

GAHC010092902022



undefined

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

Case No. : WP(C)/3414/2022

DILIP KUMAR DAS
S/O LATE GURUPRASAD DAS, RESIDENT OF VILLAGE- DANGARPAR, P.O.-
BHAWANIPUR, PIN- 781352, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, PUBLIC
WORKS DEPARTMENT (PWD), DISPUR, GUWAHATI, ASSAM, PIN- 781006.

2:THE CHIEF ENGINEER PWD (BUILDINGS)
CHANDMARI
DISTRICT- KAMRUP(M)
GUWAHATI
ASSAM
PIN- 781003.

3:THE EXECUTIVE ENGINEER
PWD
BHAWANIPUR
PATACHARKUCHI AND SARUKHETRI TERRITORIAL ROAD DIVISION
P.O. PATSHALA
PIN- 781325
DISTRICT- BARPETA
ASSAM.

4:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029.

5:THE TREASURY OFFICER
PATSHALA
DISTRICT- BARPETA
ASSAM
PIN- 781325.

6:HOUSING AND URBAN DEVELOPMENT CORPORATION LTD.
HAVING ITS REGISTERED ADDRESS AT HUDCO BHAWAN
INDIA HABITAT CENTRE
LODHI ROAD
NEW DELHI- 110003
REPRESENTED BY THE REGIONAL MANAGER
HUDCO LTD.
G.S. ROAD
GUWAHATI- 781022

Advocate for the Petitioner : MR. B PATHAK, MR. R THADANI,MR V KUMAR

Advocate for the Respondent : SC, PWD, MR. M DUTTA (R-6),MS S DEV (R-6),MR S DEY (R-6),SC, AG

Linked Case : WP(C)/3990/2020

DILIP KUMAR DAS
S/O LATE GURUPRASAD DAS

RESIDENT OF VILLAGE DANGARPAR. PO BHAWANIPUR
781352
DIST BARPETA
ASSAM

VERSUS

HOUSING AND URBAN DEVELOPMENT CORPN. LTD. AND 5 ORS.
HAVING ITS REGISTERED ADDRESS AT HUDCO BHAWAN
INDIA HABITAT CENTRE
LODHI ROAD
NEW DELHI 110003
REPRESENTED BY THE REGIONAL MANAGER HUDCO LTD. HOUSEFED
COMPLEX
RUKMINIGAON
GS ROAD

GUWAHATI 781022

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
PUBLIC WORKS DEPARTMENT(PWD)
DISPUR
GUWAHATI ASSAM 781006

3:THE CHIEF ENGINEER PWD (BUILDINGS)
CHANDMARI
DIST KAMRUP M GUWAHATI ASSAM 781003

4:THE EXECUTIVE ENGINEER
PWD
BHAWANIPUR
PATACHARKUCHI AND SARUKHETRI TERRITORIAL ROAD DIVISION
PO PATSHALA
781325 DIST BARPETA
ASSAM

5:THE ACCOUNTANT GENERAL (A AND E)
ASSAM MAIDAMGAON
BELTOLA
GUWAHATI 781029

6:THE TREASURY OFFICER
PATHSALA
DIST BARPETA
ASSAM 781325

Advocate for : MR. B C PATHAK
Advocate for : GA
ASSAM appearing for HOUSING AND URBAN DEVELOPMENT CORPN. LTD.
AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

18.02.2026

Heard Mr. B. Pathak, learned counsel for the petitioner. Also heard Mr. R. Dhar, learned Standing Counsel, PWD Department; Mr. C. Baruah, learned

Standing Counsel, Accountant General and Ms. A. Borthakur, learned counsel for the respondent No.5 and Mr. L. Deka, learned counsel for the respondent No.6.

2. The writ petitioner of these present writ petitions serving as UDC (Upper Division Clerk) under the PWD Department and subsequently superannuated on 01.02.2020. During his service, he had taken a loan of Rs. 2 lakhs from the respondent No. 6, the recovery of which was sought to be made from the monthly salary of the writ petitioner. However, certain disputes arose in respect to the quantification of the amount, which was sought to be recovered from the salary of the writ petitioner. Accordingly, the respondent No.6 filed a suit being T.S. No.367/2019 before the Court of Civil Judge No.1, Kamrup (M). The suit is still pending. However, there is no specific order for attachment issued by the Civil Court. Nevertheless, the petitioner superannuated on 01.02.2020. Although he has been granted provisional pension but his final pension has not yet been settled. In terms of the requisition made by the respondent No. 9, the Executive Engineer, PWD informed the petitioner that because of recovery of the dues, all the pension work will be held up until negotiation or settlement received from the Manager HUDCO. Pursuant thereto, the final pension has not been settled with the petitioner. While the matter stood thus, an attempt was made by the respondents to deduct the dues payable to the private respondent from the provisional pension received by the petitioner. Being aggrieved he has filed the writ petition being WP(C) No.3990/2020 challenging the actions sought to be made against the writ petitioner. This Court, while issuance of notice on 16.10.2020 directed that no deduction shall be made from the monthly pension payable to the petitioner on the basis of the order passed by the PWD, which is impugned in the writ petition being WP(C) No.3414/2022. The said interim order

is still subsisting.

3. Subsequently, during the pendency of the writ petition, the present writ petition being WP(C) No.3414/2022 has been filed seeking a direction to the respondent authorities to release the pensionary benefits including gratuity GPF, GIS etc. payable to the petitioner.

4. The private respondent has filed the affidavit stating that the petitioner is required to pay a total amount of Rs.19,99,595/- as on 31.05.2019 and further there is a title suit seeking a recovery of the said amount from the writ petitioner. It is also stated in the affidavit that the private respondent sought to recover the loan dues from the monthly salary payable to the petitioner in regular installment, which was accordingly done.

5. The learned counsel for the petitioner placing reliance on the judgment of the Apex Court in *Radhey Shyam Gupta v. Punjab National Bank and another* reported in (2009) 1 SCC 379 submits that Section 60 of the Code of Civil Procedure provides statutory protection to pensionary benefits and that no order of attachment can be passed for recovery against such benefits payable to the petitioner.

6. The PWD Department has not filed any affidavit as to why the final pension has not been settled.

7. Mr. C. Baruah, learned Standing Counsel, Accountant General submits that the papers have not been received by the Accountant General, which upon

being receipt necessary process will be undertaken.

8. Under the Assam Services (Pension) Rules, 1969, it is only the Governor of Assam who has a right to himself of withholding or withdrawing a pension or any part thereof under Rule 21. Further, under Rule 22, where any departmental or judicial proceeding is instituted and where a departmental proceeding is continued against that officer who has retired on attaining the age of compulsory retirement, he shall be paid during the period commencing from the date of retirement to the date of conclusion of the proceeding a provisional pension.

9. There is no dispute that the Assam Services (Pension) Rules, 1969 is applicable to all government employees, including the writ petitioner. Under the said rules, the only power reserved for withholding or withdrawing a pension is for the Governor of the State under Rule 21. Neither any order to that effect has been passed nor has any proposal been forwarded to the Governor under Rule 21. Under Rule 22, provisional pension is contemplated when there is a pending departmental proceeding or judicial proceeding instituted against the petitioner prior to his retirement and till culmination of the same the provisional pension is to be issued.

10. In the facts of the present case, although a title suit, being T.S. No.367/2019 has been instituted against the writ petitioner, no order has been placed before the Court whereby the competent Court of civil jurisdiction has issued any order for attachment or recovery of any amount from the petitioner. Even otherwise, in view of the expressed bar contained in Section 60 of the

CPC, there cannot be any recovery from the pension or pensionary benefits payable to a person. This is also expressly declared by the Apex Court in the judgment *Radhey Shyam Gupta (supra)*.

11. Under such circumstances, the action of the respondent authorities, namely the PWD in withholding or in not taking the adequate steps for finalizing the pension of the writ petitioner and paying provisional pension appears to the Court to be without any authority of law and contrary to the provisions of the Assam Services (Pension) Rules, 1969. The respondent No. 9 has also not been able to place before the Court any order passed by the competent Court of civil jurisdiction seeking attachment or recovery of any amount from the writ petitioner.

12. Under such circumstances, it appears to the Court that non-finalization of the pension of the writ petitioner is unauthorized and contrary to the procedure prescribed under law. This Court has no option but to allow the prayers made in the writ petitions. Accordingly, the respondent PWD department, more particularly the respondent No.3 will forthwith prepare the pension proposal of the writ petitioner and forward to the competent authority, who in turn will forward the relevant pension proposal to the Accountant General's Office. Once the same are received by the Accountant General's Office, necessary orders should follow for release of final pensionary benefit to the writ petitioner. The respondent No. 3 will forward the relevant pensionary papers to the competent authority in the department within 30 days from the date of receipt of a certified copy of this order. The PWD Department thereafter, within a further period of 15 days therefrom, forward the same to the Accountant General's Office, who in

turn will expeditiously pass appropriate orders releasing the full pension to the writ petitioner as expeditiously as possible within the outer limit of 90 days therefrom.

13. The order passed today in these writ petitions will not foreclose the proceeding of T.S. No. 367/2019.

14. Both these writ petitions stand allowed and disposed of. The interim order passed in WP(C) No.3990/2020 stands merged. The respondents shall continue to release provisional pension till the final pensionary benefits are released.

JUDGE

Comparing Assistant