

GAHC010251682024



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

Case No. : WP(C)/6553/2024

MD. CHAMED ALI
S/O LT. BUJAN ALI
R/O NATUN SARANIA
LALMAIT BYE LANE, GANDHIBASTI, GUWAHATI, DIST. KAMRUP (M),
ASSAM, PIN-781003

VERSUS

THE STATE OF ASSAM 6 ORS
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVERNMENT OF ASSAM, PUBLIC WORKS (ROADS) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE SPECIAL COMMISSIONER AND SPECIAL SECRETARY TO THE
GOVERNMENT OF ASSAM

PUBLIC WORKS (ROAD) DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM

PUBLIC WORKS (ROADS) DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE CHIEF ENGINEER

PUBLIC WORKS (ROADS) BORDER ROADS DEPARTMENT
CHANDMARI
GUWAHATI-781003.

5:THE SUPERINTENDING ENGINEER

PWD (ROADS) CACHAR CIRCLE

SILCHAR
PIN-788001

6:THE EXECUTIVE ENGINEER

PWD (ROADS) PATHARKANDI AND RATABARI TERRITORIAL ROAD
DIVISION
RAM KRISHNA NAGAR
KARIMGANJ
ASSAM.

7:THE ACCOUNTANT GENERAL (A AND E)

ASSAM
MAIDAMGAON
BELTOLA

GUWAHATI-78102

Advocate for the Petitioner : MR H R A CHOUDHURY, AMINUR RAHMAN,MR S
HUSSAIN,MR. A T SARKAR

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

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

09.12.2024

Heard Mr. H.R.A Choudhury, learned Senior Counsel assisted by Mr. A.T Sarkar, learned counsel for the petitioner, who submits that the petitioner is aggrieved with the Notification dated 14.09.2024 (Annexure - 29) by which a penalty of monthly pension has been stopped permanently under the provision of Rule 21(b) of the Assam Services (Pension) Rules, 1969 has been imposed upon him.

The learned Senior Counsel submits that the petitioner is retired Executive Engineer, who was employed with the Public Works (Roads) Department under the Govt. of Assam. The concerned Director had filed a writ petition before this Court i.e., WP(C) No. 2243/2021 wherein, the present petitioner was arrayed as the respondent No. 5. While disposing of the writ petition, this Court vide Order dated 30.11.2022 made an observation that the departmental proceeding may be drawn by the respondents against the instant petitioner. Therefore, a proceeding was drawn against the petitioner which resulted to passing of the impugned Notification. The learned Senior Counsel submits that the penalty imposed upon the petitioner is not one amongst the major penalty contemplated by Rule 9 and Rule 7 of the Assam Service (Discipline & Appeal) Rules, 1964 and that even if it was a case of misappropriation of Government fund, the same can be recovered even from the pension to be received by the petitioner. However, by the impugned Notification, the respondents have totally stopped the monthly pension permanently of the petitioner, which is most arbitrary and illegal and therefore, the same should be set aside.

In view of above, issue notice of motion, returnable by six (6) weeks. Mr. R. Dhar, learned State Counsel accepts notice on behalf of the respondent Nos. 1 to 6. Mr. C. Baruah, learned A.G, Assam accepts notice on behalf of the respondent No. 7. As such, notice complete upon all the respondents. Petitioner to serve requisite extra copies of the writ petition to the learned counsels appearing today within three (3) days.

Having regard to the nature of controversy projected by the petitioner, the respondents to file their response to the writ petition by the next date so that an attempt can be made to dispose of the writ petition at the admission stage.

List the matter again on 28.01.2025.

JUDGE

Comparing Assistant