
(2018) 07 GAU CK 0065
In the Gauhati High Court
Case No : Civil Writ Petitionl No.5850 Of 2017

Indra Kanta Gogoi

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 420, 468
Assam Services (Discipline and Appeal) Act, 1964 — Section 7(2)
Assam Services (Discipline and Appeal) Rules, 1964 — Rule 9

Citation : (2018) 07 GAU CK 0065

Hon'ble Judges : SUMAN SHYAM, J

Bench : Single Bench

Advocate : P.J. Saikia, N. Sarma

Final Decision : Disposed Off

Judgement

1. Heard Mr. P.J. Saikia, learned counsel for the petitioner. I have also heard Mr. N. Sarma, learned Standing Counsel, Elementary Education

Department, Assam, appearing for the respondents.

2. The writ petitioner in this case has retired from service on attaining the age of superannuation with effect from 30/06/18, while serving as LDA in

the office of the DEEO, Dibrugarh, by the order dated 05/05/2010, the petitioner was placed under suspension pursuant to his arrest made by the

Police in connection with Dibrugarh PS case No. 299/2008 registered under Section 120(B)/420/468/34 IPC as he was detained for more than 42

hours in the Police custody. The petitioner was, however, allowed to draw subsistence allowances during the period of suspension. Thereafter, on

03/02/2011, a show cause notice was served upon the petitioner in contemplation of initiation of a disciplinary proceeding. The petitioner had submitted

his reply to the show cause notice dated 03/02/2011. However, no disciplinary proceeding was initiated against the petitioner on the basis of the show

cause notice dated 03/02/2011. On the contrary, by issuing the order dated 14/07/2011, the petitioner was reinstated in service in the post of LDA.

The grievance of the petitioner is that although his name was forwarded before the authorities for promotion to the post of UDA way back in the year

2004, no action has been taken in the matter till date. It is also the grievance of the petitioner that the authorities have unduly withheld the benefits

accruing to the petitioner due to increment in pay since the year 2010 as well as the benefits available to him under the Assured Career Progression

Scheme. That apart, the petitioner is also aggrieved by the fact that the period during which he was placed under suspension i.e. 05/05/2010 to

14/07/2011 has not been regularized by the authorities till today as a result of which, the petitioner has been deprived of pay benefits to which he is

entitled to under the law.

3. Mr. Saikia, learned counsel for the petitioner has fairly submitted that since his client has already retired from service w.e.f. 30/06/2018, the relief

for issuing a direction for considering his case for promotion to the post of UDA may not be alive at this stage. The learned counsel for the

petitioner, however, submits that his client is entitled to regularization of the period of service during which he was placed under suspension and

payment of annual increments which have been withheld by the authorities without any valid ground. Mr. Saikia has also invited the attention of this

Court to the affidavit-in-opposition filed by the respondent no. 2 on 17/04/2018, wherein it has been stated that the department has neither initiated

nor contemplated any fresh departmental proceeding against the petitioner. It has, however, been mentioned therein that due to pendency of the

investigation in connection with the Dibrugarh PS Case No. 299/2008, the respondents are not in a position to regularize the period of suspension of

the writ petitioner with effect from 05/05/2010 to 14/07/2011.

4. Mr. N. Sarma, learned Standing Counsel, Education department has advanced his submission in tune with the stand in the affidavit filed by the

department to contend that since the petitioner has already retired from service on attaining the age of superannuation, question of initiation of any

departmental proceeding may not arise at this stage.

5. From a scrutiny of the materials available on record, it appears that the respondent authorities had earlier issued a show cause notice dated

17/09/2007 upon the petitioner based on which a disciplinary proceeding as per the provisions of Rule 9 of the Assam Services (Discipline and Appeal)

Rules, 1964 was initiated against the petitioner. The charges brought against the petitioner in the said proceeding was ultimately held to be established

and, therefore, the penalty of withholding his promotion under Section 7(2) of the Rules of 1964 was inflicted upon the petitioner. It is not in dispute

that the order dated 04/11/2008 imposing a penalty of "withholding promotion" has not been challenged by the petitioner. In view of the above and

considering the fact that the petitioner has already retired from service, the question of issuing a mandamus for considering his case for promotion can

not be entertained by this Court at this distant point of time.

6. Coming to the question of regularization of the period of suspension of the petitioner, it is to be noted herein that the respondents have categorically

stated in their affidavit that no disciplinary proceeding has been contemplated against the petitioner based on the show cause notice dated 03/02/2011.

The learned departmental counsel has also failed to draw the attention of this Court to any provision in the Rules of 1964 which prohibits the

department from regularizing the period of suspension on the ground of pendency of investigation in connection with the Police Case.

7. Since the petitioner had been reinstated in service and has been allowed to retire therefrom on attaining the age of superannuation, in the opinion of

this Court, there cannot be any justifiable ground for the authorities to deny him the benefit of regularization of service for the period during which he

has remained under suspension i.e. from 05/05/2010 to 14/07/2011. Moreover, in the absence of any order of penalty issued on the basis of a

disciplinary proceeding initiated in accordance with the provisions of Rules of 1964, the petitioner cannot also be denied of the benefits of pay

increment or any other service benefits, which might have accrued to him under the Rules. Under the circumstances, I find force in the submission of

Mr. Saikia that the respondents are duty bound to consider the case of the petitioner for regularization of his service for the period from 05/05/2010 to

14/07/2011 and also to pay the arrear of the pay and increment which the petitioner was entitled to under the Rules.

8. For the reasons stated above, this writ petition is being disposed of by granting liberty to the petitioner to file a fresh representation before the authorities ventilating his grievances regarding regularization of the period of suspension and also for paying of arrear dues. If such a representation is filed by the petitioner within four weeks from today, the same shall be considered by the respondent no.1 on its merit.
9. The exercise in terms of this order be carried out within a period of three months from the date of receipt of the representation. Whatever may be the decision, the same may be communicated to the petitioner in writing.