
(2006) 12 GAU CK 0060
In the Gauhati High Court

Sushil Kumar Baruah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-12-2006

Acts Referred:

Citation : (2007) 1 GLT 533

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mrs. N.S. Thakuria, learned Counsel appearing on behalf of the writ petitioner as well as Mr. B. Ghosh, learned State counsel appearing on behalf of the respondents.

2. By this writ petition, the writ petitioner is assailing the letter of the Assistant Inspector General of Police (R) dated 30.12. 2004 directing the Superintendent of Police, D.I. (E.O.) Assam, Guwahati to hold up the payment of the provisional D.C.R.G. amounting to Rs. 2,26,086/- (Rupees two lakhs twenty six thousand and eighty-six) only to the present writ petitioner who had been retired on superannuation as early as 31.01.2004 and also for a direction to the respondents to make payment of the said provisional D.C.R.G. of Rs. 2,26,086/- to the petitioner.

3. The writ petitioner filed this writ petition basing on the fact that the petitioner was working as an Inspector of Police in the Home Department, Govt. of Assam.

4. In the year 1991 when the petitioner was working as a Sub-Inspector of Police as I/C Traffic, Panbazar P.S., the then "Requisition Branch", City Reserve, Guwahati, requisitioned a vehicle (Ambassador Car) bearing Regn. No. AMM 1288 and it was allotted to him for official duties by the then Superintendent of Police, City, Guwahati vide Memo No. GCR(R)/464-67 dated 20.12.1991. After the petitioner was promoted to the post of Inspector of Police (UB) B.I.E.O., he was released from the post of Sub-Inspector of Police, I/C of Traffic Panbazar as

early as 20.07.1992 vide release order No. GCP(R)/90000-7 dated 20.07.1992. It is also stated that the requisition of the vehicle and also the payment of the hiring charges of the vehicle were dealt with by the Requisition Branch. Such being the situation, the petitioner had no hand in the requisition of the vehicle and also in the payment of the hiring charges of the vehicle requisitioned.

5. The Superintendent of Police, Bureau of Investigation (EO), Assam, Guwahati issued an order dated 11.03.2004 that in pursuance of the Memo No. E/II-1411/42/PT-XIII/5-A, dated 01.11.2001 of the Inspector General of Police (OSD) Assam, Guwahati on attaining of 58 years of age the petitioner was allowed to go on retirement on superannuation w.e.f. 31.01.2004, a copy of which is available at Annexure-P/1 to the present writ petition. Admittedly, the petitioner had already been retired on superannuation from his service as Inspector of Police as early as 31.01.2004. After his retirement, the concerned authority after following the procedures prescribed in the Assam Services (Pension) Rules, 1969, the amount of D.C.R.G. to be paid to the petitioner had already been calculated amounting to Rs. 2,26,086/-. The amount so calculated would be cleared from the order of the Inspector General of Police (OSD), Assam, Guwahati dated 21.12.2004, and a copy of the said order of the Inspector General of Police (OSD), Guwahati dated 21.12.2004 is also available at Annexure-P/5 (a) to the present writ petition.

6. Such being the situation, both the parties, i.e. the petitioner and the state respondents are not disputing the amount of D.C.R.G. to be paid to the petitioner; but the only dispute is, in the facts and circumstances of this case, whether the said amount of D.C.R.G. is to be released/paid to the petitioner immediately or not.

7. According to the petitioner, surprisingly he received a copy of the show cause notice dated 26.10.2004 asking him to submit his show cause statement about the alleged non-payment of balance of the hiring charges of the vehicle mentioned above, i.e. the Ambassador Car bearing Registration No. AMM 1288 which was admittedly allotted to the petitioner in the year 1991. It is the case of the petitioner that the show cause notice dated 26.10.2004 admittedly relates with an incident or occurrence said to have been taken place in the year 1991. Mrs. N.S. Thakuria, the learned Counsel appearing on behalf of the petitioner has drawn the attention of this Court to the Clause (ii) of Sub-rule (b) of Rule 21 of the Assam Services (Pension) Rules, 1969 and strenuously submitted that there cannot be departmental enquiry against the petitioner for the incident mentioned in the show cause notice dated 26.10.2004 inasmuch as the incident said to have been taken place or none payment of the balance amount of the hiring charges of the said Ambassador Car was in the year 1992.

8. For easy reference, relevant portion of Rule 21 of the Assam Services (Pension) Rules, 1969 is quoted hereunder:

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 Rule 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; and

(d) the Assam Service Commission shall be consulted before final orders are passed.

* * *

9. From bare perusal of Clause (ii) of Sub-rule(b) of Rule 21 of the Assam Services (Pension) Rules, 1969, it is crystal clear that the departmental enquiry cannot be initiated or conducted by the authority in respect of any event which took place more than 4 years before such institution. As discussed above, in the present case by the show cause notice dated 26.10.2004, the respondents are initiating/contemplating the departmental enquiry against the petitioner for the

incident which took place in the year 1992.

10. In order to bolster up the case of the petitioner, Mrs. N.S. Thakuria, learned Counsel for the petitioner has referred to the decision of this Court in *Nabam Rameshwar Singh v. State of Manipur and Ors.* 2001 (3) GLT 640 wherein and whereunder this Court held that there cannot be institution of the departmental proceedings for a charge relating to the events that had taken place 4 years before such institution. The relevant finding portion of the judgment and order of this Court in *Nabam Rameswar Singh v. State of Manipur and Ors.* (Supra) reads as follows:

5. On bare perusal of the memorandum of charges as in Annexure-A/4 to the writ petition, it has been revealed that the alleged omission or commission in other words, the event took place during the period from 1988-90 and the Departmental proceedings as against the petitioner was initially instituted, in the month of October, 1997 under the impugned memorandum dated 6th October, 1997 (Annexure-A/4) i.e. after the lapse of about 7 years from the date of the alleged event. It is not disputed that for the purpose of determining the period of 4 years, the Govt. of India's instructions and notification bearing No. 7/14/90-P & W(f) dated 23rd August, 1991 under CCS (Pension) Rules, 1972, Rule 9 specifically lays down that Departmental proceeding shall be deemed to be instituted on the date on which the statement of charge is issued to the Govt. servants or pensioners. It is true that if a Govt. servant or officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty than the departmental proceedings should also be instituted after his or her retirement as expeditiously as possible as there is no such bar for institution of the said proceeding under the law but the omission or commission or in other words, the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement i.e. the cause for the institution of proceeding should not have been placed more than 4 years before the date of institution of the proceedings and the Departmental proceeding if not instituted while the Government servants were in service, such proceeding shall not be in respect of any event which took place more than 4 years before such institution. This legal issue has been settled by the Apex Court. At this stage, I hereby recalled the decision of the Apex Court rendered in *State of U.P. and Another Vs. Shri Krishna Pandey*, wherein the Apex Court held thus:

It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if

the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss of the Government or embezzlement, i.e. the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the Departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the state had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules.

6. In view of the above legal issue and position which has been settled by the Apex Court and also the provisions of law laid down under Rule 9(2)(b) of Manipur Civil Services (Pension) Rules, 1977,¹ hereby opined that the alleged events took place more than 4 years before the institution of the said Departmental proceeding as against the petitioner which is not permissible under the law as discussed above. Though the Court is of the view that the State respondents under certain circumstances had disabled itself by their deliberate omissions to take appropriate legal action against the petitioner.

7. For the reasons, observations and discussions made above, I am of the view that the proposed departmental proceeding and the enquiry as against the petitioner only under the related impugned orders of 6th October, 1997 and 1st August, 1998 is barred by limitation and the restriction rather debarring the petitioner to get his pensionary benefits under the impugned order of 8th August, 1977 as in Annexure-A/7 to the writ petition is an illegal order and, accordingly, these impugned orders as in Annexures-A/4 (only in the case of the writ petitioner), A/6 and A/7 are hereby quashed with a further direction to the respondents/ competent authority concerned to afford the pensionary benefits to the writ petitioner as early as possible preferably within a period of one month from today.

In the result, the writ petition is allowed but no order as to costs.

11. From the perusal of the show cause notice dated 26.10.2004 and Clause (ii) of Sub-rule (b) of Rule 21 of the Assam Services (Pension) Rules, 1969 and also the decision of this Court in Nabam Rameshwar Singh v. State of Manipur and Ors. (Supra), this Court is of the considered view that the respondents cannot initiate the departmental proceedings against the petitioner for the incident which took place in the year 1992 mentioned in the said show cause notice dated 26.10.2004. Mrs. N.S. Thakuria, learned Counsel for the petitioner also submits that there is another writ petition filed being W.P.(C) No. 907 of 2005 by the

petitioner assailing the initiation of the departmental enquiry for the said incident which took place in the year 1992 mentioned in the said show cause notice dated 26.10.2004 against the petitioner. In that case, i.e. W.P.(C) No. 907 of 2005, this Court had passed an interim order dated 07.02.2005 for staying the proceedings of the departmental enquiry against the petitioner.

12. Mrs. N.S. Thakuria, the learned Counsel for the petitioner has also strenuously submitted that the payment of D.C.R.G. to the retired employee should be made as expeditiously as possible by referring to Rule 201 of the Assam Services (Pension) Rules, 1969. Rule 201 of Assam Services (Pension) Rules, 1969 contemplates the payment of D.C.R.G. without further delay even if the actual amount of D.C.R.G. cannot be calculated. The learned Counsel further submits that in the present case the amount of D.C.R.G. had already been calculated under the said order of the Inspector General of Police (OSD), Assam dated 21.12.2004 wherein the amount of D.C.R.G. to be paid to the petitioner is Rs. 2,26,086/- (Rupees two lakhs twentysix thousand and eightysix).

13. Mr. B. Ghosh, learned G.A. appearing on behalf of the respondents submits that he had been informed by the Assistant Inspector General of Police (R), Assam under his letter No. E/II-23-495/ PEN/22 dated 31.12.2005 that the withholding of the payment of D.C.R.G. to the petitioner is as per the provisions of Rule 22(i) of the Assam Services (Pension) Rules, 1969.

14. As stated above, in the instant case, the institution of departmental proceedings against the petitioner for the incident which took place in the year 1992 cannot be initiated long after the petitioner had retired on superannuation and the contemplated departmental enquiry or proceedings against the petitioner is forbidden by Clause (ii) of Sub-rule (b) of Rule 21 of the Assam Services (Pension) Rules 1969.

15. In the above factual backgrounds and also taking into consideration of the ratio laid down by this Court in Nabam Rameshwor Singh v. State of Manipur and Ors. (Supra), and Clause (ii) of Sub-rule (b) of Rule 21 of the Assam Services (Pension) Rules, 1969, this Court is of the considered view that an interference to the impugned letter dated 30.12.2004 written by the Assistant Inspector General of Police (R), Assam, Guwahati for withholding the payment of provisional D.C.R.G. amounting to Rs. 2,26,086/- to the petitioner is called for. Accordingly, the impugned letter dated 30.12.2004 (Annexure-P/5(b) and also the follow up letters of the Superintendent of Police, Bureau of Investigation (EO), Assam dated 05.01.2005 to the Treasury Officer, Kamrup, Panbazar, at Annexure-P/6 are hereby quashed. The said amount of D.C.R.G. shall be released to the petitioner as early as possible.

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