
(2018) 09 GAU CK 0041
In the Gauhati High Court
Case No : Civil Writ Petition No.1592 Of 2018

Nityananda Borah

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 21, 22(1)

Citation : (2018) 09 GAU CK 0041

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : S Chauhan, N Goswami

Final Decision : Disposed Off

Judgement

1. Heard Mr. S Chauhan, the learned counsel for the petitioner and Mr. N Goswami, the learned State Counsel appearing for the respondent Nos. 1, 2 and 4. Mr. A Hassan, the learned counsel appears for the respondent No. 3.
2. By filing this writ petition, the petitioner has sought for payment of his pensionary dues as permissible in law in view of his retirement from service on superannuation on 30.06.2017 from the post of Senior Assistant under the establishment of the respondent No.2.
3. The petitioner just before his superannuation was placed under suspension vide order dated 13.06.2017 on account of certain allegations that he misled the higher authorities in connection with a land acquisition matter and he committed breach of discipline. As such, disciplinary proceeding against the petitioner was initiated against him as per the Assam Discipline and Appeal Rules, 1964.
4. Mr. S Chauhan, the learned counsel submits that there is no allegation against the petitioner for any mis-appropriation and that being the position, the

petitioner cannot be denied his pensionary dues, which in fact has not been paid to him since his retirement on 30.06.2017.

5. Mr. N Goswami, the learned State counsel by referring to the affidavit-in-opposition submits that as per the Government's notification dated 21.06.2012, any retired employee against whom a departmental or judicial proceeding is continued, Death-cum-Retirement -Gratuity cannot be disbursed until and unless the proceeding is concluded and final order passed in that regard. To substantiate his stand, the learned State Counsel has produced a copy of the notification dated 21.06.2012.

6. A perusal of the notification dated 21.06.2012, produced by the learned State counsel indicates that pending finalization of the pension, a provisional pension is to be issued to all retired Government employees and in the case of departmental or judicial proceeding being continued after retirement, Government employees cannot be paid the Death-cum-Retirement Gratuity till the conclusion of the proceeding and final order passed.

7. The learned counsel Mr. A Hassan has drawn the attention of the Court to Rule-22 (1) of the Assam Services (Pension) Rules, 1969, which provides that pending finalization of departmental or judicial proceeding instituted under Rule-21 of the same Rules, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualified service upto the date of retirement shall be payable but no gratuity shall be paid until and unless the proceeding is concluded.

8. In view of above provision, it is seen that there will be no difficulty in directing the respondent authorities concerned to release the provisional pension of the petitioner pending conclusion of the departmental proceeding except his gratuity. Accordingly, the respondent authorities particularly the respondent No.2 is directed to prepare and disburse the provisional pension of the petitioner within a period of 60(sixty) days from the date of receipt of a certified copy of this order.

9. Writ petition accordingly stands disposed of.