

(2021) 07 SIK CK 0021
In the Sikkim High Court
Case No : Writ Petition (C) No. 19 Of 2021

Ram Bahadur Das

APPELLANT

Vs

State Of Sikkim & Ors

RESPONDENT

Date of Decision : 21-07-2021

Acts Referred:

Indian Penal Code, 1860 — Section 323, 376, 376(1), 457
Code Of Criminal Procedure, 1973 — Section 420, 467, 468, 471
Sikkim Government Service (Discipline And Appeal) Rules, 1985 — Rule 7

Citation : (2021) 07 SIK CK 0021

Hon'ble Judges : Jitendra Kumar Maheshwari, CJ

Bench : Single Bench

Advocate : B.K. Gupta, Thinlay Dorjee Bhutia

Final Decision : Dismissed

Judgement

Jitendra Kumar Maheshwari, CJ

The petitioner has filed this petition seeking direction for commanding respondent no.2 to pay the subsistence allowance from the month of June, 2019

to till date to the petitioner with a further prayer to issue any appropriate writ, order or direction.

The facts leading to decide the controversy and relief as prayed are relevant, wherein the petitioner was placed on suspension on 27.08.2001 on

account of registration of Criminal case against him under Section 420, 467, 468 and 471 of Indian Penal Code. In a criminal trial he was convicted

vide judgment dated 18.11.2005 passed by the Judicial Magistrate, East Sikkim. In Appeal before the Session Court the said order was affirmed and

on filing the Revision, the High Court vide order dated 07.06.2013 modified only the sentence part, confirming the findings to prove charge. A Special

Leave Petition was also preferred before the Honâ??ble Supreme Court CRLMP No.23558-23559/2014 which was dismissed on 05.12.2014.

Thereafter, the Department has decided to take action as per the provision of Rule 7 of the Sikkim Government Service (Discipline and Appeal)

Rules, 1985. It is relevant to note that the petitioner attained the age of superannuation on 28.02.2017. For the reasons best known by the department the subsistence allowance was paid to the petitioner up to May, 2019 even after retirement. Now when the petition was filed seeking direction to pay

the subsistence allowance, the department came to pass an order dated 30.06.2021 retiring the petitioner compulsorily with effect from 28.02.2017.

In view of the foregoing facts, it is clear that after attaining the age of superannuation on 28.02.2017 the petitioner cannot get subsistence allowance

because the master servant relationship ceased on the date on which he has attained the age of superannuation, these prayers as made in the Writ

Petition cannot be granted.

Counsel for the petitioner has strenuously urged that he must be paid the pension after the date of compulsorily retirement but the said issue is not the

subject matter of this case looking to the grievance and relief prayed. In view of the foregoing, it is open to the petitioner to take recourse of law as

permissible but in the present case no direction can be issued.

In view of foregoing, in my considered opinion, the relief prayed for by the petitioner cannot be granted, accordingly, this Writ Petition is dismissed.