

GAHC010114882019



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

Case No. : WP(C)/3918/2019

PARTHA SARATHI PAUL
S/O- LATE CHITTARANJAN PAUL, R/O- 89/1-A, SUNDARAM APARTMENT,
LANE NO. 01, RK MISSION ROAD, P.O- VIVEKANANDA ROAD, SILCHAR,
CACHAR, ASSAM, PIN- 788007

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM, HEALTH
AND FAMILY WELFARE DEPTT, ASSAM SECRETARIAT, DISPUR,
GUWAHATI- 06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 06

3:THE SECRETARY TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE (A) DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 06

4:THE DEPUTY SECRETARY
TO THE GOVT OF ASSAM
HEALTH AND FAMILY WELFARE(A) DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 06

5:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 36

6:THE JOINT DIRECTOR OF HEALTH SERVICES
CACHAR
SILCHAR
PIN- 788007
SILCHAR
CACHAR

7:THE PRINCIPAL ACCOUNTANT GENERAL(A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29

8:THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29

9:THE ACCOUNTS OFFICER
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL(A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 29

10:THE ASSISTANT ACCOUNTS OFFICER
OFFICE OF THE ACCOUNTANT GENERAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 2

Advocate for the Petitioner : MD. M U AHMED, MR U DAS,MR. C S HAZARIKA

Advocate for the Respondent : SC, HEALTH, SC, AG

– B E F O R E –
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitione : Md. M. U. Ahmed

Advocate

Advocate for the respondents: Mr. C. Boruah

Standing Counsel, AG

Mr. D. Upamanyu

Standing Counsel, Health

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 22.04.2026

Whether the pronouncement is of the
operative part of the judgment? : No.

Whether the full judgment has been
pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

22.04.2026

Heard Md. M. U. Ahmed, learned counsel for the petitioner; also heard Mr. C. Boruah, learned Standing Counsel, AG, Mr. D. Upamanyu, learned Standing Counsel, Health Department.

2. The petitioner before this court is praying for a writ of mandamus, directing the respondents to regularize the service period of the petitioner, for a

period from 07.03.2002 to 26.11.2007, and as to whether the consequential orders or directions should not be issued to the respondents. The release of the final pension of the petitioner as well as other terminal benefits including GPF, GIS, leave encashment certificate in view of unutilized earned leave, along with any unpaid pay or allowances of the petitioner for the aforementioned period.

3. The facts of the case in a nutshell is that the petitioner was serving as a government doctor, working as a Senior Medical and Health Officer at Nilambajar PHC. During his tenure, he was transferred and posted against the vacant post of Kalain CHC by way of transfer order dated 07.01.2002. The petitioner was not initially released, but subsequently released on 06.03.2002, and after that he proceeded to Kalain CHC to take charge in terms of the said transfer order. However, there was no vacancy available at Kalain CHC, and subsequently the order of the petitioner was modified by notification dated 19.03.2002, whereby the petitioner was transferred to Nilambazar PHC to Kalain CHC and one Dr. Badal Das, who was posted at Kalai CHC was transferred to Nilambazar PHC. After receiving the said notification dated 19.03.2002, when the petitioner again proceeded to join his duties, he was not permitted to take over charge as the officer who was supposed to relieve, namely Dr. Badal Das was on leave, and in a meanwhile obtained an order from this court, staying his transfer till his representation preferred before

the Department was disposed of.

4. Consequent thereto, by order dated 17.04.2002 a notification was issued staying the transfer of Dr. Badal Das. This situation continued, and subsequently the petitioner was promoted to the post of Sub Divisional Medical and Health Officer by the notification dated 12.11.2007, and was posted at Lokhipur PHC, Cachar; and in the said notification his current place of posting was shown as Kalain CHC. Subsequently, he joined at Lakhipur CHC on 27.11.2007. He served under that Department, and subsequently the petitioner was superannuated on 31.05.2014 as a Deputy Superintendent of Kalain CHC. However, the pension papers pertaining to the petitioner have never been finalized on the ground that the period with effect from 07.03.2002 till 26.11.2007, during which period the petitioner was posted at Kalain CHC, and he could not join in the same post because of the orders passed by the High Court staying the transfer of the officer who was supposed to be relieved at Kalain CHC, namely Dr. Badal Das and the subsequent modification of the transfer order itself by the Government. It is submitted that for no fault of the writ petitioner, his pensionary benefits have not been finalized.

5. After repeated representations before the Government, the petitioner has been granted provisional pension, but till date his pension has not been finalized on the ground that the period with effect from 07.03.2002 till 26.11.2007 has

not yet been regularized by the appropriate Departments. The Administrative Department had sent the pension proposal to the Accountant General's Office, which however came to be returned back with the objection raised that the period with effect from 07.03.2002 till 26.11.2007 was not regularized.

6. The learned counsel for the petitioner submits that the petitioner had also approached this Court by filing WP(C) No. 2883 of 2002 seeking a direction from the Court to the Respondent Authorities to permit him to take over charge of the Kalain CHC and for quashing of the stay order dated 17.04.2002 issued by the Government in respect of Dr. Badal Das. This Writ Petition however came to be dismissed, giving liberty to the Department to pass appropriate orders in view of the stay transfer order of Dr. Badal Das, who was supposed to be relieved by the petitioner. Being aggrieved, the petitioner had filed a Writ Appeal being Writ Appeal No. 296 of 2003. This Writ Appeal also came to be dismissed by the Government by an order dated 08.11.2006. The Writ Appellate Court, however, directed the respondents to release the pay and allowances of the appellant with effect from the period 08.05.2002 to 29.05.2003 as the appellant was at Kalain CHC. No further appeal was carried by either party before the Apex Court.

7. Pursuant thereto, the petitioner also filed a contempt petition being Contempt Petition No. 562 of 2007 as the pay and allowances were not

released. This contempt petition also came to be closed by order dated 04.09.2009, on the finding by the Court that the arrear salary payable to the petitioner has already been released.

8. It is submitted by the learned counsel for the petitioner that in spite of the petitioner being superannuated, the Department has not taken any steps to pass necessary orders regularizing the period with effect from 07.03.2002 to 26.11.2007, and thereby facilitating the release of pensionary benefits to the petitioner as per the rules.

9. The Respondent No. 5, namely the Director of Health Services, Assam has filed an affidavit where these facts narrated by the petitioner are not disputed. In the said affidavit, there is a clear averment that in response to the Accountant General's letter, the relevant documents necessary for finalizing the pension papers have already been submitted before the appropriate Department in the Government, namely the Secretary to the Department of Health, Government of Assam.

10. The learned Counsel for the parties has been heard. Pleadings available on record have been carefully perused. The only grievance of the petitioner before this court is for regularization of the service period with effect from 07.03.2002 to 26.11.2007, which has remained pending before the Government and no decision has been taken.

11. From the facts narrated hereinabove, it is seen that there is no default found on the part of the petitioner for not joining in his place of posting as the officer required to be relieved, namely Dr. B. Das did not hand over the charge at the relevant point in time and subsequently obtained a stay order in respect of his transfer.

12. In view of the interim orders obtained, the Department also stayed the transfer order by an order dated 17.04.2002; and as a consequence thereof, Dr. Badal Das, the officer who the petitioner was supposed to relieve, continued to serve at Kalain CHC. Without resolving this matter, the petitioner continued to serve. Although no specific orders were passed clarifying his position, the petitioner earned his promotion to the next higher post of Sub-Divisional Health Officer and thereafter to the post of Superintendent and ultimately superannuated on 31.05.2014.

13. There was no disciplinary proceeding initiated against the petitioner alleging willful violation of the orders passed by the Government for unauthorized absence. It is also seen from the case records that by virtue of the order passed by a coordinate bench of this court in WP(C) No. 2883 of 2002 by a judgment and order dated 29.05.2003, the respondents were directed to release the pay and allowances payable to the petitioner. It is also seen from the records that by order dated 08.11.2006 passed in Writ Appeal No. 296 of 2003,

although the writ appeal preferred by the petitioner came to be dismissed, there was a direction to the respondent authorities to release the pay and allowances payable to the petitioner without further delay. Although initially a contempt petition was filed for non-compliance of the directions contained during the pendency of the contempt petition, the amount of arrear salary and pay was released. However, in spite of that, the Government has not taken any decision as on date to regularize the service period rendered by the petitioner with effect from 07.03.2002 to 26.11.2007.

14. Coming to the Assam Services (Pension) Rules 1969, under Rule 95 G, the Department is required to forward the pension proposals in duly completed form as prescribed under the rules and signed by the Government Officer as also by the Head of the Office along with the service book, duly completed up to date with any other documents under the covering letter as prescribed under the format to the pension authorizing authority, namely the Accountant General's Office in the present case. This exercise in terms of Rule 95 G of the Assam Services (Pension) Rules, 1969 was required to be carried out before six months of the retirement of the government servant.

15. That apart, by Office Memorandum dated 29.04.1976, a clear procedure regarding simplification for elimination of delays in payment of superannuation pension and Death-Cum-Retirement Gratuity (DCRG) has been issued by the

concerned Departments, namely the Secretary to the Government of Assam, Department of Finance. In terms of the said Office Memorandum, there is a clear timetable prescribed for submission of the proposals and the necessary steps required to be undertaken. In terms of the said Office Memorandum, the Head office or other authority responsible for preparing the pension papers will initiate the pension case two years before the date of retirement of the government servant. This stage includes coalition of information necessary for working out the qualifying service, including any deficiencies due to gaps in services or imperfection in the service book or records. The concerned Head Office of the Authority responsible for preparing the pension papers will have to take all efforts to remove these deficiencies. The time period prescribed under the said Office Memorandum is for adhering to the prescription under the rules is not later than eight months in advance from the date of retirement of the government servant. Under clause 2(b) of the said Office Memorandum, it is clearly specified those eight months before the retirement, the actual work of preparation of pension papers, including reckoning of qualifying service, calculation of average emoluments should be undertaken. Any deficiency or imperfection or omission which still remains in the service records will be ignored at this stage and the determination of qualifying service will be proceeded with on the basis of the entries in the service records, whatever the

degree of perfection to which it might be possible to bring by that date.

16. Under Clause 2(d) of the said Office Memorandum, clearly prescribes that the process for determining the qualifying service and the average emoluments and admissible pension and gratuity should be positively completed within a period of two months and the pension papers should be sent to the office responsible for issuing pension payment order not later than six months before the date of retirement of the Officer.

17. Under Clause 3 of the said Office Memorandum, procedure to be adopted by the Department for extraordinary leave or suspension is prescribed. Extraordinary leave is allowed to be counted for pension if it is taken inter alia due to inability of the person to join or rejoin the duty due to civil commotion or natural calamity or prosecution of higher scientific or technical studies or medical certificate. The extraordinary leave taken on such grounds are to be treated as non-qualifying and therefore a definite entry is to be made in the service records to that effect. If there are any non-qualifying periods which has come to the notice of the Administrative Department, specific entries in the service record must be made.

18. A careful perusal of the said Office Memorandum reveals that a detailed procedure and timetable is prescribed for rectification and finalization of pension papers before it is forwarded to the Pension Relieving Authority. In the

present case, the matter is languishing before the appropriate department with regard to the said period of the petitioner, which according to the Accountant General's Office requires a specific order for the grant of extraordinary leave. There is no dispute on the facts that the service period mentioned, which is pending before the government for grant of extraordinary leave cannot be attributed to the default of the petitioner as the initial order of transfer came to be subsequently stayed by the government itself in the face of orders passed by this Court. The arrear salary and pay for the period has also been released. There is no Departmental proceeding initiated against the petitioner for unauthorized leave or for break in service etc. The pension papers have been forwarded to the Pension Payment Authority, namely the Accountant General's Office and there is no entry made by the Administrative Authority regarding any break in service.

19. During the course of hearing, the learned Standing Counsel, Health Department submits that the matter is pending before the Authority and in view of the ensuing assembly election no specific directions could be issued by the Department. He submits that matter be deferred to be listed after four weeks.

20. Considering the facts as noticed on the case record and considering the facts that the petitioner has superannuated with effect from 31.05.2014, non-

finalization of the pension papers are not supported by any proper explanation by the Health Department, save and accept to the fact that the matter is pending before the higher authority. The affidavit filed by the Health Department also does not dispute the averments made by the petitioner. There is also no explanation by the Health Department that the prescription Under Rule 95 G or the Procedure and the Timetable prescribed under O.M. dated 29.04.1976 are not applicable with the facts of the present case.

21. Under such circumstances, this Court is of the view that the Respondent Department will forthwith take all necessary steps to pass appropriate orders meeting the objections raised by the Accountant General's Office and thereafter resubmit the pension proposal to the Office of the Accountant General, whereupon the Office of the Accountant General will process and release the pension payable to the petitioner. At the time, when the pension is finalized then the Accountant General will proposes to release the Final pension. Needless to say, any amount released already by way of provisional pension or any other allowances, benefits required to be recovered from the petitioner may be adjusted as per the procedure prescribed.

22. This entire exercise shall be undertaken by the Respondent Health Department and subsequently by the Accountant General's Office within a period of 60 days from the date of receipt of certified copies of this order.

JUDGE

Comparing Assistant