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

Case No. : WP(C)/632/2024

DR NAGEN CH DAS
RETIRED PRINCIPAL
AMRANGA BARIHAT H.S. SCHOOL,
S/O LATE GAMALU RAM DAS
VILL- MIRZA, NATUN BAZAR,
HARESWAR PATH,
P.O. MIRZA
P.S. PALASHBARI, PIN-781125
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -781019

3:THE DIRECTOR OF PENSION AND PUBLIC GRIEVANCES

ASSAM
DISPUR
GUWAHATI-781006

4:THE PRINCIPAL ACCOUNTANT GENERAL

A.G. OFFICE
BELTOLA

GUWAHATI.

5:THE INSPECTOR OF SCHOOLS

KAMRUP DISTRICT CIRCLE

DADARA

DIST. KAMRUP
ASSAM

6:THE PRINCIPAL

AMRANGA BARIHAT H.S. SCHOOL

AMRANGA
KAMRUP
ASSA

Advocate for the Petitioner : MR S H SIKDAR, MR. S HAQUE

Advocate for the Respondent : SC, SEC. EDU., MR. S K MEDHI (R-4, SC, AG (A AND G)),SC, AG

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

24.09.2024

Heard Mr. S.H. Sikdar, learned counsel for the petitioner. Also heard Mr. P. Saikia, learned Government Advocate, appearing for the respondent No.3, Ms. H. Terangpi, learned standing counsel, Department of School Education, appearing for respondent Nos.1, 2 and 5 and Mr. R.R. Saikia, learned counsel appearing on behalf of Mr. S.K. Medhi, learned standing counsel, AG, for the respondent No.4.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for issuing direction to the respondent authorities, especially the respondent No.5, the Inspector of Schools, who has been holding the charge of Principal of Amranga

Barihat Higher Secondary School, Kamrup, to issue Drawal/Non-Drawal Certificate so as to enable the petitioner to draw his pension and other retirement benefits.

3. The grievance of the petitioner, which is being sought to be addressed in the present petition is that he was serving as a Principal of the Amranga Barihat Higher Secondary School, Amranga, Kamrup and he superannuated on 29.02.2020. Thereafter, the Director of Secondary Education, Assam, the respondent No.2, vide order dated 21.09.2020, bearing Memo No.Pen/C/204/2020/105, had sanctioned the pensionary benefits to the petitioner and provisional pension of Rs.51,390/- per month, plus other allowances as admissible under the rules, with effect from 01.03.2020, till finalization of the pension. Subsequently his provisional pension was stopped by the respondent authorities. Thereafter, the Director of Pension, Assam, had issued Pension Payment Order (PPO), dated 21.08.2023. Thereafter, the petitioner had approached the Inspector of Schools, Kamrup District Circle, who has been holding the charge of Principal of the said school and requested him to issue Drawal/Non-Drawal Certificate to him. But, the said certificate is being withheld till date, for which the petitioner could not draw the pension and gratuity and other retirement benefits till date in terms of the PPO issued to him. Being confronted with such a peculiar situation, the petitioner filed one representation on 18.11.2023, to the Chief Minister, Assam. But, the same also failed to yield any result. Being aggrieved, the petitioner approached this Court by filing the present petition.

4. Mr. Sikdar, learned counsel for the petitioner, submits that the petitioner, after retirement, has received no retirement benefits till date. Though provisional pension was sanctioned to him, yet the same was also stopped by the respondent authorities. Mr. Sikdar also submits that the petitioner is suffering from heart diseases and he could not arrange money for his treatment also on account of non-payment of the retirement benefits. Mr. Sikdar further submits that the respondent No.3, the Director of Pension and Public Grievances, Assam, has issued PPO to him. But, in spite of issuance of said PPO, the petitioner could not draw the pension as well as other retirement benefits on account of non-issuance of Drawal/Non-Drawal Certificate. Mr. Sikdar also submits that through one representation was filed by the petitioner to the Chief Minister, Assam, the same also

failed to evoke any response. And on such count, Mr. Sikdar contended that direction may be issued to the respondent authorities to issue Drawal/Non-Drawal Certificate so that the present petitioner can draw his pension as well as other retirement benefits.

5. Per contra, Mr. P. Saikia, learned Government Advocate, appearing for the respondent No.3 submits that the Drawal/Non-Drawal Certificate could not be issued to the petitioner as he has not submitted utilization certificate of several lakhs of rupees while he was serving as a Principal of the said school. Mr. Saikia has produced some resolutions of the School Managing Committee asking the petitioner to submit the utilization certificate and the vouchers of the money spent during his tenure as Principal. But, he has not been responding to the same and as such, direction may be issued to grant provisional pension to the petitioner, but, the payment of regular final pension may be held up till furnishing the utilization certificate by him. Mr. Saikia has also submitted one audit report of the school, in which the petitioner was serving and which are self-explanatory. And therefore, it is contended not to grant any relief to the petitioner except however granting provisional pension.

6. Controverting the submission of Mr. Saikia, Mr. Sikdar submits that the petitioner has already furnished utilization certificate, which are annexed with the additional affidavit filed by him and also he has produced the vouchers of payment of money to contractual teachers from July 2012 till August 2017 for a sum of Rs.28,05,000/- and that he has also submitted the vouchers of the expenditure made by him and therefore, Mr. Sikdar contended to allow the petition.

7. However, Mr. Saikia, learned Government Advocate for the respondent No.3 has disputed the facts mentioned in the additional affidavit. Notably, none of the respondent authorities have filed their affidavit-in-opposition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the relevant file produced by Mr. Saikia before the Court today and also I have carefully gone through the additional affidavit and the documents enclosed therewith, filed by the

petitioner.

9. It is not in dispute that the petitioner was serving as a Principal of the Amranga Barihat Higher Secondary School and he had superannuated on 29.02.2020. It is also not in dispute that he has not been drawing any pension till date, though vide order dated 21.09.2020 provisional pension was sanctioned to him by the respondent No.2 @Rs.51,390/- per month plus other allowances as admissible under the rules with effect from 01.03.2020 till finalization of the pension. But, the same as also not been paid to him as submitted by Mr. Sikdar, learned counsel for the petitioner. It also appears that the respondent No.3 had issued PPO on 21.08.2023 and thereafter, the petitioner had approached the Principal-in-Charge i.e. the Inspector of Schools, respondent No.5, who is presently holding the charge of Principal of the said school, for issuance of Drawal/Non-Drawal Certificate in his favour, but the same was denied to him. It also appears that the petitioner had also approached the Chief Minister, Assam by filing one representation, but no action was taken upon the same.

10. Though Mr. Saikia, learned Government Advocate for the respondent No.3 submits that on account of non-furnishing of the utilization certificate of the amount spent by him during his tenure as Principal, the Drawal/Non-Drawal Certificate could not be issued, yet, Mr. Saikia failed to show any relevant rule in respect of withholding of pension on account of failing to furnish utilization certificate of the school funds. On the other hand, it appears from the additional affidavit that the petitioner has furnished utilization certificate for a sum of Rs.7,73,800/-. He has also produced the payment vouchers in respect of payment of salary to the contractual teachers, for a sum of Rs.28,05,000/- and thus he has given the accounts of Rs.35,15,800/-. Despite, the Drawal/Non-Drawal Certificate has not been issued to him.

11. The issue of granting of pension has been dealt with by Hon'ble Supreme Court in the following cases:-

- (i) **D.S. Nakara v. Union of India**, reported in (1983) 1 SCC 305;

- (ii) **Nisha Priya Bhatia v. Union of India**, reported in (2020) 13 SCC 56;
- (iii) **Radhey Shyam Gupta v. Punjab National Bank**, reported in (2009) 1 SCC 376.

12. In the case of D.S. Nakara (*supra*), Hon'ble Supreme Court had the occasion to deal with this aspect in paragraph Nos. 19 and 20 as under:-

"19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*. (1976) 2 SCC 1 :"

13. Thus, it appears that pension is a right and the payment of it does not depend upon the discretion of the Government, but is governed by the rules and a government servant coming within those rules is entitled to claim pension and the grant of pension does not depend upon anyone's discretion. This view has been re-affirmed in the case of **Nisha Priya Bhatia (supra)**, wherein Hon'ble Supreme Court has held as under:-

"77. It is cardinal that pension is a valuable statutory right of an employee and is not controlled by the sweet will or pleasure of the Government. In the absence of express exceptions to the same, any provision resulting in denial thereof ought to be subjected to strict judicial scrutiny. This position of law has been succinctly expository by this Court in *D.S. Nakara v. Union of India* (1983) 1 SCC 305, which reads thus: (SCC p. 320, para 20)

"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* reported in (1971) 2 SCC 330] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in

State of Punjab v. Iqbal Singh [State of Punjab v. Iqbal Singh, (1976) 2 SCC 1]."

14. In the case of **Radhey Shyam Gupta (supra)**, it has been held by putting on hold of the pensionary benefit on account of non-payment of loan amount is not permissible.

15. Thus, drawing premises of the illuminating discourse in the aforementioned cases and also considering the submission of learned Advocates of both the parties as well as the facts and circumstances on the record, this Court is inclined to dispose of this writ petition by directing the respondent authorities, specially the respondent No.5, who is holding the charge of Principal of the Amranga Barihat Higher Secondary School to issue Drawal/Non-Drawal Certificate to the petitioner within a period of 1(one) week of receipt of certified copy of this order.

16. It is further provided that 25% of the retirement benefits of the petitioner shall be held up till resolving the dispute of expenditure and utilization certificate by the respondent authorities with the petitioner. It is also provided that the petitioner shall furnish copies of the utilization certificate and the expenditure statement to the respondent No.5, and after resolution of the dispute, the remaining 25% of the retirement benefit shall be released to the petitioner. The petitioner shall obtain a certified copy of this order and place the same before the respondent No.5, who shall carry out the direction of this Court as indicates above.

17. In terms of above, the writ petition stands disposed of. The parties have to bear their own cost.

**Sd/- Robin Phukan
JUDGE**