was found utilised for the purpose of renovation construction of the

school building."" Moreover, the date of receipt of the fund as per the audit report is 31.12.2007 which is also long before the date on which the

petitioner took over as Incharge Principal of the school. As such, it is not understood as to how the NOC could be withheld on the basis of

observations made in the audit report.

13. As regards the second allegation regarding non-deposit of the tuition fees is concerned, the audit report speaks of an amount of Rs.2,48,720/-

being the admission and tuition fees which is yet to be deposited in the school account but the said amount relates to the period from 2007-08 to

2011-12 whereas the petitioner took over as the Principal In-charge only on 26.05.2009. In view of the stand taken by the writ petitioner in the

reply affidavit, as noted above, it cannot be said that the petitioner is liable for non-deposit of the aforesaid amount since the period during which

the alleged irregularities had taken place do not exclusively conform to the tenure of the petitioner as the In-charge Principal of the school. There is

also no indication in the audit report as to whether the tuition fee collected during the tenure of the petitioner had been misused/misappropriated.

14. By a long line of decisions rendered by the Hon''ble Supreme Court as well as this Court, law has been firmly settled that pension is not a

bounty or a matter of charity but is a legal entitlement of a person to be enjoyed after his retirement as a matter of right. As per the provision of

Rule 21 of the Pension Rules, 1969, the pension of a retired Govt. servant cannot be withheld except on the basis of an order to be passed by the

Governor in accordance with the provisions mentioned therein when the pensioner is found to be guilty of grave misconduct or negligence during

the period of his service in a departmental or judicial proceeding. As per Rule 21(b)(ii), in case of a retired Govt. servant no such departmental

proceeding can be initiated after the lapse of four years from the date on which the event had occurred. Relying upon the said provision contained

in Assam Services (Pension) Rules, 1969, a Division Bench of this Court in the case of Eyakub Hussain (supra) has categorically held that no

departmental proceeding can be initiated against a retired Govt. servant after the lapse of four years as per the mandate of Rule 21(b).

15. Again, in the case of Aruna Sadhanider (supra), this Court had held that withholding of pension on the ground of causing financial loss to the

Government without holding any enquiry or ascertaining the veracity of the allegations is impermissible. Similar view has been expressed in a

subsequent decision of this Court in the case of Aroti Das (supra) whereby this Court has held that no recovery can be made from a Government

servant without following the procedure contemplated under Rule 21 of the Pension Rules, 1969.

16. In the case in hand, as noted above, no departmental action or criminal proceeding has been initiated against the petitioner for recovery of any

amount. The stand of the respondent No.4 and the school management authority, even if taken in face value, would merely amount to allegations

which will have to be established in a proceeding contemplated by Rule 21 of the Assam Pension Rules, 1969. Although the respondent No.4 has placed heavy reliance on the audit report, yet, even from a bare perusal of the said report, this Court finds that the audit report does not support

the allegations brought against the petitioner. Be that as it may, since Rule 21(b) of the Pension Rules would not permit any recovery proceeding to

be initiated against the petitioner at this point of time it would not be permissible to take any penal action or make any recovery from the petitioner

even if the allegations are true. As such, I am of the considered opinion that there is no justifiable ground to withhold the pension of the petitioner in

the facts and circumstances of the case.

17. Having regard to the mandate of Rule 21(b) of the Assam Services (Pension) Rules, 1969 as well as the law laid down by this Court in the

aforementioned decisions, I deem it appropriate to issue a direction upon the respondent No.4 to issue the NOC to the respondent No.3 within a

period of four weeks from the date of receipt of a certified copy of this order. Upon receipt of the NOC, the pension of the petitioner be finalised

by the departmental authorities within a period of three weeks thereafter. The writ petition is disposed of accordingly. There would be no order as

to cost.