

GOVERNMENT OF ASSAM  
HEALTH & FAMILY WELFARE (A) DEPARTMENT  
DISPUR :: GUWAHATI-781006

No.HLA.395/2014/151

Dated Dispur the 4<sup>th</sup> January, 2022

SPEAKING ORDER

- READ** : Regarding release of pensionary benefit to Dr. Pradip Bhattacharjee in view of Hon'ble Gauhati High Court's order dated 16.2.2016 in WP©2724/2014.
- ALSO READ** : Order of Hon'ble Gauhati High Court on 16.2.2016 in WP©2724/2014.
- FINDINGS** :
- (1) Dr. Pradip Bhattacharjee was appointed as M&HO-I on Ad-hoc basis and posted at epidemic Unit, Karimganj vide Notification No.HLA.829/Pt-i/83 dated 21/01/1988.
  - (2) Thereafter, he was transferred and posted as Urban Health Officer, Karimganj vide No.HLA.218/93/Pt/35-A dated 26/05/1993 with an additional charge of Ex-Officio Registrar of Births and Deaths of Karimganj Municipal Area.
  - (3) Dr. Bhattacharjee applied for leave w.e.f. 30/10/2003 to 31/12/2008 and continued to submit leave petition upto 31/12/2008. Dr. Bhattacharjee did not join his duty even after expiry of his leave. There are also no official records of his leave being granted to him or any authority slip for drawl of leave salary received from AG.
  - (4) Dr. Bhattacharjee was promoted to the rank of Sr.M&HO and posted at Katlicherra CHC vide order No.HLA.929/2008/2 dated 12/11/2008 and on receipt of the same he submitted a petition for modification of his place of posting to Karimganj CH instead of Katlicherra CHC.
  - (5) Dr. Pradip Bhattacharjee filed a Writ Petition WP©2724/2014(Dr. Pradip Bhattacharjee Vs State of Assam and Ors) before Gauhati High Court for non payment of pension to him after his superannuation on 31/7/2013.
  - (6) Hon'ble Gauhati High Court passed an order on 16/2/2016 in WP©2724/2014 with following directions—  
*“this writ petition is disposed off with a direction to the authorities to process the pension papers of the petitioner w.e.f 31.7.201.*  
*The Health Department shall also take a decision as to the manner in which they are going to treat the break-in service period of the petitioner w.e.f 7.6.2003 till 31.7.2013.*  
*The above two directions are subject to the condition that the petitioner had not been terminated or dismissed from service on the basis of any departmental proceedings which had been initiated and completed prior to 31.7.2013.*  
*The entire exercise as directed shall be completed within a period of three months from the date of receipt of a certified copy of this order”*
  - (7) Dr. Bhattacharjee also filed a contempt Case(C) No.75/2017 for disobedience of orders dated 16/2/2014.
  - (8) Views of Judicial Department was sought on the matter and their views is quoted below—  
*“It appears that initial appointment of the petitioner was on ad-hoc basis, followed by subsequent transfer and posting. Precls discloses that he remained in service since Jan, 1988 to Oct, 2003, for a period of about 15 years and thereafter remained unauthorisedly absent till his normal date of retirement i.e 31.7.2013.*

*Normally such unauthorized absence entails dismissal, after holding a D.P. But no D.P having initiated earlier, it cannot be started now.*

*It is further noticed that the petitioner did not join his promotional post and, therefore he was holding the earlier post, till 2013. Therefore, the department may ascertain whether service of the petitioner was subsequently regularized or brought in substantive capacity? If not, he is not entitled to pension. In that event, the department have to go for appeal or review.*

*Otherwise, the department may comply with the instant order dt. 16.2.16 passed in WP(C) No.2724/14 and process the pension paper w.e.f. 31.7.2013. Since the petitioner did not serve during the period since 2003 to 2013, his period of absence may be regularized by way of leave without pay. This may arise the occasion for granting pension from 2013. Therefore, the department may explore possibility of granting pension on the basis of last pay drawn, or proportionate pension, in consultation with P&PG Department. However, if it is found difficult to implement the order, the department should go for appeal/review.*

*In the facts of the present case, the petitioner also utterly failed to report for duty and therefore, he does not deserve any further consideration for normal retiral benefits. The department may examine the whole matter in the light of the above and take appropriate decision."*

(9) No Departmental proceedings was drawn against Dr. Bhattacharjya as per office records available.

(10) Views of P&PG Department on the case is quoted below:

*"P&PG Department observes that the concerned Govt. Servant, Dr. Pradip Bhattacharjee, Retd. M&HO-I had rendered 15 years(approx.) of service prior to his unauthorized absence from duty for more than 10 years. Due to his unauthorized absence, his past services are forfeited in terms of Rule 64 of AS(P) Rule 1969 and due to this condition he is not eligible for pension".*

(11) Views of Finance (Estt.-A) Department on the case is quoted below:

*"It appears that Hon'ble High Court directed the authority to process the pension papers of the petitioners w.e.f. 31-7-2013 and to take a decision as to the manner in which they are going to treat the break in service period of the petitioner w.e.f. 7-6-2003 to 31-7-2013.*

*If EOL on private granted is granted by relaxation of provision of FRs & SRs, to regularise the period w.e.f. 7-6-2003 to 31-7-2013 , then the period will not count for pension as per AS(pension) Rules, 1969.*

*Hence, Department is requested to consult the matter with P&PG Deptt for relaxation of minimum qualifying service of pension for compliance of Hon'ble High Court's order dated 16-2-2016 passed in W.P(C) No.2724/2014".*



(12) Thereafter, views of P&PG Department was sought again and their views is quoted below:


*“Pension & Public Grievances Department after observation of the proposal express its inability towards relaxation of minimum qualifying service of pension beyond one year”.*

**ORDER** : After careful consideration of all the relevant records of the matter, it appears that Dr. Pradip Bhattacharjee was unauthorizedly absent from 07/6/2003 and did not show any intension to work as well as to his promotion till his normal date of retirement on 31/7/2013. Although no Departmental proceedings was drawn against the doctor for his unauthorized absence, but not initiating Departmental proceeding should not make such a person eligible for pensionary benefit. Also the doctor did not complete the minimum qualifying service to become eligible for pension.

Therefore keeping in view with the order of Hon'ble Gauhati High Court dated 16/2/2016 in WP©2724/2014 and taking into consideration of the views of the concerned departments, the Govt. in Health & F.W Department is pleased to dispose off the instant case with the following order -

**“The Govt. in Health & F.W Department expresses its inability to grant pensionary benefit to Dr. Pradip Bhattacharjee, Retd. Urban Health Officer, Karimganj”.**

**A copy of the order may be sent to AG, Assam for necessary action.**

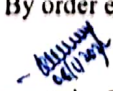
  
Principal Secretary to the Govt. of Assam  
Health & F.W. Department  
Dated Dispur the 4<sup>th</sup> January, 2022

Memo No.HLA.395/2014/ 151-A

Copy to:

1. The Accountant General, Assam, Beltola, Guwahati-29.
2. The Director of Health Services, Assam, Hengrabari, Guwahati-36.
3. The Director of Health Services (FW), Assam, Hengrabari, Guwahati-36.
4. The Joint Director of Health Services, Karimganj, Assam.
5. Treasury Officer, ....., Assam.
6. Dr. Pradip Bhattacharjee, Retd. Urban Health Officer, Karimganj, Assam.
7. P.S. to Hon'ble Minister, Health & Family Welfare Department, Assam, Dispur.
8. P.S. to Principal Secretary to the Govt. of Assam, Health & F.W. Department, Dispur.
9. Sr. Standing Counsel, Health & F.W Department for appraisal of Hon'ble High Court in connection with contempt Case(C) No.75/2017 and further request to drop the proceeding.

By order etc.

  
Joint Secretary to the Govt. of Assam  
Health & F.W. Department.