

GAHC010039722024



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

Case No. : Review.Pet./28/2024

NIRMAL JYOTI CHAKRABORTY
S/O- LT. NARESH CHANDRA CHAKRABORTY, RESIDENT OF ABC TARUN
NAGAR, GLORY APARTMENT, P.O. AND P.S.- BHANGAGARH, DIST.-
KAMRUP METRO, ASSAM, INDIA, PIN- 781005.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
AGRICULTURE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR
DEPARTMENT OF AGRICULTURE
GOVT. OF ASSAM
KHANAPARA
GUWAHATI- 781022

DIST.- KAMRUP(M)
ASSAM.

3:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT
GOVT. OF ASSAM
PANZABARI
GUWAHATI

DIST.- KAMRUP(M)
PIN- 781037

ASSAM.

4:ACCOUNTANT GENERAL (AE)

ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI
DIST.- KAMRUP(M)

PIN- 781029
ASSAM.

5:PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
CACHAR
SILCHAR
PIN- 788001
ASSAM

Advocate for the Petitioner : MR. S P BHATTACHARJEE

Advocate for the Respondent : SC. AGRICULTURE

Linked Case : WP(C)/623/2023

NIRMAL JYOTI CHAKRABORTY
S/O- LT. NARESH CHANDRA CHAKRABORTY

RESIDENT OF ABC TARUN NAGAR

GLORY APARTMENT

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PIN- 788001
ASSAM.
6:THE DIRECTOR OF PENSION

HOUSEFED
GUWAHATI-781006.

Advocate for : MR. S P BHATTACHARJEE
Advocate for : SC
AGRI. DEPARTMENT appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 01.04.2024

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr. N.K. Dev Nath, learned Standing counsel, P&RD Department; Mr. S.K. Medhi, learned Standing Counsel, Accountant General (A&E); Ms. G. Bora, learned Standing Counsel, Agriculture Department and Ms. A. Talukdar, learned Junior Government Advocate, Assam.

2. This review petition is filed seeking review of the Judgment and Order dated 12.12.2023 passed in WP(C)/623/2023. Learned counsel for the petitioner referring to Paragraph 21 (c) of the Assam Services Pension Rules, 1969 submits that under Rule 21 it is the Governor of Assam, who reserves to himself the right of withholding or withdrawing a pension or any part thereof, whether permanently or for a specified period and the right of recovery of the whole of the pension or a part thereof shall be that of the Governor if the pensioner is found guilty of grave misconduct or negligence during his service period in any departmental or judicial proceedings.

3. The learned counsel for the petitioner submits the judicial proceeding has been defined in the explanation under Rule 21 (c) to the effect that the date on which the complaint or a report the police officer is taken cognizance of by the Magistrate only then judicial proceedings shall be deemed to be instituted in case of criminal proceedings on the date on which the complaint or report of the police officer is taken cognizance of by the Magistrate.

4. The learned counsel for the review petitioner submits that in the paragraph 21 of the judgment, the following directions were issued:-

“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 proceedings, 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 Public Service Commission shall be consulted before final orders are passed."

5. It is submitted that in the directions issued it was held that the respondent No.1 will consider the matter as to whether the cause of action or the event for which the Vigilance P.S case No. 03/2005, which was lodged on the 27.09.2005, relates to an episode or an incident which occurred more than four years before such an institution. It is submitted that this direction may be considered by the respondent No.1, by treating the date of lodging of the FIR, which is 27.09.2005 as the date while deciding whether the episode or the incident occurred more than four years before filing of the FIR.

6. The learned counsel for the review petitioner submits that in terms of Rule 21 (c) of the Assam Services Pension Rules, 1969, it is not the date of filing or lodging of the FIR but the date on which the cognizance of the criminal proceedings is taken by the Magistrate. The date of taking cognizance is 26.07.2011. He, therefore, submits that to that limited extent the review petition

be allowed and appropriate directions be issued.

7. Ms. G. Bora, learned Standing Counsel, Agriculture Department appearing for the respondent No.1 and 2 and Mr. S. K. Medhi, learned Standing Counsel, Accountant General (A&E) submits that there is no infirmity in the Judgment and the Order and therefore no clarification or review is required.

8. Having heard the learned counsel for the parties and upon careful perusal of the Judgment and Order dated 12.12.2023 passed in WP(C)/623/2023 read with the relevant provisions of the Assam Services (Pension) Rules, 1969, this Court is of the view that at this stage no review as prayed for by the learned counsel for the petitioner is called for. This Court is of the view that it will suffice the interest of the petitioner if it is clarified that insofar as the directions issued in the said Judgment and Order are concerned requiring the respondent No.1 to consider as to whether the cause of action or the event for which the Vigilance P.S case No. 03/2005 occurred more than four years, the relevant date would be the date of taking cognizance of the criminal case by the Magistrate concerned and which date is 26.07.2011.

9. This Court is of the view that the limited clarification issued in this order will satisfy the prayer made by the review petitioner. The review petition, accordingly, stands disposed of in terms of the above. This order dated 26.07.2011 shall be read along with Judgment and Order dated 12.12.2023 passed in WP(C)/623/2023.

10. Writ petition is accordingly disposed of. No order as to cost.

JUDGE

Comparing Assistant