GAHC020005292026 2026:GAU-NL:612

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

Case No. : WP(C)/113/2026

SHRI PIKETO
LOWER DIVISION ASSISTANT (LDA) CUM COMPUTER ASSISTANT,
OFFICE OF THE EXECUTIVE ENGINEER, PWD (R AND B),
MANGKOLEMBA DIVISION, MANGKOLEMBA, MOKOKCHUNG,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMISSIONER AND SECRETARY, GOVT OF
NAGALAND, NAGALAND PUBLIC WORKS DEPARTMENT (NPWD),
NAGALAND, KOHIMA

2:THE ENGINEER IN CHIEF
NAGALAND PUBLIC WORKS DEPARTMENT (NPWD)
NAGALAND
KOHIMA

3:THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT (R AND B)
MANGKOLEMBA DIVISION
MANGKOLEMBA
MOKOKCHUNG
NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI, A HUKAVI SUMI,RUBICA KIHO,R WONCHIBENI TSANGLO,TUNATO YEPTHO,KEVI KIRE,YEKA SUMI,K LILY SWU,KEDI KOSO,P MHONBENI EZUNG,MIKA H AYE,CHINGMEI KONYAK,NAGALI SHOHE

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 13.11.2026

1. Heard Ms. Mika H. Aye, learned counsel for the Petitioner. Also heard Mr. Mosemsa Longkumer, learned Government Advocate appearing for the State Respondent Nos. 1, 2 and 3.

2. The Petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a direction to the Respondents to release his salary with arrears from April, 2024. The Petitioner also prays for setting aside the communication dated 12.09.2024 issued by the Engineer-in-Chief, NPWD, Nagaland, Kohima.

3. The fact leading to the filing of this writ petition is that the Petitioner, while serving as LDA cum Computer Assistant under the Office of the Executive Engineer, PWD (R&B), Mangkolemba Division, Mokokchung was arrested on 27.12.2023, in connection with Chozuba PS Case No. 016/2023 registered U/S 384/506/457, IPC r/w Section 251B of the Arms Act. The Petitioner was subsequently released on bail on 04.03.2024. The criminal case against the Petitioner has been submitted into Charge-sheet and it is presently pending trial before the Court of the Judicial Magistrate (First Class), Phek, Nagaland.

4. According to the Petitioner, after his release on bail in connection with the aforesaid P.S. case, he had joined and resumed his duty in the month of April, 2024, and since then he has been performing his official duties

regularly. However, despite of discharging his duties, his salary has not been released by the Respondent Authorities. Being aggrieved, the Petitioner approached the competent Authorities requesting for release of his salary. However, in the meantime, the Engineer-in-Chief, NPWD issued the impugned communication dated 12.09.2024 informing the Petitioner that his case could be considered only upon furnishing an acquittal order from the Court of the Judicial Magistrate (First Class), Phek, Nagaland.

5. The Petitioner contends that the criminal trial is still pending, only five prosecution witnesses out of 12 have been examined so far, and the trial is likely to take a longer time. Therefore, it is contended that he cannot be deprived of his salary indefinitely merely because a criminal case has been registered and pending against him. It is submitted that the Petitioner has been regularly attending his duties and, therefore, he is entitled to receive his salary for the period during which he had actually worked and attended the duty.

6. The State Respondents contested the case and have filed their affidavit-in-opposition, wherein they have admitted the registration and pendency of the criminal case against the Petitioner. The State Respondents have also admitted issuance of impugned communication dated 12.09.2024. However, the Respondents have not specifically denied the Petitioner's claim that he resumed his duty in the month of April, 2024 and has been performing his official duties since then. Learned Government Advocate further fairly admits that the Respondents have not placed on record any suspension order or any other order passed under the applicable service rules authorizing withholding of the Petitioner's

salary after the resumption of duty.

7. I have heard the submissions advanced by the learned counsel for the parties and also perused the documents available on record.

8. Having heard the learned counsel for the parties and upon consideration of the materials available on record, the question that arises for consideration is whether the Respondents are justified in holding the salary of the Petitioner solely on the ground of the criminal case pending against him, while not issuing any order of suspension or departmental proceedings against the Petitioner.

9. It is well settled that mere pendency of the criminal case against a government employee does not automatically disentitle him from receiving salary. If the employee is placed under suspension, his entitlement of subsistence allowance during the suspension period is governed by the applicable service rules. However, where an employee has been permitted to resume duty without any objection from the authority and in pursuance to that the employee is actually discharging his official duties, the authority ordinarily cannot withhold the salary of such employee merely because the criminal proceeding is pending against him and have not yet concluded.

10. In the present case, the Petitioner claims that he has resumed his duty in the month of April, 2024 and since then he is performing his duty sincerely. The Respondents have not specifically disputed this fact in their affidavit-in-opposition. There is also no material placed before this Court to show that the Petitioner was under suspension or that any lawful order

was passed against him preventing him from performing his duties in the Department. The Department has been utilizing his service since April, 2024 without any restriction.

11. Mere perusal of the communication dated 12.09.2024 makes it clear that the Department has declined to consider the case of the Petitioner until he produces an order of acquittal from the Court of the Judicial Magistrate (First Class), Phek, Nagaland.

12. In the considered opinion of this Court, such a stand on the part of the Authority cannot be sustained in law. The criminal proceedings against the employee and the entitlement of an employee to receive salary for duties actually performed by him are separate matters. The Department, if necessary, may take appropriate action against the Petitioner in accordance with the applicable service rules, but it cannot withhold his salary indefinitely solely on the ground that there is a criminal case pending against him. The Court is also of the view that the Petitioner cannot be made to wait for his salary until the conclusion of the criminal trial for payment of salary for the period during which he has actually performed his duty and the Department has utilized his service without any objection. Such withholding of salary without any lawful justification would be arbitrary and unreasonable.

13. Accordingly, this Court finds that the communication dated 12.09.2024, in so far as it directs the Petitioner for production of the acquittal order from the competent Court of Judicial Magistrate (First Class) as a pre-condition for releasing his salary is not sustainable and is

liable to be interfered with.

14. Accordingly, the communication dated 12.09.2024 issued by the Engineer-in-Chief, NPWD, Nagaland, Kohima is hereby set aside in so far as the demands of furnishing of acquittal order from the Court of the Judicial Magistrate (First Class) for consideration and release of his salary.

15. The Respondent Authorities shall verify the service records and the attendance record of the Petitioner w.e.f. April, 2024 onwards and ascertain the period during which he actually discharged his official duties and upon such verification the Respondents shall release his monthly salary w.e.f. the month of December. The Respondents shall also release admissible arrears of the Petitioner for the period during which he actually performed his duties, subject to lawful deduction, if any.

16. The entire exercise of verification and payment of admissible arrears shall be completed within a period of 5 (five) months from the date of receipt of certified copy of this order. However, as directed above, his monthly salary shall be worked out and released from the month of December, 2026.

17. With the above observations and directions the writ petition stands disposed of.

JUDGE

Comparing Assistant