

GAHC010050532019



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

Case No. : WP(C)/1596/2019

DILIP HAZARIKA

S/O- LT MITHA RAM HAZARIKA, R/O- CHANDMARI, PUB SARANIA, BYE LANE NO.5, H.NO.5, P.O. SILPUKHURI, P.S. CHANDMARI, GHY-3, DIST-KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-6

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GHY-6

3:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
PANJABARI
JURIPAR
GHY-37

4:THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
BAKSA
BTAD
DIST- BAKSA
ASSAM
PIN- 781373

5:THE BLOCK DEVELOPMENT OFFICER

TAMULPUR DEVELOPMENT BLOCK
BAKSA
BTAD
DIST- BAKSA
ASSAM
PIN- 781373

6:THE BLOCK DEVELOPMENT OFFICER
PAKHIMORIA DEVELOPMENT BLOCK
DIST- NAGAON
ASSAM
PIN- 782001

7:SRI RAJ KRISHNA SAIKIA
JUNIOR ENGINEER
PAKHIMORIA DEVELOPMENT BLOCK
DIST- NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MR. B CHAKRABORTY, MR. D GOSWAMI,MR. P P BARUAH,MR S HUSSAIN,MR. R SARMA

Advocate for the Respondent : SC, PNRD, MS P. PATHAK (R- 4 & 5)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 27/09/2024

Heard Mr. P.P. Baruah, learned counsel for the writ petitioner. Also heard Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam and Mr. P. Nayak, learned Standing Counsel, BTC, are present on behalf of the official respondents.

The facts of this case, in a nutshell, are that the writ petitioner, while serving as a Junior Engineer under the Panchayat and Rural Development Department and posted at Nilip Development Block, Karbi Anglong, was transferred vide transfer order dated 27/08/2009 and posted in the Langsomepi Development Block at karbi Anglong, in which post he had joined on 31/08/2009.

However, the respondents did not pay his salary from the month of September, 2009. The petitioner was thereafter, transferred and posted at Tamulpur Development Block under the BTC area in the year 2014 but even thereafter, his salary was not paid. In the meantime, the petitioner had completed 20 years of service and was, therefore, entitled under the FR 56(C) to go for voluntary retirement after giving 3 (three) months notice to the Department. Accordingly, on 16/11/2018, the petitioner had submitted his request for allowing him to proceed on voluntary retirement before the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department.

Notwithstanding the receipt of such request, no action was taken on his application for voluntary retirement nor has the salary of the petitioner been released. Aggrieved thereby, he has approached this Court by filing the instant writ petition, *inter-alia*, praying for a Writ of Mandamus directing the respondents to permit him to proceed on voluntary retirement based on his application dated 16/11/2018 and also to release the arrear salary payable to the petitioner with effect from the month of September, 2009.

Mr. Baruah has relied upon a decision of this Court rendered in the case of **Dr. Prabhas Chandra Sarma Vs. The State of Assam and 3 Ors. [2023] 0 Supreme (Gau) 351** to submit that in so far as the request for allowing him to proceed on voluntary retirement is concerned, the claim of the petitioner is covered by the aforesaid decision wherein, it has been categorically held by this Court that subject to fulfillment of requirement of FR 56(C), the application for voluntary retirement of an employee shall automatically take effect from the expiry of 3 months notice period. According to Mr. Baruah, there is no dispute about the fact that the petitioner's case is covered under FR 56(C). He submits that there is no departmental proceeding pending against his client and, therefore, there is no justifiable ground for the authorities to consider the request for voluntary retirement made by the petitioner. Mr. Baruah has also prayed for a Writ of Mandamus directing the respondents to release the arrear salary with effect from September, 2009 till the date of his retirement from service.

Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department, Assam, has submitted in his usual fairness that the petitioner's case is covered by the law laid down by this Court in the case of ***Prabhas Chandra Sarma (Supra)*** and, therefore, he would have no objection, if the writ petition is disposed with a similar direction.

Similar is the stand of Mr. P. Nayak, learned Standing Counsel, BTC.

Since the basic facts are not in dispute, hence, it would not be necessary for this Court to enter into a detail discussion of the facts involved in this proceeding.

Suffice is to mention herein that the petitioner, while serving as Junior Engineer under the Department of Panchayat & Rural Development and while he was posted in the Tamulpur Development Block having completed 20 years of service, had submitted an application dated 16/11/2018 requesting the authorities to allow him to go for voluntary retirement. The said application had been received by the authorities. However, admittedly, no action was taken in the matter.

In the case of ***Prabhas Chandra Sarma (Supra)***, this Court, while dealing with a issue of similar nature, has made the following observations in paragraph 21 of the said judgement, which is reproduced herein below for ready reference :-

"21. The law laid down by the Supreme Court in the case of Dinesh Chandra Sangma (supra) and Sayed Muzaffar Mir (supra) leaves no room for doubt that once an application for voluntary retirement is received by the authorities, subject to fulfillment of the conditions laid down in FR 56 (c), the same will take effect automatically on completion of the notice period and there would be no requirement for communicating acceptance of such application for the Government. In a case where no notice period is clearly spelt out in the application, the application for voluntary retirement must be deemed to take effect upon expiry of the statutory period of three months as provided under FR 56 (c). In other words, once an application for voluntary retirement is received from an employee who has attained the age of 50 years or has completed 25 years of service, his/her request for voluntary retirement would come into effect automatically on expiry of the notice period and there would be no further

requirement under the law for the employer to specifically accept such request of the employee."

Since there is no dispute about the fact that the petitioner's case is covered under FR 56(C), hence, this Court has no hesitation in concluding that the petitioner shall be deemed to have retired from service on the basis of his application dated 16/11/2018 for voluntary retirement, immediately after completion of 3 months notice period. The authority may process the matter accordingly.

In so far as the release of arrear salary is concerned, the respondents are directed to verify the claim of the petitioner and if it is found that the petitioner had duly discharged his duties as Junior Engineer during the aforesaid period, salary and allowances payable to him under the Government Rules, shall be released to the petitioner within a period of six months from the date of receipt of a certified copy of this order.

It is made clear that if the amount due and payable is not released to the petitioner within six months than, in that event, the same would carry interest @ 12% per annum from the date of this order till realization.

With the above observations, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant