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

Case No. : WA/301/2024

ABDUL KADER,
S/O. LT. D. ALI,
R/O. HOUSE NO. 14, SIJUBARI ROAD,
NEAR SBI, P.S. HATIGAON, GUWAHATI-38,
DIST. KAMRUP M, ASSAM.

.....Appellant

-VERSUS -

1.THE STATE OF ASSAM,
REP. BY THE COMM. and SPL. SECY. TO THE GOVT. OF ASSAM,
PUBLIC WORKS ROADS DEPTT., DISPUR, GHY.-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS ROADS DEPTT., DISPUR, GHY.-06.

3:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
FINANCE DEPTT., DISPUR GHY.-06.

4:THE CHIEF ENGINEER, PUBLIC WORKS ROADS DEPTT.,
CHANDMARI, GHY.-03.

.....Respondents

- BEFORE -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Appellant(s) : Mr. B.M. Deka, Advocate.

For the Respondent(s) : Mr. D. Nath, Standing Counsel, Public Works Department,
assisted by Ms. N. Barman, Advocate for respondent Nos.1, 2 &
4.

Date of Hearing : 27.03.2025.

Date of judgment : 28.03.2025.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. B.M. Deka, learned counsel, appearing for the appellant. Also heard Mr. D. Nath, learned Standing Counsel, PWD, assisted by Ms. N. Barman, learned counsel for respondent Nos.1, 2 and 4.

2. This writ appeal is filed by the appellant being aggrieved with the judgment and order dated 30.03.2023 passed in WP(C) No.4118/2017.

Vide impugned judgment and order dated 30.03.2023, the learned Single Judge has set aside the order dated 03.03.2017 passed by the Disciplinary Authority against the appellant, however, allowed to continue the disciplinary proceedings against him under Rule 21(a) of the Assam Service (Pension) Rules, 1969 (hereinafter to be referred to as "Rules of 1969") with certain other directions.

3. The brief facts of the case are that the appellant while serving as a Superintending Engineer in the Public Works Department was served with a show-cause notice dated 04.07.2015 under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (hereinafter to be referred as "Rules of 1964") read with Article 311 of the Constitution of India, requiring him to show-cause as to why penalty prescribed under Rule 7 of the Rules of 1964 shall not be imposed on him in respect of two charges mentioned in the show-cause notice.

4. The appellant has joined the disciplinary proceedings initiated pursuant to the show-cause notice and ultimately, the said disciplinary proceedings were culminated in the passing of the final order dated 03.03.2017 by the Secretary to the Government of Assam, Public Works Department, imposing two penalties, one regarding salary which was limited to the subsistence allowance received by the petitioner and the other is regarding recovery of 50% of the pensionary benefits for the loss caused.

5. It is to be noticed that the disciplinary proceedings initiated pursuant to the show-cause notice dated 04.07.2015 were finally decided by passing the punishment order on 03.03.2017 i.e. during the continuation of the appellant in service of the respondent Public Works Department as the appellant has attained the age of superannuation on 31.03.2017.

6. The learned Single Judge, taking note of the facts and circumstances of the case, has set aside the punishment order dated 03.03.2017, while observing as under:

“3. The relevant provisions of the order passed in the disciplinary proceeding against the petitioner dated 03.03.2017 is extracted as below:

‘And whereas in the Meeting of the Public Accounts Committee, Assam Legislative Assembly held on 23rd September, 2016, the Chairman on Para 2.2.3 (above mentioned C&AG’s report) has decided and directed to (1) re-instate the service of the Superintending Engineer (Sri Kader) immediately and recover the remaining amount during his service period and (2) to submit a report before the committee by March, 2017 regarding the other punishment taken against the Executive Engineer.

Now, after careful consideration of all the aspects and non-recovery of considerable amount of Govt. money from the contractor concerned, the Govt. in PWD decided to re-instate Sri Abdul Kader Superintending Engineer, PWRD revoking the suspension order issued vide No.CON.33/2015/101 dated-18-06-2015 in service with the following penalties.

- 1. The period of suspension is to be treated as on duty only for pensionary purpose and salary for the suspension period shall be limited to*

subsistence allowance received or to be received by him.

2. *Whole of his DCRD is to be recovered and his pension is limited to 50% of his net pension.'*

4. *A reading of the aforesaid-extracted provisions of the order dated 03.03.2017 makes it discernable that as per the meeting of the Public Accounts Committee of the Assam Legislative Assembly held on 23.09.2016 there was a decision to reinstate the petitioner in his service as Superintending Engineer and to recover the remaining amount during his service tenure.*

5. *Accordingly, by the said order the petitioner was reinstated as Superintending Engineer, PWRD upon revocation of the order dated 18.06.2015 but certain penalties were imposed. One of the penalties imposed upon the petitioner by the order dated 03.03.2017 is that the period of suspension shall be treated to be on duty only for the pensionary purpose and the salary for the suspended period shall be limited to subsistence allowance already paid to the petitioner. A further penalty is imposed that the whole of his DCRG which is understood to be a pensionary benefit is to be recovered and his pension be limited to 50% of his net pension.*

6. *Being aggrieved by the order dated 03.03.2017 the present writ petition is instituted.*

7. *It is informed to the Court that the tenure of service of the petitioner upon superannuation came to an end on 31.03.2017. We have noticed that the order of punishment is dated 03.03.2017.*

8. *We have particularly noticed that the dominant penalty imposed upon the petitioner is that the whole of his DCRG is to be recovered and that his pension would be limited to 50% of his net pension. In other words the order of penalty is in the nature of a penalty by which the pensionary benefits which the petitioner otherwise would have been entitled had been interfered to a certain extent.*

9. *We have already noticed that as per the show cause notice dated 04.07.2015 the petitioner was asked to show cause as to why the penalties prescribed under Rule 7 of the Rules of 1964 should not be imposed upon the petitioner.*

10. *.....*

11. *The provisions of Rule 7 (iii) of the Rules of 1964 would be that one of the punishments that can be meted to a government servant upon a disciplinary proceeding being held is to recover the loss caused to the Government from his pay either in whole or any part.*

12. *In the instant case although the order impugned dated 03.03.2017 is not very clear, but it has to be understood that the recovery from the DCRG of the*

petitioner and the pension to be limited to 50% of his net pension is in furtherance of the requirement of the disciplinary authority to recover the pecuniary loss that the petitioner may have caused in connection with the charges against him in the disciplinary proceeding.

13. *The recovery of the loss caused to the Government by a government servant related to the charges in a disciplinary proceeding under Rule 7 (iii) of the Rules of 1964 can be recovered from the salary allowance but Rule 7 nowhere provides that such recovery can also be made from otherwise the pensionary benefits that the government servant would be entitled upon his retirement.*

14. *The concept of DCRG and pension are definitely related to the pensionary benefits and not related to the pay and salary of a government servant during his service tenure. But again Rule 21 of the Assam Services (Pension) Rules, 1969 (in short, Rules of 1969) do provide for recovery from the pensionary benefits of a government employee after his retirement. But such recovery from the pensionary benefits would have to be under Rule 21 of the Rules of 1969 and it cannot be understood or construed that recovery from the pension would be under Rule 7(iii) of the Rules of 1964.*

15. *Accordingly, as the impugned order dated 03.03.2017 of the Secretary to the Government of Assam in the Public Works Roads Department is in exercise of the power under Rule 9 of the Rules of 1964, it would be in excess of the jurisdiction to order for recovery from the pensionary benefits of the petitioner in a disciplinary proceeding where the order had been passed during the tenure of service and accordingly, we are of the view that the same would be unsustainable in law. As a consequence, the order dated 03.03.2017 is set aside on the technical reason as indicated above that the recovery from the pensionary benefits cannot be ordered during the tenure of the service of a government employee pursuant to a disciplinary proceeding under Rule 9 of the Rules of 1964."*

7. While interfering with the punishment order dated 03.03.2017, the learned Single Judge has observed that since the interference is made on technical ground, ends of justice would be met if the proceedings initiated against the appellant under Rule 9 of the Rules of 1964 should be brought to its logical end by following procedure of law and after observing as such, the learned Single Judge has ordered that the said proceedings would now have to be continued against the appellant under rule 21 of Rules of 1969 because the appellant has already retired from service on 31.03.2017.

8. Aggrieved by the direction of the learned Single of ordering of continuance of the Disciplinary proceedings against the appellant under Rule 21 of the Rules of 1969, the appellant has preferred this writ appeal.

9. The learned counsel for the appellant has argued that the proceedings under Section 21 of the Rules of 1969 cannot be continued against the appellant for two reasons, firstly, in the absence of any decision of the competent authority, i.e. Hon'ble Governor of Assam or the appointing authority, to take action against the person concerned under Rule 21, no proceedings can be initiated or continued under the said Rule. In the present case, no such decision has ever been taken by the Governor or by the appointing authority to continue the proceedings and secondly, the proceedings under rule 21 cannot be invoked until and unless a finding is recorded that on account of action of the Government servant, any pecuniary loss is caused to the Government.

It is contended that in the disciplinary proceedings against the appellant, no such finding was recorded to the effect that the action of the appellant has caused pecuniary loss to the Government though some other findings in respect of other objectionable actions have been recorded.

10. It is contended that in the absence of the aforesaid conditions, the learned Single Judge ought not to have ordered for continuation of the Disciplinary proceedings against the appellant under Rule 21 of the Rules of 1969.

11. In support of the above contentions, the learned counsel for the appellant has placed reliance upon the decision rendered by a Division Bench of this Court in **Reazoudin Ahmed Vs. State of Assam**, reported in **1988 2 GLJ 106: 1988 0 Supreme (Gau) 114** and prayed that the impugned judgment

and order dated 30.03.2023 passed by the learned Single Judge may kindly be set aside to the extent of ordering continuance of departmental proceedings against the appellant under Rule 21 of the Rules of 1969.

12. Per contra, learned counsel for the State has opposed the intra court appeal and supported the impugned judgment and order passed by the learned Single Judge.

13. Having heard the learned counsel appearing for the parties and after going through the material available on record, we are of the view that the learned Single Judge has rightly set aside the order dated 03.03.2017 passed by the Disciplinary authority whereby two penalties were imposed upon the appellant, firstly, of limiting the salary of the appellant up to the subsistence allowance already paid and further penalty of recovery by limiting the pension of the appellant up to 50%.

14. The learned Single Judge has rightly observed that under Rule 7 of the Rules of 1964, no such penalty can be imposed upon an employee who has not superannuated till the conclusion of the disciplinary proceedings against him.

The further direction of the learned Single Judge of continuance of the disciplinary proceedings against the appellant under Rule 21 of Rules of 1969 is concerned, we are of the view that the same is also perfectly in accordance with law.

15. It is to be noticed that in the year 1989, vide Gazette Notification dated 04.10.1989, an Explanation is inserted in Rule 21(a) of the Rules of 1969. The said Explanation reads as under:

21.

(a)

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 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 the Government but also in all other cases.

As per the said Explanation, a disciplinary proceeding initiated against a serving Government employee would automatically be continued in the event of retirement of the said employee and for that purpose no fresh decision of the Hon'ble Governor or the appointing authority shall be necessary. The Explanation further states that the power under the Rule 21 shall be exercisable not only in case of causing pecuniary loss to the Government but also in other cases.

16. In view of the said Explanation, the grounds, on which the appellant has assailed the direction of the learned Single Judge of continuation of the proceedings against the appellant under Rule 21 of the Rules of 1969, are having no merit. The judgment rendered by the Division Bench of this Court in **Reazoudin Ahmed** (*supra*) is of no help to the appellant because the said judgment was passed before insertion of Explanation in Rule 21(a) of the Rules of 1969.

17. In view of above discussion, we do not find any merit in this writ appeal. The same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant