
(2009) 04 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 2188 of 2006

Purna Prasad Bordoloi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Assam Services (Pension) Rules, 1969 — Rule 21

Citation : (2009) 4 GLT 565

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A.K. Goswami and A.K. Sarma, for the Appellant; M. Soren, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The Petitioner, who has retired from service on 30.06.2003 on his attaining the age of superannuation, by the present petition has challenged the initiation of proceeding pursuant to the Show Cause Notice dated 12.01.2006 issued by the Commissioner and Secretary to the Government of Assam, Information and Public Relations, basically on the ground that no such proceeding could be initiated in view of the provisions contained in Rule 21(b) of the Assam Services (Pension) Rules, 1969 (hereinafter referred to as "the Rules").

2. I have heard Mr. A.K. Sarma, learned Counsel for the Petitioner and Mr. M. Soren, learned Government Advocate, Assam for the Respondents.

3. Mr. A.K. Sarma, learned Counsel for the Petitioner referring to the show cause notice dated 12.01.2006 has submitted that it is evident from the statement of allegations as well as charges levelled against the Petitioner that the allegation is pertaining to the period from 01.05.1991 to 01.09.2001 while the Petitioner was holding the post of Cashier in the office of the Director of Information and Public Relations and the Petitioner having retired from service on 30.06.2003 attaining

the age of superannuation, no departmental proceeding can be initiated so as to deprive him from the pension payable to him, in respect of any event which took place more than four years before initiation of such process. Learned Counsel, therefore, submits that the show cause notice issued is liable to be quashed and the Petitioner being entitled to full pension payable under the provisions of the Rules, necessary direction may also be issued in that regard.

4. Mr. M. Soren, learned State Counsel, on the other hand, referring to the affidavit-in-opposition filed by the Respondent No. 1 has submitted that in fact the concerned authority on receiving information from the Director as well as Chief Secretary to the Govt. of Assam started preliminary inquiry into the allegations against the Petitioner in the month of October, 2003 and thereafter decided to start disciplinary proceeding on 09.12.2005 and ultimately issued the show cause notice on 12.01.2006. According to the learned State Counsel, initiation of the preliminary inquiry in the month of October, 2003 amounts to institution of the Departmental proceeding against the Petitioner within the meaning of Rule 21(b)(ii) of the Rules and hence the prayer made by the Petitioner in the present petition challenging the Show Cause Notice dated 12.01.2006 cannot be granted and his entitlement to the pension would be dependant on the final decision that may be taken in such departmental proceeding so initiated.

5. It is not in dispute that the Petitioner has retired from service on attaining the age of superannuation on 30.06.2003. It is also not dispute that neither any departmental proceeding has been initiated nor the preliminary enquiry into the allegations levelled against the Petitioner vide show cause notice dated 12.01.2006, has been conducted by the authority while the Petitioner was in service i.e. before the date of his retirement from service. It appears from the show cause notice dated 12.01.2006 that the allegations relates to the period between 01.05.1991 and 01.09.2001 while he was holding the post of Cashier in the Office of the Director, Information and Public Relations.

6. Rule 21 of the Rules empowers the Governor of Assam to withhold or withdraw pension or any part thereof, whether permanently or for a specific period and to order recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceedings, pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, provided (a) such departmental proceeding, if initiated while the officer was in service, whether before his retirement or during his re-employment, after the final retirement of the officer, be deemed to be a proceeding under the Rule and shall be continued and concluded by the authority in the same manner as if the officer had continued in service. Explanation to Clause (a) provides that 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 appointing authority nor any show cause notice to the person concerned

shall be necessary. It further provides that the power under Rule 21 shall be exercisable not only in case of causing pecuniary loss to the Government, but also in other cases. Clause (b) provides that such departmental proceeding, if not instituted while the officer was in service, before his retirement or during his re-employment--(i) shall not be instituted save with the sanction of the Governor; (ii) shall not be in respect of any event which took place more than 4 years before such institution. Explanation (a) to the Rule 21 provides that the departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, if the officer has been placed under suspension from an earlier date, from that date.

7. In the instant case, there being no dispute to the factual position that the charge sheet along with the statement of allegation has been issued on 12.01.2006, departmental proceeding against the Petitioner, within the meaning of Sub-rule (b) of Rule 21 is deemed to have been instituted on that date i.e. 12.01.2006. Hence, the contention of the learned State Counsel that in the present case the institution of the Departmental proceeding within the meaning of Sub-rule (b) of Rule 21 of the Rules would relate back to the date when the preliminary inquiry was initiated i.e. October, 2003, cannot be accepted and hence rejected.

8. As noticed above, in the charge sheet issued on 12.01.2006, allegations have been made against the Petitioner relating to the period from 01.05.1991 to 01.09.2001. Sub-Rule (b)(ii) of Rule 21 of the Rules prohibits institution of a departmental proceeding against person who retired from service in respect of any event which took place more than four years before such institution. The date of institution of the departmental proceedings, as held above, being 12.01.2006 and the allegations being pertaining to the period from 01.05.1991 to 01.09.2001, which are clearly in respect of the event which took place four years before such institution, the proceeding initiated vide charge sheet dated 12.01.2006 cannot be sustained in law, being violative of Rule 21(b)(ii) of the Rules.

9. In view of the above, the departmental proceeding initiated against the Petitioner vide show cause notice dated 12.01.2006 is set aside. The Petitioner shall be entitled to pensionary benefits payable to him under the Rules.

10. The writ petition is allowed to the extent indicated above. No costs.