(2001) 05 GAU CK 0042

In the Gauhati High Court

Case No : WP (C) No. 880 of 2000

Phatik Chandra Choudhury APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:
Assam Services (Pension) Rules, 1969 — Rule 21

Citation : (2001) 2 GLT 200

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : J.P. Sharma, for the Appellant; B. Goswami, Junior Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. JP Sharma, learned counsel appearing on behalf of the petitioner. Also heard Mr, B. Goswami, learned Jr. Govt. Advocate,

1. The grievances of the petitioner in this writ petition are three-fold i.e.:-

(i) Non-payment of his pension, gratuity and other service benefits since his retirement on attaining superannuation on 31.8,1995,

(ii) Non-payment of upgraded scale of pay of Class-I Officer from 5.12.1992 to 31.8.1995 (i.e. the date of retirement) in terms of notification dated 5.12.1992 and letter dated 26.5.1999 (Annexure-I & II appended to the Writ Petition respectively)

(iii) Non-payment of arrears of travelling allowances and other bills of Rs. 23,283 together with interest @ 12% per annum.

2. The petitioner who was working as Fodder Development Officer under the Animal Husbandry & Veterinary Department at the time of retirement, he was initially appointed as non-Gazetted Officer in the said Department on 1.2.1956 and he had been continuing to serve in the said post upto 31.8.1990. Thereafter

since 1.9.1990 till his superannuation he served as Gazetted Officer Grade-I. On 5.12.1992 the Governor of Assam was pleased to upgrade Class-II (senior Grade) posts of Subject Mater Specialist or its equivalent post as indicated in Schedule-I of the Assam Animal Husbandry & Veterinary and Dairying Service Rules, 1988 which carried the scale of pay of Rs. 1835 to 4325 per month to the Cadre of Sub-Divisional Animal Husbandry & Veterinary Officer or its equivalent posts in Class-I Service carrying scale of pay Rs.2275 to 4450 giving effect to the notification immediately. In spite of the said upgradation, the pay scale of the petitioner was not regulated fixing or paying as per notification dated 5.12.1992. More so, the respondent No. 4, Deputy Secretary to the Finance Department, Government of Assam by letter dated 26.5.1999 wrote to the respondent No. 3, Accountant General (A&E) Assam, requesting to issue necessary instruction to G.E. Sections accepting the fixation of pay under FR 22(1)(a)(i) in case of Officers upgraded to Class-I Service form Class-II service vide Veterinary Department notification dated 5.12.1992 as a very special case. Unfortunately, the respondents did not refix the pay the upgraded Class-I scale of pay to the petitioner from 5.12.1992 to 31.8.1995 i.e. till his retirement to which he is legally entitled to as per notification dated 5.12.1992 as well as the communication dated 26.5.1999 by which Government agreed for fixation of pay under FR 22(1)(a)(i) as a very special case. It is also stated that during his tenure of service the petitioner incurred travelling allowances, LTC expenses etc. for the period from 1991 to 1995 and subsequently submitted travelling allowances bill and LTC bill amounting to Rs. 23,283 duly counter signed for payment. But the same also remained unpaid for considerable time for which the petitioner have to submit representation on 28.8.1995 just before his retirement. Though the petitioner retired on 31.8.1995 and in spite of submission of his pension papers and also the related documents, petitioner has not been paid his pension and gratuity till today.

3. The State-respondents has contested this Writ petition by filing affidavit-in-opposition, denying and disputing the contentions and averments made therein. Relevant records has also been produced. Relying on the affidavit-in-opposition as well as the relevant records, Mr. Goswami, learned Government Advocate has contended that the petitioner was found to be involved in some financial irregularities during the period form 3.6.1992 to 5.11.1993 while working as firm Manager, Regional Fodder Seed Production Farm Matia, Goalpara, as per enquiry report dated 26.5.2000 conducted by the enquiry committee as per the Government order vide letter dated 1.4.2000. Due to such financial irregularities committed by the petitioner, the finalisation of his pensionary benefits was delayed and similarly, upgraded pay-scale as claimed, could not be considered, but so far other bills relating to travelling allowances/LTC were under consideration of the Government.

4. For proper appreciation of the stand taken up by the State-respondents for non-payment of pensionary benefits for last more than 5 years after the retirement of the petitioner from 31.8.1995, it is necessary to look into the

averments made in the affidavit-in-opposition. Accordingly, relevant paragraphs No. 4, 7, 8. 10 and 12 of the said affidavit are extracted below:

"4. That in regard to the statements made in paragraph 8 of the writ petition, the deponent states that the TA and LTC bills of the petitioner are under consideration of the Government.

7. That in regard to the statements made in paragraphs 10, 11 and 12 of the writ petition, the deponent states that provisional pension has been paid to the petitioner. But other pension benefits could not he paid to the petitioner (sic) some financial irregularities of the petitioner were prima facie detected while he was working as Fire Manager, REgional Fodder Seed Production Farm Matia. An Enquiry Committee constituted to conduct an enquiry into the aforesaid matter. As per the findings of the said Enquiry Committee (a) the petitioner while working as Manger, Regional Fodder Seed Production Farm, Matia, left his aforesaid office without formal hand over of charge to his subsequent Manager, (b) the petitioner made irregular payment for Muster Roll wages and pay of staff to the amount of Rs. 65,860 out of which Rs. 43.953 was adjusted by dr. P.K. Nath his successor subsequently, (c) the petitioner made a huge liabilities amounting to Rs. 1,98.452.36 (Rupees one Lac Ninety Eight Thousand Four Hundred Fifty Two and paise Thirty Six) only on P.O.L. and other miscellaneous office expenses manufacturing false vouchers. In view of the above, the respondent authority is taking time to dispose of his representation. The question here is the irregularities of spending of Government money by the petitioner. In spite of this, the pension papers of the petitioner are under active consideration of the authority.

8. That in regard to the statements made in paragraph 13 of the writ petition, the deponent states that provisional pension has been paid to the petitioner. The question as to other pension benefits will be settled soon as per the law and rules.

10. That in regard to the statements made in paragraph 15 of the writ petition, the deponent respectfully states that because of the petitioner''s involvement in financial irregularities during the period when he was posted as Manager, Regional Fodder Seed Production Firm, Matia, his pay in upgraded scale could not be considered.

12. That in regarded to the statements and submissions made in paragraph 18 of the writ petition, the deponent respectfully states and submits that because of the financial irregularities committed by the petitioner, while working as the Manager, Regional Fodder Seed Production Firm, Matia, the finalisation of his pension benefits has been delayed.

5. A close scrutiny of the relevant paragraphs as mentioned above of the counter affidavit including the annexed enquiry report dated 26.5.2000 annexed as Annexure-A to the counter affidavit filed by the State-respondent, it is shockingly evident that the purported enquiry was held on the basis of the Government

letter dated 1.4.2000 with regard to alleged financial irregularities committed by the petitioner during the period form 3.6.1992 to 5.11.1993 while he took over the charge of Manager. The said enquiry report was submitted on 26.5.2000. Seemingly, in conducting the said enquiry the authority has given a total go bye to the service jurisprudence inasmuch as the said enquiry was initiated only after 1.4.2000 i.e. after more than five years of retirement of the petitioner as regards to the purported illegalities committed during the period form 3.6.1992 to 5.11.1993 which itself contrary to the provision of Rule 21 of the Assam Services (Pension) Rules, 1969 (hereinafter in short referred as "Rules"). Obviously, even the said enquiry was conducted behind the back of the petitioner without his knowledge when he has been eagerly waiting for release of his pensionary benefits. More interestingly, the so called enquiry was held after filing this writ petition i.e. on 17.2.2000 while notice of motion was issued by this court on 20.1.2000. The records of the counter affidavit clearly shows that enquiry was initiated in view of the Government letter dated 1.4.2000 and the same was completed by submitting enquiry report on 21.5.2000.

6. Mr. J P Sharma, learned counsel appearing on behalf of the petitioner has strenuously argued that such enquiry/enquiry report was hit by the provision of Rule 21 (c) of the ''Rules ''. For the sake of convenience, relevant portion of the Rule 21 of the''Rules '' is quoted herein below:

"..21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it. Whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service, including, service rendered upon re-employment after retirement provided that -

(a) Such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

Explanation - The continuation of the proceeding after the final retirement of the officer shall be automatic under sub-rule (a) of Rule 21 and no fresh decision of the Governor and/or the Appointing Authority nor any show cause notice to the person concerned shall be necessary.

The powers under Rules 21 shall be exercisable not only in case of causing pecuniary loss to Government but also in all other cases.

(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 event which took place more than 4 years before such institution;

7. The Rules clearly bars the institution of any disciplinary proceeding or any judicial proceeding in respect of cause of action which arose more than four years before such institution. Further such proceeding could be instituted with the sanction of the Governor. In the instant case, the cause of action relating to financial irregularities arose during the period of 3.6.1992 to 5.11.1993 and the ex parte enquiry was held between 1.4.2000 and 26.5.2000 against the petitioner who retired from service on 31.8.1995.

8. 1 have given my thoughtful consideration to the submissions of the learned counsel for the parties and also perused the materials available on record, particularly the pleadings of the parties and on proper perusal of the same, I am of the view that ex-parte enquiry/ enquiry report is pulpably illegal and contrary to the provision of law and the same cannot be the basis for withholding the pensionary benefits to which the petitioner is legally entitled to.

9. It is a matter of tragedy and scourge to a retired person who is yet to get his legitimate pension and gratuity after his retirement due to apathy and non-callant attitude of Government. A retired Government employee seems to be neglected and shabbily treated by the State Government who does not pay the retirement benefit in time and he is compelled (o run from pillar to post with a begging bowl. It is really unfortunate and disgusting in spite of paying the retirement dues in time to the petitioner, in the instant case, the Government has come with a plea, that too after filing of the writ petition, that since the petitioner was involved in some financial irregularities during the period from 3.6.1992 to 5.11.193, finalisation of his pension benefits was delayed.

10. The Apex Court in State of Kerala and Others Vs. M. Padmanabhan Nair, has declared that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property inn their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. In an another decision in Baij Nath Gupta Vs. State of Bihar and Others, the Apex Court held that if the Government is responsible for the delay for payment of pension, the employee, necessarily be entitled to the payment of interest on the delay payment of such pensionary

benefits.

11. Admittedly there is considerable delay for payment of such pensionary benefits to the petitioner. Furthermore, I totally disapprove the explanation put forward on behalf of the State/respondents for the delay in payment of pensionary benefits to the petitioner. Accordingly, having regard to the aforesaid decisions, I hold that petitioner is entitled to the payment of interest also due to delay caused in payment of such retirement benefits.

12. Considering the facts and circumstances of the case, and upon hearing the learned counsel for the parties. I am of the considered view that this writ petition deserves to be accepted. The petitioners shall be paid his pensionary benefits immediately including the upgraded scale of pay of Class-I officers from 5.12.1992 to 31.8.1995 as also arrear of travelling allowances and other bills of Rs. 23,283.

13. In the result, the writ petition is allowed with the following directions:

(i) The State/respondents shall make payment of all the pensionary/retirement benefits including pension and gratuity to the petitioner with 12% interest per annum from 1.3.1996 being the date after expiry of six months from the date of superannuation i.e. 31.8.1995 till the date of payment of all the retirement dues and benefits to the petitioner.

(ii) The State/respondents shall pay the amount of Rs. 23,283 incurred as travelling expenses. LTC expenses for the period of 1991-95 with an interest at the rate of 12% per annum from today till final payment of the same.

(iii) The State/respondents shall make payment of upgraded scale of pay of Class-I officer from 5.12.1992 to 31.8.1995 together with interest @ 12% per annum from today till final payment of the same.

14. Necessary compliance of the direction indicated above shall be completed within a period of two months from the date of receipt of this order failing which the amount of interest shall be paid @ 18% per annum.

15. At this stage Mr. Goswami, learned Government Counsel has stated that the authority has been paying the petitioner the provisional pension. But the said factual position has been categorically denied by the counsel appearing on behalf of the petitioner. But that as it may, it is made clear that if any provisional pension has been paid to the petitioner by this time, the same shall be deducted for the purpose of calculating the interest on the amount payable to the petitioner as pensionary benefits as indicated above.

16. Petitioner shall furnish a certified copy of this order to the concerned authority who shall do the needful as per direction indicated above.

17. No costs.

