

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(c) No. 294(AP)2018

Smti Nyamba Shongmu,
W/o Tsering Tashi Dirkipa,
R/o Village Thembang, P.S/P.S-Dirang,
West Kameng District, Arunachal Pradesh

.....**Petitioner**

- Versus -

1. The State of Arunachal Pradesh, represented by the Director General of Police, Police Head Quarter, Govt. of Arunachal Pradesh, Itanagar.
2. The Superintendent of Police, Bomdila, West Kameng District, Arunachal Pradesh.
3. The Commissioner (Vigilance), Govt. of Arunachal Pradesh, Itanagar.
4. The Deputy Commissioner, Bomdila, West Kameng District, Arunachal Pradesh.
5. The Director, Audit & pension, Govt. of Arunachal Pradesh, Naharlagun.

.....**Respondents**

Advocates for the petitioner: Mr. B. Picha.

Advocates for the respondents: Mr. S. Tapin, learned Sr. Govt. Advocate.

:::B E F O R E:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 10.10.2018

Date of Judgment & order : 10.10.2018

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. Picha, learned counsel appearing for the petitioner and Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents.

2. By preferring the instant petition under Article 226 of the Constitution of India, the petitioner is seeking direction to the respondent No.3/the Commissioner (Vigilance), Govt. of Arunachal Pradesh and respondent No.4/the Deputy Commissioner, West Kameng District, Bomdila, Arunachal Pradesh to issue No Objection Certificate (NOC) and vigilance clearance and also the respondent No.5 to process the file of the petitioner for granting regular pension without waiting for any NOC and vigilance clearance from the office of the respondents No. 3 & 4.

3. The petitioner's case, in a nutshell, is that she availed voluntarily retired from the post of Inspector of Police, Arunachal Pradesh on 30.09.2017. Before the petitioner proceeded on voluntary retirement, the Deputy Superintendent of Police, West Kameng District, Bomdila by a letter, dated 26.12.2016 requested the respondent No.4/ the Deputy Commissioner, West Kameng District, Bomdila and the respondent No.3/the Commissioner (Vigilance), Govt. of Arunachal Pradesh for issuing NOC as there was no departmental proceeding or criminal case pending against her. Accordingly, the respondent No.2/the Superintendent of Police, West Kameng District, Bomdila forwarded all her pension documents and service book to the respondent No.5/the Director, Audit & Pension, Govt. of Arunachal Pradesh.

4. The petitioner has contended that as per the order, dated 06.06.2017 issued by the Vigilance Department, Govt. of Arunachal Pradesh wherein, it has been made mandatory for every government employee to obtain NOC from the concerned the Deputy Commissioner for settling the retirement dues and in case of failure to issue NOC within 6(six) weeks, the NOC shall be deemed to be considered as issued. However, the respondent No.5/the Director, Audit & Pension, Govt. of Arunachal Pradesh denied to process the pension file of the petitioner. The petitioner submitted representations on 29.03.2018 and 02.04.2018 before the respondent authorities for issuance of NOC and vigilance clearance but no NOC has been issued in favour of the petitioner and as such, she has been deprived of pensionary benefits till date.

5. The respondent No.4 in his affidavit-in-opposition averred and Mr. S. Tapin, learned Sr. Govt. Advocate appearing on behalf of the State respondents submits that the petitioner has illegally occupied and encroached upon a plot of Govt. land near the Circuit House Bomdila and constructed a double storied RCC building without any land allotment order from the competent authority. According to Mr. Tapin, the said land encroachment was done just leaving a space of 0.5 metres and 1.5 metres from the government quarters on the eastern and western side respectively. On the southern side of the government quarters, the petitioner has constructed a RCC compound wall and erected steel gate keeping no distance from the government quarter and further, her husband had also illegally occupied a plot of government land near the Car parking complex at Bomdila and raised an OBT House thereon. Mr. Tapin also submits that the petitioner has already drawn provisional gratuity, leave encashment, provisional pension and GIS. Mr. Tapin also contends that in this regard an encroachment proceeding is pending against the petitioner and as such, regular pensionary benefits could not be released to her.

6. Mr. B. Picha, learned counsel for the petitioner submits that the respondent authority has released only provisional pension for a period of 6(six) months and 90% of the gratuity to the petitioner, but the regular pension has been withheld and 10% of the gratuity. Mr. Picha submits that the order, dated 06.06.2017 clearly says that in case of retirement of officers and in the event of the NOC not been issued by the authority designated by the State Govt. in this regard within the specified period of six weeks from the date of the receipt of the application in proper format by the designated authority, it would be deemed that the NOC has been issued by the designated authority however, the fact remains that although the period of six weeks has already lapsed, till date the respondent authority whimsically denied the petitioner from her pensionary benefits. Mr. Picha emphatically submits that as per the order, dated 06.06.2017, the respondent authority is duty bound to grant pensions and other benefits to the petitioner.

7. It may be mentioned that this Court by order, dated 20.06.2018 directed and observed as herein below extracted:-

"....taking note of the fact that the petitioner had gone on retirement on 30.09.2017 and almost 09(nine) months have elapsed since then and further

taking into consideration the provisions of Rule-69 of the Central Civil Service(Pension) Rules, 1972, it is directed that the respondent authorities shall pay the provisional pension to the petitioner from the next months onwards.

It is taken note of that the provisional pension is applicable to a retired Government employee even if a departmental or judicial proceeding is pending against him. But in the instant case, the petitioner is in a far better position inasmuch as, there is no such judicial or departmental proceeding pending against him and it is merely a case where the departmental authorities had not carried out the required formalities for issuing him the NOC...

8. In ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava***, reported in ***(2013) 12 SCC 210***, the Hon'ble Supreme Court held that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India. Further, the Court held that a person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

9. On perusal of the standing order, dated 06.06.2017 issued by the Vigilance department, Govt. of Arunachal Pradesh, the Deputy Commissioners are required to issue the NOC to the retired officers within a period of six weeks from the date of the application and in case of failure to do so on their part, it shall be deemed to have been issued. In the instant case, more than one year lapsed from the date of voluntary retirement on 30.09.2017, the various communications being made by the police department, no NOC has been issued and as such, the same is deemed issued as per the standing order of the Govt. of Arunachal Pradesh, dated 06.06.2017 by the respondents No. 3 and 4.

10. in view of the above, this writ petition is disposed of directing the respondent No.3/the Commissioner(Vigilance), Govt. of Arunachal Pradesh and the respondent No.4/the Deputy Commissioner, West Kameng District to issue

required NOC to the petitioner within a period of 30(thirty) days from the date of receipt of a certified copy of this order. All the respondents are also collectively directed to facilitate payment of regular pensionary benefits to the petitioner within a period of 3(three) months from the date of receipt of the NOC from the petitioner.

11. However, liberty is hereby granted to the respondents to take such action as may be considered appropriate in respect of encroachment of government land in violation of any Act or Rules, in accordance with law.

12. The writ petition stands disposed of in terms of the above observations and directions.

JUDGE

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