

# IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

## WP(C) No. 552 (AP) OF 2018

***Shri Tai Nikio,***  
S/O Late Tai Kami,  
Resident of Karsingsa,  
P.O./P.S. Banderdewa,  
District-Papumpare,  
Arunachal Pradesh.  
Phone No. 07085007001

----- Petitioner

– *VERSUS* –

- 1. *The State of Arunachal Pradesh,***  
Represented by the Chief Secretary,  
Government of Arunachal Pradesh,  
Itanagar.
- 2. *The Chief Secretary,***  
Government of Arunachal Pradesh,  
Itanagar.
- 3. *The Commissioner,***  
Public Works Department,  
Government of Arunachal Pradesh,  
Itanagar.
- 4. *The Chief Engineer,***  
Public Works Department,  
Central Zone,  
Government of Arunachal Pradesh,  
Itanagar.
- 5. *The Superintending Engineer,***  
Capital Circle-cum-Co. Ordination,  
Training and Vigilance,  
Public Works Department,  
Government of Arunachal Pradesh,  
Itanagar.
- 6. *The Under Secretary (Vigilance SIC),***  
Government of Arunachal Pradesh,  
Chimpu, Itanagar.

----- Respondents

**BEFORE**  
**HON'BLE MR. JUSTICE HITESH KUMAR SARMA**

Advocates for the Petitioners :: Mr. I Choudhury, learned Senior Counsel, Mr. K Lollen, & Mr. S Biswakarma.

Advocates for Respondent Nos. 1 to 6 :: Mr. K Ete, learned Senior Additional Advocate General

Date of hearing :: 13.12.2018.

Date of delivery of Judgment :: **21.01.2019.**

**JUDGMENT & ORDER (CAV)**

By this writ petition, under Article 226 of the Constitution of India, the petitioner has sought for a declaration that he has voluntarily retired from his service w.e.f 31.08.2018 as well as a direction to the respondent authorities to release him from service w.e.f. 01.09.2018 with all retirement benefits.

**[2]** The fact, in a narrow campus, is that the petitioner joined as Junior Engineer in the Public Works Department, Arunachal Pradesh, (in short PWD) in the year 1991 and has completed 27 (twenty seven) years of service in the department. On temporary promotion, the petitioner was serving as Executive Engineer immediately before filing of this writ petition. Being desirous of contesting the Legislative Assembly Election-2019, he decided to voluntarily retire from service and exercised his right under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the CCS (Pension) Rules) and submitted an application, dated 30.04.2018, giving notice of voluntary retirement with a prayer that such voluntary retirement be

made effective from 31.08.2018. The said notice has been annexed with the petition as Annexure-1. The Superintending Engineer, Yachuli Civil Circle, PWD, vide letter, dated 03.05.2018, forwarded the aforesaid notice of the petitioner for voluntary retirement to the Chief Engineer (Central Zone), PWD and the Chief Engineer, in turn, forwarded the same to the Commissioner, PWD on 07.05.2018, vide letter at page 18 and 20, respectively. The under Secretary, PWD, sought vigilance clearance in respect of the petitioner, vide Annexure-3, at page 21, of the writ petition. Since no response was received, the under Secretary, PWD, vide letter dated 11.09.2018 (Annexure-4 at page 23), issued a reminder to the under Secretary, Vigilance, Government of Arunachal Pradesh to furnish the vigilance clearance of the petitioner for onward submission of same to the competent authority. As voluntary retirement is deemed to have come into effect upon completion of the notice period i.e., 31.08.2018 in terms of proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, the petitioner submitted a representation on 03.10.2018, vide Annexure-5, to release him from service w.e.f. 31.08.2018. This representation, seeking release, evoked no response from the respondent authorities. Therefore, this writ petition seeking the declaration as well as the direction, indicated above.

**[3]** The respondent No. 3, the Commissioner of PWD, filed an affidavit-in-opposition. Paragraphs 7 and 8 of the said affidavit-in-opposition are quoted below for convenience of appreciation.

***"7. That with regard to the statement made in paragraph-8 of the writ petition, the answering respondent begs to state that it is a fact that Shri Tai Nikio has submitted a representation dated 03.10.2018 to the Government with a request to release him from Government service as per***

**existing rule. The said representation has been submitted to the competent authority vide file No. SPWD-427/2018 on 09.10.2018 for decision and further instruction which is awaited.**

**8. That with regards to the statement made in paragraph-9 of the writ petition, the answering respondent begs to state that neither the Vigilance Department did issue any Vigilance clearance in respect of petitioner nor intimated this department about reason for withholding his vigilance clearance even after the lapse of 6 (six) months time."**

**[4]** It emerges from the statements made in para 7 and 8 above that the PWD, i.e., the appointing department of the petitioner has not passed any order either allowing or refusing voluntary retirement of the petitioner and the grounds cited for such inaction is lack of communication from the Vigilance department.

**[5]** The respondent No. 6, the Under Secretary (Vigilance SIC), Government of Arunachal Pradesh, has also filed an affidavit-in-opposition stating therein, inter alia, that certain complaints have been lodged against the petitioner which are being investigated/enquired into. The para 4 of the affidavit-in-opposition of the respondent No. 6 reads as follows:-

**"4. That with regards to the statement made in paragraphs- 6 and 7 of the writ petition, the answering respondent begs to state that on receipt of letter for Vigilance Clearance in respect of Shrt Tai Nikio, Executive Engineer(PWD) from Under Secretary (PWD) as per existing guidelines, it was written to Special investigation cell (SIC) for confirmation of any case is pending against the officer.**

**Accordingly, SIC submitted their report. In view of the report submitted by the SIC wherein some complaints/cases are informed to be being**

***examined, enquired into and investigated under existing guidelines, the Vigilance Clearance in respect of Shri Tat Nikio has not been issued.***

***The status of the case in respect of Shri Tai Nikio EE(PWD) has already been submitted to the Sr. Addl. Advocate General, Arunachal Pradesh in response to the letter No. Dir/Lit/AP/2018/1104 dated 08.11.2018 pertaining to WP(C)No. 552(AP)2018.***

***An Order No. SIC/VIG/PS/31/ENQ/2018(Pt-III), dated 28.11.2018 has been issued to conduct enquiry into the Disproportionate Assets possessed by Er. Tai Nikio, EE, PWD in respect of SIC(Vig) Enquiry No.29/18."***

[6] The Status Report, dated 14.11.2018 annexed with the affidavit-in-opposition of the respondent No. 6, vide Annexure-1, reads as follows:-

- "1. FIR No. 1712018 PS SIC (VIG) U/s 409/420/467/471/120B/506 IPC r/w 13(1)(c)/(d)/13(2) PC ACT dated 14/11/2018**  
***This case pertains to irregularities and misappropriation of public money in c/o Tamin Tali Road (Ph-I) which has been registered after due approval of competent authority. The enquiry of the case revealed gross procedural irregularities and siphoning off govt. funds by preparing inflated bills which bear the signatures of the accused viz. viz. Er. Hage Koyang , Er. Tai Nikio , Er. Madan Singh and Er. C S Chowtang . The Enquiry also revealed forgery of documents along with intimidation of complainants by the accused officers in connivance and conspiracy with other individuals. Thereafter based on the enquiry report, after seeking approval from the competent authority the aforesaid case has been registered.***
- 2. Enquiry No. 3012016 PS SIC (VIG) dated 22/09/2016**

***A complaint was submitted by Shri Takuadar Triiri Taku Thomas, Chairman & General Secy, Arunacahal against Corruption, Kra-Daadi District Unit, alleging misappropriation of public money and illegal payment of bills against C/O ST girls Hostel Palin Circle, Kra-Daadi District, by the corrupt Officials of PWD, Palin Circle, pertaining to the Sanctioned amount of Rs.124.90 lakh and the total of Rs.62,45,000/- being the 1st installment for said purpose under the Deptt. Of Social Justice, Empowerment & Tribal Affairs, AP, Itanagar.***

***Based on the abovementioned complaint, PS SIC(Vig) has initiated an enquiry to verify the allegations levelled in the complaint. Various documents along with statements of involved officers and witnesses have been collected.***

***During the course of enquiry, it was found that during 2011, Rs.12.49 lakh (Rupees twelve Crore forty nine Lakhs) only amount was sanctioned by the GOI vide Order No.11020/14/2005-Education dat.26/12/2011 for CIO 10 nos of ST Girls Hostel for 40 seats each in Kurung kumey district Viz, Dui, Yaglung, Jamin, Bangte, Pania, Amji, Langbai, Joni, Jullang, and Palin Town, as per DPR prepared by the PWD authority.***

***1st Installment of RS. 624.50 Cr was released vide CEAP/CZ-AAANG-20/YC/2014-15/597-99 dtd.09/6/2014 by the chief Engineer, central Zone-A, PWD, Itanagar, and 2nd Installment of RS. 6,24,49,000/- was released from the secretary, social Justice & environment and Tribal affairs Deptt, Govt. of AP, Itanagar.***

***The Construction of said works was started by the Sangram PWD on Work Order basis due to local problems after amicable settlement through local leaders.***

***Further Technical Reports have been obtained from the Deputy Commissioner Kra Daadi twice, as the first report was found unsatisfactory, to ascertain into the veracity of the allegations.***

***Accordingly, the 2nd Verification Report has been received from the DC, Kra-Daadi vide letter No. KDIJUD-2***

*(VOL-II)/2018/3065 dtd 25/10/18. The verification Report reveals that the project was initially sanctioned for double-Storey RCC building having plinth area of 440 4 sqm. as per Detailed Estimate. The Estimate has been changed and altered in design and scope because of the actual site condition of the area which is hilly, earthquake prone besides hostile terrain and is insecure to construct double storey RCC building. Also, there was no motorable road at Joru, Dui, Yaglung, Langbia, Amji, and Bangte at the time of construction of the buildings.*

*The board members found that the CGI sheets roofing were not painted in all the buildings, it was also found that no boards were fitted in most of the buildings. In some building ceilings at verandah were not fitted and, in some buildings, ceilings were fitted but not painted.*

*The report also opined that the buildings were in very bad condition especially since the school is defunct due to wear & tear without any maintenance and that it is now almost three to Six years old.*

*The Board also found that some works like earth development, phase wire fencing along with angle post with Iron-gate and local open kitchen with CGI sheets roofing in the hostel buildings have done which were not within the estimate.*

*The Enquiry being conducted in SIC is still under progress and this investigating agency is in the process of examining the 2nd Technical Report and efforts are being made to ensure expeditious disposal.*

**3. Complaints dated 11/06J2C I:1Land 10/07/2018 against Sh. Tai Nikio, EE PWD regarding disproportionate assets have been sent to SIC(VIG)PS Vide Letter No. V1G-) 203/2018/439 for investigation as per law.**

**4. Complaint dtd.11106118 against Sri Tai Nikio, EE, PWD Yazali Divn, was received from Sri Taba rajan of Yazali regarding criminal misappropriation, criminal breach of trust, cheating and non-**

***disbursement of his balance sanctioned bills amounting to Rs. 95,42,492/- against the work C/O Link Road from Tago Power House to Dobo village  
The Complaint has been forwarded to vigilance department vide our letter No. SICNIG/72-CF/2018 dtd.13th June' 2018 for necessary action.  
The withdrawal letter submitted by the complainant has also been forwarded to your office vide our letter NO. SICNIG/72-CF/2018 dtd.27" July'2018 for necessary Action."***

[7] Annexure-2 to the affidavit-in-opposition of the respondent No. 6 is an order by Superintendent of Police, SIC (Vigilance), Itanagar, dated 28.11.2018, making an endorsement to SIC (Vigilance) PS, Chimpu, Itanagar for making an enquiry into the complaints as regard disproportionate assets of the petitioner.

[8] As regard the affidavit-in-opposition by the respondent No. 3 and the respondent No. 6, the petitioner submitted rejoinders. In the rejoinder to the affidavit-in-opposition of the respondent No. 3, the reply of the petitioner is very specific to the effect that even after the statutory period of 3 (three) months notice is over, no steps/actions were taken by the respondent authorities for which the representation, dated 03.10.2018, was submitted for deemed acceptance of his voluntary retirement w.e.f. 31.08.2018. The petitioner has referred to the proviso of Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, that if the appointing authority does not refuse to grant the permission for retirement within the specified period of the 3 (three) months, the retirement shall become effective from the date of expiry of the said period. Since the respondent No. 3 did not refuse to voluntarily retire the petitioner nor communicated withholding of his voluntary retirement during the statutory period, and even after 6 (six)

months, the voluntary retirement of the petitioner is deemed to have taken place on the expiry of the 3 (three) months notice period. It has further been stated in the said rejoinder that the respondent authorities are bound to pass appropriate order(s) either withholding permission to retire or retaining the petitioner in service in terms of Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, and despite such right given to the competent authorities, in this regard, no order was passed or any communication was made to the petitioner even after lapse of 6 (six) months from the date of the notice. Therefore, he has made out a case for intervention by this court under Article 226 of the Constitution of India.

[9] The para 5 of the rejoinder to the affidavit-in-opposition filed by the respondent No. 6 is quoted below for convenience of appreciation.

***"5. That with regards to the statement made in Paragraph- 4 of the Counter Affidavit, your humble deponent/petitioner vehemently denies the same and further begs to state that during the statutory period of 3 (three) months notice submitted by the petitioner for voluntary retirement, the respondents no. 6 never refused to grant vigilance clearance to the petitioner for any reasons whatsoever. However, after lapses of more than 6 (six) months of filing notice dated 30.04.2018, the respondent no. 6 alleging of pending investigations against the petitioner are after thoughts and same cannot be reasons to withhold the permission of voluntary retirement of petitioner as per sub-rule (2) of Rule-48A of CCS Rules.***

***It is further to states that as per detailed report vide no.SIC/VIG/2018-19/1534 dated 14.11.2018 (ANNEXURE-1 of the counter affidavit filed by the respondent no. 6) submitted to***

*the Commissioner (Vigilance), Govt. of A.P, various fake and fabricated corruption cases shown to have been pending investigation against the petitioner.*

*The details of which are as follows:-*

**A. FIR No. 17/2018 PS SIC (VIG) U/s 409/420/467/471/120B/506 IPC r/w 13(1) Zif3(2) Pc Act dated 14.11.2018.**

*That with regards to present FIR the deponent/petitioner states that initially 6 (six) Panchayat leaders of 21<sup>st</sup>- Tali (ST) Assembly Constituency namely, 1. Nikbia Talom, ASM Raha, 2. Jedang Takup, ASM Hai Machi, 3. Yukar Taro, ASM Langha, 4. Tagru Tagiang, ASM Dotte, 5. Smt. Yura Yalong, ASM Lodakore and 6. Smt. Gichik Yapa, ASM Yarda, lodged a complaint alleging of irregularities and misappropriation of public money in C/O Tamin Tali Road (Ph-I) by PWD officials, without any basis. But on 30.10.2018 four complainants namely; 1. Jedang Takup, ASM Hai Machi, 2. Yukar Taro, ASM Langha, 3. Tagru Tagiang, ASM Dotte and 4. Smt. Gichik Yapa, ASM Yarda, submitted withdrawal letter dated 30.10.2018 before the SP (Vigilance), Itanagar for withdrawal of the said complaint stating that said complaint was lodged due to pressurized by one Er. Bamang Raju, EE, PWD Tali Division, who is the younger brother of Shri Bamang Felix, the present Minister PWD, who pressurized the complainants to lodged false and fabricated corruption cases against the petitioner. Which is nothing but political rivalry in order to delay the voluntary retirement of the petitioner as petitioner is likely to contest the 2019 assembly election against his elder brother form said constituency.*

**B-Enquiry No. 30/2016 PS SIC NIG) dated 22.09.2016.**

***That with regards to the present enquiry, your humble deponent/petitioner states that on the basis of said complaint the technical team members were constituted and the technical team verified various schools and prepared report on 07.01.2017 with an observation that 90 % of the estimated cost of each building is involved and the work has been completed as per CPWD specification with up to date correction slip. And the report was submitted to the Deputy Commissioner, Kra Daadi District on 09.01.2017. And thereafter on 13.03.2017 the possession of said hostel buildings were taken over by the DDSE, Kra Daadi District.***

**C- Complaints dated 11.06.2018 and 10.07.2018 against Sh. Tai Nikio, EE PWD.**

***That the deponent/petitioner states that the complaint dated 10.07.2018 lodged by one Miss Bagi Mad against the petitioner for encroachment of 4 or 5 nos of PWD labour barrack at Barapani Naharlagun and constructed big star hotel and further alleging that petitioner has accumulated crores of money and possessing disproportionate assets. However, the complainant subsequently withdrawn the complainant on dated 23.07.2018 after realizing the facts that petitioner has never constructed any hotel buildings at Barapani Naharlagun nor involved in any corrupt practice. The alleged constructed buildings belongs to Smt. Tai Yarang, who has constructed on the gifted land vide gift deed dated 07.02.2012 by one Shri Rikam Tare Hake. The land encroachment case of Smt. Tai Yarang was already disposed of by the learned JMFC, Itanagar vide order dated 08.10.2013. Therefore, after withdrawal of***

***complaint, the order for investigation/enquiry vide No. SIC/VIG/PS/31/ENQ/2018(PT-III) dated 28.11.2018 (Annexure-2 of the counter affidavit filed by the respondent no. 6) against the petitioner shows malafide intention on the part of respondent no. 6 to harass the petitioner without any valid ground by withholding the vigilance clearance on the basis of withdrawn complaint.***

***D- Complaint dated 11.06.2018.***

***That the deponent/petitioner states that the said complaint was lodged without any basis only to disturb the petitioner from getting vigilance clearance due to political rivalry. Accordingly the said complaint was also withdrawn by the complainant on 22.06.2018."***

**[10]** From the petition, the affidavits-in-opposition filed by the respondent Nos. 3 and 6 and rejoinders thereto, it has clearly come out that:-

(i) On the notice, dated 30.04.2018, so submitted by the petitioner, no order either allowing him to voluntarily retire or refusing or withholding the same has been passed during the notice period.

(ii) That there is no disciplinary proceeding either pending or contemplated against the petitioner.

(iii) The relevant portion of the reminder issued by the Under Secretary to the Government of Arunachal Pradesh, PWD, to the Under Secretary (Vigilance), Government of Arunachal Pradesh, dated 11.09.2018 (Annexure-4 at page 23 to the writ petition) reads thus, ***"even after the expiry of voluntary retirement notice date, the establishment could not submit his VRS notice to the Hon'ble Chief Minister due to non furnishing of vigilance clearance by your establishment."*** Such statement in the

reminder shows that the department is aware of the fact that an order has to be passed within the notice period of 3 (three) months. But, the competent authority could not do so due to non receipt of vigilance clearance from the Vigilance Department of the Government of Arunachal Pradesh.

(iv) It has also come out from the reminder, referred to above, that the same was issued beyond the 3 (three) months notice period.

**[11]** The learned senior counsel for the petitioner, Mr. Choudhury, has referred to the proviso of Rule 48-A of the CCS (Pension) Rules, which reads as follows:-

**"48-A. Retirement on completion of 20 years' qualifying service-**(1) *At any time, after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:*

*Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-*

- (i) On assignments under the Indian Technical and Economic Cooperation (ITCE) Programme of the Ministry of External Affairs and other aid programmes,*
- (ii) Posted abroad in foreign based offices of the Ministries/Department,*
- (iii) On a specific contract assignment as a foreign Government.*

*Unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.*

*(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:*

*Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.*

*(3-A)(a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor."*

**[12]** The learned senior counsel for the petitioner has argued that in view of the above undisputed facts, the voluntary retirement of the petitioner shall be deemed to have come into effect from 31.08.2018 and it is inevitable for the respondent authorities to release him with effect from such date in terms of the mandate of the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules. He has further referred to the decision of the Hon'ble Supreme Court in the case of ***Tek Chand –vs- Dile Ram***, reported in ***(2001) 3 SCC 290***, particularly paragraphs 31 to 35 thereof. This decision has laid down the following ratio:-

(i) The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period.

(ii) Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self contained, it is unnecessary to look to other provisions.

(iii) In case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee.

**[13]** Therefore, the learned senior counsel for the petitioner has argued that since as per the proviso to Rule 48-A (2) of the CCS (Pension) Rule, the appointing authority did not refuse to grant permission for voluntary retirement before the expiry of the period specified in the said notice, the retirement sought for shall become effective from the date of expiry of the said period. Para 32, 33, 34 and 35 of ***Tek Chand*** (supra), are quoted below for convenience of appreciation of the matter in issue in this writ petition:-

***"32. Under sub-rule (1) of the said Rule, at any time after completion of 20 years qualifying service, a Government servant could give notice of not less than three months in writing to the appointing authority for retirement from service. Under sub-rule (2), voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. In the proviso to sub-rule (2) of Rule 48-A, it is clearly stated that in case the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.***

***33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is***

*open to the appointing authority to refuse also on whatever grounds available to it but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5.12.1994. The learned senior counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the Government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub- rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a Government Servant during the period from the date of expiry of the notice period*

***upto the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a Government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation.***

***34. This Court in a recent judgment in the case of State of Haryana and others vs. S. K. Singhal [(1999) 4 SCC 293], after referring to few earlier decisions of this Court touching the very point in controversy in para 13 of the judgment has held thus :-***

***"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz, in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently,***

*there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”*

*35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In first category, voluntary retirement automatically comes into force on expiry of notice period. In second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision.”*

[14] Mr. Ete, learned Senior Additional Advocate General for the respondent authorities has also relied upon the ***Tek Chand*** (supra), and particularly para 35 thereof. He has submitted that as per

the Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, the notice of voluntary retirement given under sub-rule 1 shall require acceptance by the appointing authorities. Mr. Ete has submitted further that, in the instant case, the deeming provision of Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules is not applicable. To bring home this argument, he has submitted that to accept the request for voluntary retirement, the competent authority is to see whether there is any case pending against the petitioner and whether he has encroached upon government property, etc. Therefore, there is requirement of non-encroachment certificate from the concerned Deputy Commissioner and also vigilance clearance from the Vigilance Department. He has also submitted that in respect of the petitioner, the Vigilance Department did not give vigilance clearance on the ground that various complaints/cases are pending against him which are being investigated/enquired into by the SIC (Vigilance) which is apparent from the status report submitted by the Vigilance Department on 14.11.2018. This vigilance status report has been specifically referred to in para 6 of this judgment. He has also submitted that an order, dated 28.11.2018, was issued to conduct enquiry into the disproportionate assets possessed by the petitioner. However, it is an admitted position that the petitioner has fulfilled the requirement of furnishing non-encroachment certificate, copy of which has been annexed with the petition.

With regard to the status report relating to the complaints and cases against the petitioner, a rejoinder has also been filed by the petitioner. On examination of the status report dated 14.11.2018 and the affidavit-in-opposition of the respondent No. 6, it is found that the FIR mentioned at Sl. No. 1 of the status report is dated 18.11.2018, and far beyond the notice period. That apart, 4 (four) out of 6 (six) complainants had withdrawn this complaint as stated in the rejoinder which has not been disputed by the respondent authority. As regards the complaint at Sl. No. 2 of the status report, it is found that the complaint is dated 22.09.2016, nearly two years prior to the voluntary retirement notice of the petitioner. It appears from the rejoinder filed by the petitioner that on this complaint, a technical team was constituted by the administration and finding no infirmities in the relevant construction, possession of the constructed hostel buildings was taken by the concerned department. All these exercise on this complaint was made in the year 2017, far before the notice for voluntary retirement. So far the complaint at Sl. Nos. 3 and 4 are concerned, they were withdrawn by the complainant and is a position admitted in the aforesaid status report itself.

It appears from the complaints, apart from the observation made above against each complaint, that except the complaint at Sl. No. 2 of the status report, other complaints are either beyond the notice period or within the notice period and the complaint at Sl. No. 2 is only of the year 2016, long before the notice period. But, the

complaints were registered after the notice period. On the other hand, the statements of the petitioner, in his rejoinder, in respect to the complaints referred to in the affidavit-in-opposition of respondent No. 6 as well as in the status report, have not been disputed by the respondent authorities including respondent No. 6. Therefore, apparently, there is no complaint registered against the petitioner prior to the notice period. Admittedly, in no way, this argument of the learned Additional Advocate General is relevant in the context of this case as the competent authority did not refuse permission to the petitioner to voluntarily retire. This aspect of the matter has been specifically dealt with and decided, with reference to sub-rule 2 to Rule 48A of the CCS (Pension) Rules, at a later point of time in this judgment.

[15] Mr. Ete, has also referred to the para 35 of the ***Tek Chand*** (supra), and has submitted that there are 3 (three) categories of rules relating to seeking voluntary retirement after notice. In the ***1<sup>st</sup> category***, voluntary retirement automatically comes into force on expiry of the notice period. In the ***2<sup>nd</sup> category*** also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the ***3<sup>rd</sup> category***, voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. According to Mr. Ete, learned Senior Additional Advocate General for the respondent authorities, the petitioner falls under the 3<sup>rd</sup> category. But, such argument would have

been valid had the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, is not there. The said proviso has made it clear that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period stipulated in the said notice, the retirement will become effective from the date of expiry of the said notice. Therefore, the 3<sup>rd</sup> category, referred to above, by the learned Senior Additional Advocate General does not appear to have fit in this case in view of the aforesaid proviso of Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules. Therefore, the argument on this count fails.

**[16]** The learned Senior Additional Advocate General, Mr. Ete, has also referred to the decision of the Hon'ble Supreme Court in the case of ***C.V. Francis –vs- Union of India & Others***, reported in ***(2013) 14 SCC 486*** . A perusal of the said judgment would reveal that there was a voluntary retirement scheme that was introduced by a Company which is essentially a part of the Company's decision to weed out deadwood. Moreover, there was no deeming provision of automatic retirement as provided in sub-rule 2 to Rule 48(A) of the CCS (Pension) Rules. Therefore, this decision does not fit in the facts of this case.

**[17]** The learned Senior Additional Advocate General has also relied upon the case of ***State of Haryana & Others –vs- S.K. Singhal***, reported in ***(1999) 4 SCC 293***, particularly, paras 6, 8, 9, 13 and 18 thereof. This judgment of the Hon'ble Supreme Court has

also been relied upon by the petitioner. The Hon'ble Supreme Court has also considered the said S.K. Singhal in **Tek Chand** (supra). However, on examination of the judgment of **S.K. Singhal** (supra), it is found that the issue there was in respect of voluntary retirement of the petitioner in accordance with the provision of Rule 5.32(B) of the Punjab Civil Services Rules, (Vol-II) and the said Rule reads as follows:-

***"5.32(B)(1) At any time a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months given reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the government employee shall not apply for communication of a part of his pension before the expiry of the period of notice of three months.***

***(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to Rule 2.2. of the Punjab Civil Services Rules Vol. II.***

***Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule***

***(1) supra, the retirement shall become effective from the date of expiry of the said period:***

***Provided further that before a Govt. employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension."***

**[18]** So, it appears that sub-rule 2 and 1<sup>st</sup> proviso thereto of the Punjab Civil Services Rules are same with Rule 48-A, sub-rule 2 and proviso thereto of the CCS (Pension) Rules. In this decision, the Hon'ble Supreme court held, in para 13, that if the ***right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in the Rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat's case and as in Sayed Muzaffar Mir's case, the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the authority***

***concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J.Shelat's case and in Sayed Muzaffar Mir's case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.***

**[19]** In para 18 of the said decision, the Hon'ble Supreme Court finally held that ***in the case before us sub-rule (1) of Rule 5.32(B) contemplates a "notice to retire" and not a request seeking permission to retire. The further "request" contemplated by the sub-rule is only for seeking exemption from the 3 months period. The proviso to sub-rule (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma's case so far as the employee is concerned. As already stated, Rule 2.2. of the Punjab Civil Services Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired.***

[20] Mr. Ete has submitted, to a pointed query, that there is no rule in Arunachal Pradesh conferring any right on the Appointing Authority to withhold acceptance of voluntary retirement. Whatever it may be, this judgment wholly once again supports the case of the petitioner instead of the respondents. The case of **S.K. Singhal** (supra) was examined in the context of Rule 5.32(B) of the Punjab Civil Service Rules and the proviso thereof is in parimateria with the proviso to Rule 48-A(2) of the CCS (Pension) Rules as will be evident from paragraph 6 thereof, quoted in Para 17 of this judgment. The Hon'ble Supreme Court upon a thorough examination of the precedents on the issue was pleased to hold in favour of the officer.

[21] Mr. Ete, the learned Senior Additional Advocate General, appearing for the respondent authorities, has further referred to the decision of the Hon'ble Supreme Court in the case of State of **Uttar Pradesh & Others –vs- Luxmi Kant Shukla**, reported in **(2011) 9 SCC 532**, particularly, paragraphs 27, 28, 29 thereof, perhaps, to impress upon this court that in view of the complaints/enquiries pending against the petitioner, there may be departmental proceeding in contemplation. A perusal of this judgment would reveal that the Hon'ble Supreme Court was called upon to decide a case of voluntary retirement in the context of FR 56 (c) and (d) and not in the context of Rule 48-A of the CCS (Pension), Rules. The relevant rule, i.e., FR 56 (d) (ii) and the proviso thereto, unlike in the instant case was conditional. In terms of FR 56 (d) the voluntary retirement was

contingent upon pendency of a disciplinary proceeding or contemplation thereof. In the said case, the officer in question was already facing a disciplinary proceeding prior to his application for voluntary retirement. However, in the instant case, there is neither any disciplinary proceeding pending against the petitioner nor even contemplated while he had filed the application seeking voluntary retirement and thereafter till date. Therefore, the aforesaid decision, referred to by Mr. Ete, has no application in the instant case.

[22] Mr. Ete has also referred to the case of ***State of U.P. – vs- Achal Singh***, reported in ***(2018) SCC 1044***, particularly, paragraphs 13, 15, 19, 21, 25, 26 and 27 thereof.

[23] I have meticulously perused the judgment and found the same to be not applicable in the facts and law relevant in the instant case. Referring to the various earlier decisions rendered by the Hon'ble Supreme Court on identical issues, the said judgment of the Hon'ble Supreme Court has made it clear in para 28 thereof that ***the Rule which came up for consideration was entirely different. There is no provision contained in rule in question in the case at hand like the proviso to Rule 48-A(2) referred to above due to which the retirement shall become effective from the date of expiry of period of notice in case the same was not refused.***

[24] The ***Achal Singh*** (supra) reference to the proviso of voluntary retirement as contained in Rule 56 of the Uttar Pradesh

Fundamental Rules. The Hon'ble Supreme Court held, in para 27 of the judgment, referring to para 35 of the judgment in ***Tek Chand*** (supra), that even in cases where the rule provides for refusal of voluntary retirement on ground of pendency or contemplation of disciplinary proceeding, the Government is bound to inform the officer within the notice period. But, in the instant case, evidently no information of any kind was given to the petitioner, not only during the notice period of 3 (three) months but even after 6 (six) months. At the cost of repetitions, it is to be stated that there is neither any departmental proceeding pending or contemplated against the petitioner till date.

**[25]** Learned Senior Additional Advocate General, has further submitted that the case at hand is not a simple case of deemed voluntary retirement after the expiry of 3 (three) months notice period on the strength of the proviso to sub-rule (2) of Rule 48A. According to him, if enquiry/investigation so carried out against the petitioner leads to termination, removal or dismissal from service, then the petitioner will be allowed to escape from liabilities on the strength of the deeming provision under sub-rule (2) of Rule 48-A. Therefore, the requirement for accepting or rejecting the notice for voluntary retirement of the petitioner has to be first allowed to be exercised by the respondent authorities before directly invoking the deeming provision under proviso to sub-rule (2), referred to above. He has also submitted that certain procedure is required to be followed before any decision on an

application for voluntary retirement is taken by the respondent authorities.

[26] Mr. Ete, during the course of argument, has sought to hint that the period of 3 (three) months stipulated in Rule 48-A above is extendable and that the authorities have the power to pass an order on an application for voluntary retirement even after the period of 3 (three) months have elapsed. Such contention, in the considered view of this court, does not have the approval of the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rule, 1972, in view of its mandatory nature. On the other hand, this aspect of the matter has also been dealt with in para 33 of *Tek Chand* (supra), quoted above, holding specifically that ***since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self contained, it is unnecessary to look to other provisions.***

[27] Therefore, in view of the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rule, 1972, the appointing authority is required to accept the notice of voluntary retirement given under sub-rule 1 and it is open to the appointing authority to refuse also on valid and cogent grounds and such refusal has to be before the expiry of the notice period specified in the notice. The said proviso is clear and certain in its term and if the authorities do not refuse to grant permission for retirement before the expiry of the period, the retirement sought for becomes effective from the date of expiry of the

said period. In the instant case, the appointing authority did not decide to refuse to grant permission for voluntary retirement before the expiry of the period stipulated in the notice, and therefore, the petitioner is deemed to have voluntarily retired on expiry of the notice period.

**[28]** Some of the decisions relied upon by Mr. Ete, learned Senior Additional Advocate General, particularly ***Achal Singh*** (supra), relates to a case of voluntary retirement under Fundamental Rule 56(K) of Fundamental Rules and Supplementary Rules (in short FRSR). In Rule 56(K) of FRSR also, a Government servant can retire by giving 3 (three) months notice and under this provision, the appropriate authority can withhold the retirement of the government employee. In ***Achal Singh*** (supra), when the notice of voluntary retirement was submitted, the petitioner was not under suspension nor any inquiry was contemplated against him, as is evident from the clearance given by the vigilance department, and as such, under this proviso of FRSR also, the authority ought to have passed an order of withholding the retirement on the grounds mentioned in the rule, if it was desirous of doing so.

**[29]** The learned senior counsel for the petitioner, Mr. Choudhury, has referred to the decision of the Hon'ble Supreme Court in the case of ***B.J. Shelat –vs- State of Gujarat***, reported in ***1978 (2) SCC 202***, particularly, paragraph 10 thereof. The relevant portion of para 10 is reproduced below:-

**".....Fundamental Rule 56 (j) is similar to Rule 161 (aa) (1) of the Bombay Civil Services Rules conferring an absolute right on the appropriate authority to retire a Government servant by giving not less than three months notice. Under Fundamental Rule 56(k) the Government servant is entitled to retire from service after he has attained the age of fifty-five years by giving notice of not less than three months in writing to the appropriate authority on attaining the age specified. But proviso (b) to sub-rule 56(k) states that it is open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. Thus under the fundamental Rules issued by the Government of India also the right of the Government servant to retire is not an absolute right but is subject to the proviso wherever the appropriate authority may withhold permission to a Government servant under suspension. On a consideration of Rule 161(2) (ii) and the proviso we are satisfied that it is incumbent on the Government to communicate to the Government servant its decision to withhold permission to retire on one of the ground specified in the proviso."**

**[30]** Mr. Choudhury, has submitted that even when the employee is under suspension or enquiry is contemplated, the mere suspension or pendency of the enquiry, or its contemplation does not result in notice for voluntary retirement not coming into effect on the expiry of the period stipulated in the notice. It has been held that the authorities concerned must pass a positive order withholding permission to retire and must also communicate the same to the employees. In the instant case, as has been stated earlier, no such communication is made to the petitioner.

**[31]** In view of the above discussions particularly, in view of the mandate of the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules, this court holds that since the appointing authority of the petitioner has not refused to grant him permission for retirement before the expiry of the period stipulated in the said notice, his retirement has become effective from the date of expiry of the said period.

**[32]** It has been argued by the learned Senior Additional Advocate General, Mr. Ete, appearing for the respondent authorities that although the petitioner claims to have retired w.e.f. 31.08.2018 in accordance with the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rule, on expiry of the 3 (three) months notice period yet he is attending his duties and drawing his salary till date. Therefore, according to him, the deeming provision of Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rule cannot come into play in this case.

**[33]** Needless to say that a legal consequence by operation of a legal provision cannot be set at naught by any inconsequential action. In the instant case the petitioner had offered to go on voluntary retirement by giving a notice with specified period. By operation of the aforesaid provision of Rule 48A of the CCS (Pension) Rules, the authority empowered in this regard was obliged either to accept or to refuse the offer made by the petitioner and in absence of both, it must

be deemed to have accepted the offer and the retirement became effective on expiry of the notice period.

**[34]** The period beyond the effective date of voluntary retirement during which the petitioner had to work was not because of any misrepresentation on his part. The authority with its eyes wide open allowing the petitioner to work beyond the specified period in spite of the aforesaid clear legal position cannot take the plea of the deeming provision being diluted. It is needless to say that there cannot be estoppel against law. Thus, the argument of the learned Senior Additional Advocate General, on this count, is not acceptable.

**[35]** For all the aforesaid reasons, I find sufficient force in the submission of the Senior learned counsel for the petitioner duly backed by the decisions of the Hon'ble Supreme Court discussed above. Consequently, the offer of voluntary retirement made by the petitioner has become effective from 31.08.2018. The competent respondent authority is directed to issue the release order to the petitioner, on his voluntary retirement effective from 01.09.2018, within 7 (seven) days from the date of receipt of a certified copy of this judgment.

**[36]** It is made clear that the period of service rendered by the petitioner with effect from 01.09.2018 shall not be counted for any service benefit. However, the salary already paid to the petitioner shall not be recovered as he has rendered his services during the said period.

**[37]** With the aforesaid order and direction, the writ petition is allowed granting the prayers made therein, without, however, any order as to cost.

**JUDGE**

*Nilakhi*