

GAHC010034222020



2024:GAU-AS:11165

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1149/2020

REDAUL HUSSAIN KHAN
S/O- LATE HAJI MD. HUSSAIN KHAN, R/O- TARUN NAGAR, P.O AND P.S-
DISPUR, DIST- KAMRUP(M), ASSAM, GUWAHATI- 06

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
SOCIAL WELFARE DEPTT, DISPUR, GUWAHATI- 06

2:THE PRINCIPAL SECRETARY
NC HILLS AUTONOMOUS COUNCIL
DIMA HASAO
HAFLONG
DIST- DIMA HASAO
ASSAM
PIN- 788819

3:THE DEPUTY COMMISSIONER
DIMA HASAO DISTRICT
HAFLONG
P.O AND P.S- HAFLONG
PIN- 78881

Advocate for the Petitioner : MR. U K NAIR, MR R ISLAM,MS M DEKA,MS AFSANA
HUSSAIN

Advocate for the Respondent : GA, ASSAM, SC, N C HILLS AUTONOMOUS COUNCIL

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 18.11.2024

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. C. Sarma, learned Standing Counsel for NC Hills Autonomous Council and Mr. D. Borah, learned Junior Government Advocate for the respondent nos. 1 and 3.

By way of this petition under Article 226 of the Constitution of India, the petitioner is seeking release of petitioner's subsistence allowance with effect from 06.06.2009 to December 2015 @75% of his salary from January, 2016 to till date after deducting the subsistence allowance paid with effect from 06.06.2009 to December 2015 at 50% of his salary and for according sanction for release of the subsistence allowance of the petitioner with effect from 06.01.2009 to December 2015 at 75% of his salary upon deducting the payment already made from January-2016 to till date at 75% of his salary with arrear and current including inhence subsistence allowance as early as possible so that the petitioner can be able to draw the subsistence allowance a per the Government norms.

It appears that while petitioner was functioning as Deputy Director Social Welfare Department, NC Hills Autonomus Council, Haflong, he was arrested on 31.05.2009 on the basis of some alleged

source of information in connection with Basistha PS Case No.170/2009 and since then he was languishing in jail till 16.08.2017. During the period of his said detention, the Commissioner and Secretary to the Government of Assam, Social Welfare Department suspended the petitioner by notification dated 06.06.2009 from his service and subsequently drawn departmental proceeding against the petitioner vide show-cause notice dated 13.08.2012.

However, the said departmental proceeding was kept in abeyance in view of the order dated 02.06.2015 passed by this Court in WP(C) No.1655/2014.

Thereafter, it appears that the petitioner was paid subsistence allowance since the date of his suspension, i.e. from 06.06.2009 to December 2015 @ 50% of his salary. However, thereafter no subsistence allowance was paid to the petitioner for which the present writ petition has been filed.

It appears that subsequently though the petitioner was dismissed from his service by order dated 17.05.2018 after being convicted in NIA Case No.01/2009, however, due to the stay order passed by this Court on 10.08.2018 in WP(C) No.5365/2018, the petitioner is continuing under suspension.

Heard the learned counsel for both the contesting parties and perused the material available on record.

It further appears from the affidavit-in-opposition filed by the respondent no. 1 that the subsistence allowance in favour of the

petitioner was enhanced at the rate not exceeding 50% of the amount already sanctioned, i.e. 31.08.2009 to 17.05.2018 that is the date of his dismissal from service which is equivalent to the extent of 75% of the officiating pay.

Paragraph 6 of the aforesaid affidavit-in-opposition is reproduced hereunder for ready reference:-

“6. That as regards to the statements made in paragraph 17 of the writ petition the deponent begs to state that subsistence allowances in favour of Shri Redaul Hussain Khan was enhanced at a rate not exceeding 50% of the amount already sanctioned 31.05.2009 to 17.05.2018 (i.e. the date of his dismissal from service) which is equivalent to the extent of 75% of the officiating pay, vide this Department's letter No. SWD. 61/2020/104 dated 22.04.2020.”

It further appears from the notification dated 22.04.2020 issued by the Commissioner and Secretary to the Government of Assam, Social and Welfare Department, Dispur to the Accountant General (A&E) Assam, Maidamgaon, Beltola that the subject subsistence allowance is already sanctioned. Relevant portion of the aforesaid notification is also reproduced hereunder for ready reference:-

“ Dated Dispur, the 22nd April, 2020

From: Commissioner & Secretary to the Govt. of Assam, Social Welfare Department, Dispur

To: The Accountant General (A&E), Assam, Maidamgaon, Beltola, Guwahati- 29

Sub: Grant of Subsistence allowance at enhance rate to Shri R. H Khan Ex-CDPO and i/c Deputy Director, Social Welfare Department, North Cachar Hills Autonomous Council, Dima-Hasao

Ref: 1.Suspension letter No. SWD 129/96/Pt./57 dated 06.06.2009.

2. This Department's earlier Sanction No. SWD.129/1996/Pt.1/22 dated 05.04.2016.

Sir

I am directed to convey the sanction of the Governor of Assam to enhance ment of subsistence allowance not exceeding 50% of the amount already sanctioned vide letter No. SWD.129/1996/Pt.1/22 dated 5th April, 2016 in favour of Shri R.H.Khan, Ex-CDPO and i/c Deputy Director, Social Welfare Department North Cachar Hills as per provision under f.R.53(1)(i) w.e.f 31.08.2009 to 17.05.2018 (ie, the date of his dismissal from service) on the same terms and conditions as indicated in this Department's earlier letter cited above."

Thus, apparent that the subject subsistence allowance as claimed for in the aforesaid writ petition has already been sanctioned by the appropriate authority.

That being so, I am of the considered view that, in the interest of justice, this writ petition can be disposed of by directing the respondent authorities specially respondent no. 2 to release the subject subsistence allowance as sanctioned to the petitioner within a period of 3 (three) months from the date of receipt of this Court's order.

It is needless to be clarified that as regards the subsistence allowance after 2018 as claimed by the petitioner by representation dated 22.05.2024, the same be considered and disposed of by the respondents within a period of 2 (two) months from the date of the receipt of the certified copy of the order.

Accordingly, with the above observations and directions, this

writ petition stands disposed of.

JUDGE

Comparing Assistant