

GAHC010088542025



2026:GAU-AS:4345

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

Case No. : WP(C)/2252/2025

SRI RANJAN KUMAR DAS
SO LATE UMESH CHANDRA DAS
R/O HOUSE NO. 111/D, DR. B.K. KAKATI ROAD, ULUBARI GUWAHATI
781007 DISTRICT KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI,
PIN-781006, KAMRUP(M) DISTRICT, ASSAM

2:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
V.I.P ROAD
CHACHAL
GUWAHATI
PIN- 781036
KAMRUP(M) DISTRICT
ASSAM.

3:ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR
VIP ROAD
CHACHAL
GUWAHATI
PIN- 781036 KAMRUP(M) DISTRICT
ASSAM REPRESENTED BY ITS MANAGING DIRECTOR.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT

DISPUR
GUWAHATI-78100

Advocate for the Petitioner : MR. S K GOSWAMI, MR. R SHARMA,MR. B K GOSWAMI

Advocate for the Respondent : GA, ASSAM, SC, FINANCE,SC, FISHERY

Linked Case : WP(C)/2254/2025

SRI BASANTA KAKATI
SO LATE HALADHAR KAKATI
R/O 2 NO MATHGHARIA
MOTHER TERESA ROAD
SIV MANDIR PATH
GUWAHATI-781020 KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
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FISHERY DEPARTMENT
DISPUR
GUWAHATI
PIN-781006
KAMRUP(M) DISTRICT
ASSAM

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FISHERIES DEVELOPMENT CORPORATION LTD
V.I.P ROAD
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PIN- 781036
KAMRUP(M) DISTRICT
ASSAM
REPRESENTED BY ITS MANAGING DIRECTOR.

3:ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR
VIP ROAD

CHACHAL
GUWAHATI
PIN- 781036 KAMRUP(M) DISTRICT
ASSAM REPRESENTED BY ITS MANAGING DIRECTOR.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT. DISPUR
GUWAHATI-781006

Advocate for : MR. S K GOSWAMI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WP(C)/2255/2025

SRI TARINI DEKA
S/O DAYARAM DEKA
R/O GANESH MANDIR PATH
NOONMATI
GUWAHATI- 781020 DISTRICT KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI
PIN-781006
KAMRUP(M) DISTRICT
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2:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
V.I.P ROAD
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REPRESENTED BY ITS MANAGING DIRECTOR
VIP ROAD
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PIN- 781036 KAMRUP(M) DISTRICT
ASSAM REPRESENTED BY ITS MANAGING DIRECTOR.

4:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT. DISPUR
GUWAHATI-781006

Advocate for : MR. S K GOSWAMI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WP(C)/2253/2025

SRI DEVA BARMAN
S/O LATE JADAB CHANDRA BARMAN R/O RAM DHENU PATH
VIP ROAD
AMARTAL
SIXMILE
GUWAHATI-781022 DISTRICT- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI
PIN-781006
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ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
V.I.P ROAD
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TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT. DISPUR
GUWAHATI-781006

Advocate for : MR. S K GOSWAMI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved	:	18.03.2026
Date of pronouncement of judgment	:	26.03.2026
Whether the pronouncement is of the		
Operative part of the judgment	:	N/A
Whether the full judgment has been		
Pronounced	:	Yes

Judgment & Order (CAV)

Heard Mr. S. K. Goswami, learned counsel for the petitioners. Also heard Mr. P. Sarma, learned Standing Counsel, AFDCL and Mr. R. Borpujari, learned Standing Counsel, Finance Department.

2. The challenge made in these writ petitions is to the order dated 19.03.2025 issued by the Managing Director of Assam Fishery Development Corporation Limited (hereinafter referred to as "AFDCL"), whereby it is decided not to release any pensionary benefits to the four retired employees of the Corporation, i.e., the petitioners herein, on the ground of a pending Vigilance and Enforcement Directorate case, as there is a provision for attachment of property and the case is under investigation. The petitioners have prayed for a direction to release their gratuity in terms of the Payment of Gratuity Act, 1972 (in short, the "Gratuity Act"), as well as arrear salary for the period from April, 2016 to March, 2020.

3. Having considered that these writ petitions involve similar issues on facts and in law, same were heard analogously and are being disposed of by this common judgment and order.

4. The case, in brief, is that the petitioners were appointed as Account Assistants and Accountant vide orders dated 06.11.1984, 25.04.1988, 02.12.1987 and 03.12.1987 in AFDCL. The petitioners, upon attaining the age of superannuation, had retired from service as Internal Auditor, Accountant and Accounts Officers on 31.03.2023, 31.12.2022, 31.01.2022 and 30.11.2023, respectively. On their retirements, the petitioners have been sanctioned monthly

pension of Rs. 3,948/- (Rupees Three Thousand Nine Hundred Forty-Eight), Rs. 3,781/- (Rupees Three Thousand Seven Hundred Eighty-One), Rs. 3,992/- (Rupees Three Thousand Nine Hundred Ninety-Two) and Rs. 3,472/- (Rupees Three Thousand Four Hundred Seventy-Two) by the Assistant Provident Fund Commissioner (Pension), Guwahati. The petitioners have also received their respective leave encashment, which was released by the Managing Director, AFDCL.

5. On account of certain financial anomalies in AFDCL, a high-level enquiry was conducted by the Government of Assam regarding the illegal transfer of funds of the Corporation in the names of various officials of the Corporation, contractors and suppliers. Based on the enquiry report, the Joint Secretary to the Government of Assam, Fishery Department, directed the Managing Director of AFDCL vide letter dated 07.02.2022 to initiate legal and administrative actions. It has been observed that despite the objections/ views expressed by the Accounts Branch of AFDCL against such illegal transfer of funds, the sanctioning authority had granted such advances, ignoring the advice of the Accounts Branch.

6. It is projected by the petitioners that, being Internal Auditor, Accounts Officers and Accountant, had raised objection as regards the transfer of funds of the corporation. However, ignoring such objection, the authorities of the Corporation released advance amount in the names of different officials at their own cost and responsibility. In that regard, the officials of the Accounts Branch jointly submitted a note to the Managing Director on 25.10.2019 to check unproductive expenditure in AFDCL. The petitioners are in no way connected with any financial irregularities or anomalies; if any advance amounts were

released to officials, contractors, or suppliers, the same was done pursuant to the decision of the higher authorities of the Corporation.

7. The petitioners contend that they are entitled to gratuity in terms of the Gratuity Act. However, the respondent authorities in AFDCL have not released the said amount despite repeated representations. Such non-release of the gratuity amount has caused serious financial hardship to the petitioners, as they are compelled to depend on the meagre pension amount being received by them. It is contended that AFDCL has an arrangement with the Life Insurance Corporation of India (LICI) to create a corpus through contributions made by the Corporation for payment of gratuity to its employees upon superannuation in accordance with the Gratuity Act and accordingly, LICI has released and transferred the gratuity amount due to the employees of AFDCL, including the petitioners, to the Corporation, which are presently lying with AFDCL.

8. Mr. S. K. Goswami, learned counsel for the petitioners, submits that till date the petitioners have not been issued any show cause notice with regard to any case, nor have any disciplinary proceedings been initiated against them. It is only after nearly two years of the petitioners' retirement that the Managing Director, vide the impugned order dated 19.03.2025, has decided not to release any pensionary benefits to the petitioners on the purported ground of pendency of a Vigilance and Enforcement Directorate case, without considering that the petitioners are not at all involved in the said case.

9. Mr. Goswami, learned counsel submits that as per the Gratuity Act, it is clearly provided that gratuity shall be payable to an employee who has rendered continuous service for not less than five years upon superannuation. The employer shall arrange to pay the amount of gratuity within 30 days from the

date it becomes payable to the employee and in case of default, the employer shall be liable to pay simple interest. Therefore, the petitioners are entitled to gratuity after their retirement from service and the same cannot be withheld and such withholding on the ground of pendency of investigation of some case and proceedings, in which the petitioners are not involved, is a violation of the Gratuity Act.

10. He submits that the gratuity of the petitioners cannot be withheld if the employees have not been terminated from service, as specified under the relevant provisions of the Gratuity Act. In the present case, neither have the petitioners been terminated from service, much less has any show cause notice been issued to them, nor have any departmental proceedings been initiated against them. Therefore, the decision not to release any pensionary benefits to the petitioners on the purported ground of pendency of a Vigilance and Enforcement Directorate case is illegal and liable to be set aside and a direction may be issued to the respondent AFDCL to release the pensionary benefits, including gratuity, forthwith.

11. In support of his submissions, Mr. Goswami, learned counsel for the petitioners, has placed reliance on the following judgments:

(i). **State of Jharkhand vs. Jintendra Kumar Srivastava**, reported in **(2013) 12 SCC 210**.

(ii). **Dr. Hiralal vs. State of Bihar**, reported in (2020) 4 SCC 346.

(iv). **Smti Bahni Sikha Dutta vs. the State of Assam**, in **WP(C)5369/2017**.

12. Mr. Goswami, learned counsel has also relied upon the judgement in the case of **Jorsing Govind Vanjari vs. Divisional Controller Maharashtra State Road Corporation**, reported in **(2017) 2 SCC 12**, to project that for the purpose of denying gratuity to an employee, it is not sufficient that the alleged misconduct constitutes an offence involving moral turpitude as per the report of domestic enquiry. It must further be established that the services of the employee were terminated on account of such misconduct which constitutes an offence involving moral turpitude.

13. On the other hand, Mr. P. Sarma, learned Standing Counsel for AFDCL, submits that the petitioners have retired from the sensitive post of Internal Audit, which forms part of the Accounts Committee of AFDCL and are alleged to have been involved in siphoning and illegal disbursement of funds, as implicated in Vigilance Case No. ACB P.S. Case No. 30/2023, under Sections 120B/406/409 IPC read with Sections 13(1)(a)/13(2) of the Prevention of Corruption Act, 1988. He submits that the cases are not mere minor infractions but involved grave charges of criminal conspiracy, criminal breach of trust by a public servant and corruption, which are directly linked with their official duties as Accountants, Internal Auditors and Accounts Officers. The involvement of the petitioners, being officials/officers of the Accounts Branch in the case, cannot be ruled out.

14. He submits that the offences charged would fall under "scheduled offences" under Part A of the Schedule to the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA). The gravity of the charges is further amplified by the fact that the matter is under active investigation by the Enforcement Directorate under the provisions of the PMLA to trace and potentially attach proceeds of crime derived from these underlying criminal

activities. Therefore, non-release of the terminal benefits, including gratuity of the petitioners, by the impugned order dated 19.03.2025 is not illegal but has been made prudently, legally and responsibly to secure financial interests and public funds. Such action is warranted, particularly in light of the ongoing investigation by the ED under the PMLA, as the provisions allow attachment of assets, including benefits that may be deemed proceeds of crime, given that the proceedings are yet to be concluded. Therefore, there is no illegality in withholding the pensionary benefits of the petitioners pending investigation by the ED under the PMLA.

15. Mr. P. Sarma, learned Standing Counsel, submits that a person not accused or prosecuted in a scheduled offence can still be prosecuted for the offence of money laundering, provided the ingredients of Section 3 of the PMLA are satisfied.

16. In support of his submission, Mr. P. Sarma, learned Standing Counsel, has relied on the following Case Laws:

(i) **Pavana Dibbur vs. The Directorate of Enforcement** reported in **(2023) 15 SCC 91,**

(ii) **Vem Krishna Keerthan vs Directorate of Enforcement in Criminal Petition No. 9314 of 2022,** of the Hon'ble Telangana High Court,

(iii) **M. Venkatesan vs. The Directorate of Enforcement,** of the Hon'ble Madras High Court,

(iv) of **Vijay Madanlal Choudhary & Ors. vs.....,** reported in **(2023) 12 SCC 1.**

17. Due consideration has been made to the submissions of the learned counsel for the parties and have also perused the materials available on record.

18. The petitioners, who were working as Account Officers, Internal Auditor and Accountant, have retired from the services on attaining the age of superannuation on 31.03.2023, 31.12.2022, 31.01.2022 and 30.11.2023, respectively. After retirement, they have been receiving monthly pension amounts of Rs. 3,948/- (Rupees Three Thousand Nine Hundred Forty-Eight), Rs. 3,781/- (Rupees Three Thousand Seven Hundred Eighty-One), Rs. 3,992/- (Rupees Three Thousand Nine Hundred Ninety-Two) and Rs. 3,472/- (Rupees Three Thousand Four Hundred Seventy-Two) only respectively.

19. Due to allegation of certain financial anomalies and irregularities in AFDCL, a committee was constituted to enquire into the same. On due examination of the report of the enquiry committee, the Joint Secretary to the Government of Assam, Fishery Department, by a communication dated 07.02.2022 addressed to the Managing Director, AFDCL, directed initiation of appropriate legal and administrative action against the officials involved in such illegal transfer of funds and also to lodge an FIR. The allegation pertains to illegal transfer of funds of the Corporation in the names of various officials, including the Ex-Chairman/Vice-Chairman, as well as contractors and suppliers. It is indicated in the said communication that, as per the report, despite objections/views raised by the Accounts Branch of the Corporation against such advances, the sanctioning authority had granted the same by ignoring the advice of the Accounts Branch, which constitutes a serious financial irregularity.

20. Pursuant thereto, the Managing Director, AFDCL, vide communication dated 21.09.2022 filed an FIR before the Officer-in-Charge-cum-Superintendent of

Police, Vigilance Case and Anti-Corruption, Assam, mentioning clearly the names of 14 former Managing Directors and other officers/officials of the AFDCL. However, the petitioners are not named in the F.I.R. Consequent thereto, Vigilance Case No. ACB P.S. No. 30/2023 was registered under Sections 120B/406/409 of the IPC read with Sections 13(1)(a)/13(2) of the Prevention of Corruption Act, 1988 and subsequently, to the ED under the PMLA, which is pending investigation.

21. The petitioners have brought on record a note jointly submitted by them on 25.10.2019, which is reproduced herein below:

“Managing Director,

Regarding financial matters of the corporation

As per the accounts of the corporation finalized for the year 2015 and 2016, there was a profit of Rs 572.66 lakhs and Rs 507.48 lakhs respectively. It can't be assessed the quantum of profit for the years 2017-2018 and 2018-2019 as the accounts of these years are not yet finalized. But it is quite certain to earn some profit in those two years. But in the current year (2019-2020), a large sum of money has been spent out of the corporation's fund. If unproductive expenditure is not checked, it will have adverse effect on the financial position of the corporation and there would be a significant loss to the corporation in the current year. It is worthwhile to note that the corporation earning profit continuously since 2001-2002 may have to face audit objections and adverse reaction from Registrar of Companies if the corporation has to face loss in a year all of a sudden. As such, it has become necessary to avoid unnecessary expenditure.

It is for your kind appraisal from the accounts branch of the corporation in the greater interest of the corporation.

Sd/- Deba Barman, Accountant

Sd/- Ranjan Kr Das, Internal Auditor,

Sd/- Basanta Kakat, Asstt. Accounts Officer

Sd/- Tarini Deka, Accounts Officer”

22. Perusal of the above note submitted by the petitioners reveals that, if

unproductive expenditure is not checked, it is likely to adversely affect the financial position of the corporation and may result in significant losses during the current year. It is further reflected that the corporation, which has been consistently earning profits, may face audit objections and adverse remarks from the concerned authorities in the event of an abrupt loss. Accordingly, the petitioners suggested that unnecessary expenditure be avoided.

23. On consideration of the matter, the issue required to be determined in the present proceeding is as to whether the respondent AFDCL would have any authority to withhold the release of pensionary benefits, including gratuity, of the petitioners on account of the pending investigation by the ED under the PMLA. To appreciate, it would be apposite to refer to and consider the relevant provisions of the Payment of Gratuity Act, 1972.

24. Under Section 4(1), it is laid down that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on his superannuation, retirement, resignation, or on his death or disablement due to accident or disease. Further, under Section 7(3A), gratuity is required to be released within thirty days from the date it becomes payable to the employee, and in case of default, the employer shall be liable to pay simple interest to the employee.

25. Section 4(6) provides that gratuity of an employee can be withheld, when service of the employee has been terminated for any act, wilful omission or negligence causing damage or loss or destruction of the employer's property, by forfeiting it wholly or partially to the extent of the damage or loss so caused. It further provides that gratuity may be forfeited where the services of such employee have been terminated for his riotous or disorderly conduct or any

other act of violence. Section 13 protects gratuity to the extent that no gratuity payable under the Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

26. In the present case, undisputedly the services of the petitioners have not been terminated, nor are there any allegations of willful omission, negligence, or of causing any damage, loss or destruction of the property of the employer, or of riotous or disorderly conduct or any other act of violence. Though the FIR has been filed against ex-employees, officials and officers, the names of the petitioners do not find mention therein. The investigation in Vigilance Case No. ACB P.S. Case No. 30/2023 as well as the proceedings initiated by the ED is still pending and nothing has been brought on record to indicate any involvement of the petitioners in the alleged financial irregularities.

27. Law is well settled that the right to receive pension is a right to property protected under Article 300A of the Constitution of India, which provides that no person shall be deprived of his property save by authority of law. Pension is payable to an employee in consideration of long, continuous and dedicated service and cannot be treated as a bounty payable at the will and pleasure of the employer. The right to receive pension and other retirement benefits is thus a valuable right vested in an employee.

28. The Hon'ble Supreme Court in catena of judgements including in the case of **Jitendra Kumar Srivastava** (supra), **Jorsing Govind Vanjari**, (supra), has held that pension and gratuity are valuable rights protected under Article 300A of the Constitution of India and cannot be withheld by executive or administrative instructions in the absence of statutory authority. It has further been held that mere pendency of departmental, vigilance or criminal

proceedings is not a valid ground to deny such benefits, unless the statutory conditions permitting forfeiture or withholding are satisfied or a finding of guilt is recorded in accordance with law.

29. In the present case, the petitioners have been receiving a meagre amount of pension and leave encashment to which they are entitled. However, the remaining pensionary benefits, including gratuity, are sought to be withheld on the purported ground of pendency of an investigation in Vigilance Case No. ACB P.S. Case No. 30/2023 and the subsequent proceedings initiated by the ED under the PMLA, wherein provision for attachment of property is provided. The petitioners are not Government servants, but retired employees of AFDCL, who have superannuated from service and are presently on a meagre pension. Under these circumstances, withholding of gratuity, to which the petitioners are otherwise entitled, in the absence of any ground permissible under the law to withhold, would be impermissible and illegal.

30. The services of the petitioners have not been terminated, nor are there any allegations of willful omission, negligence causing damage or loss or destruction of the employer's property, or of riotous or disorderly conduct or any act of violence. The only ground cited appears to be the pendency of investigation by the ED under the PMLA, wherein provisions exist for attachment of property. Mere pendency of such proceedings, without any allegation or material indicating the involvement of the petitioners, cannot constitute a valid ground for withholding pensionary benefits, including gratuity and such action, if permitted, would be totally contrary to law.

31. Regard being had to the judgments relied upon by the respondents in **Pavana Dibbur** (supra), **Vem Krishna Keerthan** (supra), **M. Venkatesan**

(supra), **Vijay Madanlal Choudhary** (supra) and **Mohammad Wajid** (supra), perusal of the same indicates the principles relating to the scope and ambit of proceedings under the PMLA, the independent nature of the offence of money laundering and the permissibility of simultaneous investigation or prosecution in respect of predicate/scheduled offences. However, the said decisions are rendered in a completely different context and do not deal with the issue of entitlement to pensionary benefits or gratuity, nor do they recognise any authority in law to withhold such statutory benefits merely on account of pendency of investigation under the PMLA. In the present case, there is admittedly no material to show that the petitioners are accused in the predicate offence or that any finding of guilt has been recorded against them, nor is there any statutory provision brought to the notice of this Court enabling withholding of gratuity on such ground. Thus, the reliance placed on the aforesaid judgments does not come to the aid of the respondents in justifying the impugned action of withholding pensionary benefits.

32. In the light of the above discussion, this Court is of the considered view that the decision to withhold the pensionary benefits, including gratuity, on the ground of pendency of the Vigilance and ED case, coupled with the alleged authority to attach property, is illegal and unsustainable. Accordingly, the impugned order dated 19.03.2025 issued by the Managing Director of AFDCL is hereby set aside and quashed.

33. Consequently, the respondent authorities are directed to release the pensionary benefits, including gratuity, to the petitioners expeditiously and, in any case, positively within 30 (thirty) days from the date of receipt of a certified copy of this order. It is, however, made clear that this Court has not expressed

any opinion on the merits of the Vigilance and ED case, which is pending investigation. The concerned authorities shall be at liberty to proceed with the investigation in accordance with law.

34. The writ petitions stand allowed and disposed of. However, there shall be no order as to cost(s).

JUDGE

Comparing Assistant