

WP(C) 4722/2009

BEFORE

THE HON'BLE MR. JUSTICE UJJAL BHUYAN

Heard Mr. G. P. Bhowmik, learned counsel for the petitioner. Also heard Dr. B. Ahmed, learned standing counsel, Cooperation Department as well as Mr. G. Baishya, learned standing counsel, Accountant General, Assam.

Shorn of details, the petitioner's case can be briefly noted as under:

The petitioner retired from service on attaining the age of superannuation on 31-10-2004 as Jr. Inspector-cum-Auditor of Co-operative Societies under the Cooperation Department, Government of Assam. He is aggrieved by the non payment of his retirement dues.

While he was in service, the petitioner was subjected to an allegation of misappropriation of two sums of money from two different Co-operative Societies, totaling an amount of Rs. 68,667.00. In this connection, a criminal case was instituted against the petitioner and another. However, the criminal Court i.e., the Court of the learned Chief Judicial Magistrate, Darrang at Mangaldai vide the judgment and order dated 08-10-1999 passed in C. R Case No. 806 of 1992 acquitted the petitioner and the other person as the prosecution failed to prove the case beyond all reasonable doubt. No departmental proceeding was initiated against the petitioner while he was in service. Surprisingly, 3(three) years after his retirement, the Registrar of Co-operative Societies, Assam passed an order on 28-08-2007 directing release of provisional pension to the petitioner for the period from 01-11-2004 to 31-10-2005 as well as the provisional gratuity amount after deducting the aforesaid amount of Rs. 68,667.00. The Assistant Registrar of Co-operative Societies, Tezpur was asked to pay the aforesaid amount to the two cooperative societies as per the proportion indicated therein. The petitioner thereafter filed a representation dated 03-09-2007 before the Registrar of Co-Operative Societies, Assam requesting the said authority not to deduct the said amount and to pay the full and final pension and gratuity amount to him. As there was no response and being hard-pressed, the petitioner approached this Court by way of the present writ petition.

This Court by order dated 06-11-2009 while issuing notice, directed as an interim measure the concerned Assistant Registrar of Co-operative Societies to release the dues of the petitioner after deducting the aforesaid amount of Rs. 68,667/-, without prejudice to his rights and contentions. The said order was passed keeping in view the immediate urgency expressed by the petitioner.

The Accountant General, Assam, respondent No. 2 has filed his affidavit. In his affidavit, the respondent No. 2 has stated that the pension papers pertaining to the petitioner has not been received in his office and that the pension proposal can be finalised only after receipt of the relevant papers.

On a number of dates, the State counsel was asked to file the counter affidavit.

On the last two occasions, Dr. B. Ahmed, learned standing counsel had appeared and had sought for time to file the affidavit. But no such affidavit has been filed. Today when the matter is taken up for consideration, Dr. Ahmed fairly submits that the decision to deduct the aforesaid amount of Rs. 68,667/- from the gratuity amount of the petitioner is not justified in the absence of any departmental proceeding drawn up against the petitioner. He submits that he has instructed the department to immediately release the aforesaid amount, prepare the pension papers and to forward the same to the office of the respondent No. 2 for doing the needful.

Mr. G. Baishya, learned standing counsel, Accountant General, Assam submits that once the pension papers are received, the respondent No. 2 would be in a position to release the pensionary dues to the petitioner within a period of 45 days thereafter.

In view of the submissions made by the learned counsel for the parties, the controversy in question has considerably narrowed down. In the absence of any departmental proceeding, whether concluded or pending, I am of the view that the decision of the Registrar of Cooperative Societies to deduct the aforesaid amount of Rs. 68,667/- from the gratuity amount of the petitioner cannot be sustained, more so after the acquittal by the criminal Court. Accordingly the direction of the

e Registrar of Co-operative Societies, Assam to deduct the aforesaid amount as contained in the order dated 28-08-2007 is set aside and quashed.

As has been noticed above, the petitioner had retired from service on attaining the age of superannuation way back on 31-10-2004 and eight long years have gone by without finalisation of the regular pension. Mr. Bhowmik, learned counsel for the petitioner points out that only provisional pension amount for a period of one year from 01-11-2004 to 31-10-2005 and provisional gratuity minus the aforesaid amount has been paid to the petitioner.

Time and again, the Courts have held that pension is a valuable right and property of an employee and that there should be no delay in the release of pension. It is not a bounty to be disbursed to the employee at the convenience of the employer. In the instant case, there has been an inordinate delay in the release of the retirement dues of the petitioner which is without any justification.

Upon hearing the learned counsel for the parties and on perusal of the materials on record, this writ petition is allowed by directing the Registrar of Co-operative Societies, Assam to immediately release to the petitioner the full gratuity amount, including the amount of Rs. 68,667/- which is part of the gratuity amount due to the petitioner and to transmit the pension papers of the petitioner to the Office of the Accountant General, Assam. This shall be done within a period of 30(thirty) days from today. Thereafter, the office of the Accountant General, Assam shall finalise the pension proposal of the petitioner and release the pensionary dues, including the arrear amount within a period of 45 days thereafter. Once the arrear amount is paid, the petitioner would be paid his current pension amount regularly.

No cost.