



MAJESTY LEGAL
Advocates & Solicitors

**STATE INFORMATION COMMISSIONER ENTITLED TO POST-RETIREMENT
BENEFITS AT PAR WITH CHIEF SECRETARY UNDER RTI ACT**

“STATE OF ASSAM V. PINUEL BASUMATARY”

Hon’ble Gauhati High Court in case of *State of Assam v. Pinuel Basumatary*¹ held that under Section 16(5) of the Right to Information Act, 2005, a legal fiction is created in favour of the State Information Commissioner, entitling them to the same salary and post-retirement benefits as those admissible to a Chief Secretary. The appeal arose from an order which recognized the entitlement of the respondent, a retired State Information Commissioner, to such benefits and allowances under Section 16(5) of the 2005 Act with effect from 01.01.2020. The order further directed that the respondent would also be entitled to additional benefits, including enhanced pension, additional DCRG, as well as facilities such as a telephone and security assistant.

Hon’ble Court observed that the respondent, a member of the Union Civil Service, had superannuated as OSD in the office of the Principal Accountant General, A&E, Assam, and was otherwise governed by the Central Civil Services (Pension) Rules, 1972. Rule 49 of the 1972 Rules expressly provides that a government servant retiring under its provisions is entitled to pension as specified therein. Having regard to Section 16(5) of the RTI Act, coupled with the fact that the respondent was already receiving pension as a member of the Indian Audit Service, Hon’ble Court found no valid basis to deny him additional post-retirement benefits at par with the Chief Secretary, merely on the ground of not completing 10 years of qualifying service.

Accordingly, the appeal was dismissed.

TEAM MAJESTY LEGAL²

OFFICE : B-87, Alaknanda Apartment, G-1, Ganesh Marg/Moti Marg, Bapu Nagar,
Jaipur, Rajasthan-302015.

https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g_st=iw

CHAMBER : 204, E-Block, Rajasthan High Court, Jaipur.

MOBILE No. : 9785461395

E-MAIL : mahi@majestylegal.in

WEBSITE : www.majestylegal.in

¹ WA/357/2024

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

GAHC010176562024



undefined

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

Case No. : WA/357/2024

STATE OF ASSAM AND ORS.
REPRESENTED BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM,
ADMINISTRATIVE REFORMS AND TRAINING DEPARTMENT,
DISPUR, GUWAHATI-781006.

2: THE ASSAM INFORMATION COMMISSION

REPRESENTED BY ITS SECRETARY
PANJABARI, GUWAHATI- 781037

3: THE PENSION AND PUBLIC GRIEVANCE DEPARTMENT
REPRESENTED BY THE SECRETARY
DISPUR, ASSAM, GUWAHATI- 781006.

VERSUS

PINUEL BASUMATARY
SONE OF LATE KRISTODAS BASUMATARY,
RESIDENT OF NO.1, SAPKHAITI,
UDALGURI, BTR, ASSAM, PIN-784509

For the appellants : Mr. D.K. Sarmah,
Addl. Sr. Govt. Advocate, Assam

For the respondent : Mr. B.D. Das, Sr. Advocate
Mr. H.K. Sarma, Advocate

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

21-08-2025

(Ashutosh Kumar, C.J.)

We have heard the learned counsel for the parties.

2. The present appeal is preferred against the judgment and order dated 28.06.2024, passed by a learned Single Judge of this Court in WP(C) 5578/2023, wherein it has been held that the respondent herein, who retired as State Information Commissioner, would be entitled to the benefits and allowances under Section 16 (5) of the Right to Information Act, 2005 (hereinafter to be referred as "2005 Act") w.e.f. 01.01.2020. The impugned judgment further declares that he would be entitled to other additional benefits, namely, additional pension, additional DCRG along with Telephone and Security Assistant, which ought to be made available to the respondent.

3. The State of Assam has challenged this decision on several counts but primarily on the ground that the judgment does not take into account a decision of a Division Bench of this Court and that the respondent did not have the qualifying 10 years of service to be entitled for additional pension, additional DCRG along with Telephone and Security Assistant, which are paid to the Chief Secretary of a State.

4. The respondent was appointed as State Information Commissioner, who served from 31.07.2015 till 31.12.2019. Prior to his engagement as State

Information Commissioner, he was a member of the Indian Audit Service and had demitted his office as an OSD in the office of the Principal Accountant General, A&E, Assam.

Section 16(5) of the Right to Information Act, 2005 prior to its amendment in 2019, is extracted hereinbelow for ready reference as also for the sake of completeness:

“16. Term of office and conditions of service.

(1).....

(2).....

(3).....

(4).....

(5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioner shall not be varied to their disadvantage after their appointment:

Provided further that the State Chief Information Commissioner and the State Information Commissioner appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.”

5. Since the respondent was appointed on 31.07.2015, the un-amended Section 16(5) of the 2005 Act would be applicable in his case. A bare reading of Section 16(5) of the 2005 Act would indicate that the salaries and allowances of the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government.

6. It appears from the records that the respondent had earlier approached this court by way of WP(C) 4497/2021, which was disposed off with a direction to the State respondents to pass a reasoned order in case of the respondent

herein, in view of the legal fiction created under Section 16(5) of the 2005 Act and not to insist for extending such benefits only to a person who has served as Chief Secretary or in the rank equivalent to Chief Secretary. By virtue of Section 16(5) of the 2005 Act, a deeming fiction is created to the advantage of the State Information Commissioner, who would be paid similar salary and post-retiral benefits as that of Chief Secretary.

7. The learned Single Judge has taken note of the judgment rendered by a Division Bench of this Court in ***Eken Riba and othes vs. State of Arunachal Pradesh and others***, reported in ***2022 (1) GLT 474*** and has rightly observed that the afore-noted judgment does not specify whether the petitioner therein was similarly situated like that of the respondent herein.

8. The respondent herein undoubtedly is a member of Union Civil Service, who superannuated as an OSD from the office of the Principal Accountant General, A&E, Assam. Since he is a member of Union Civil Service, he would be otherwise governed by the Central Civil Services Pension Rules, 1972. Under Rule 49 of the 1972 Rules, there is a clear provision that in the case of a Government servant retiring in accordance with the provisions of these rules, he would be entitled to pension as provided under the said Rule.

9. The learned Single Judge, therefore, concluded that since there is no dispute that the respondent is drawing pension after having superannuated from service under the Union Civil Service, there would be no requirement of further qualifying service of 10 years, which would be necessary for making the respondent eligible for the benefits of salaries and allowances equivalent to that of the Chief Secretary of the State Government.

10. In view of the provisions contained in Section 16(5) of the 2005 Act, referred to above, as also the fact that the respondent has been receiving pension after demitting his office as a member of Indian Audit Service, there would be no justifiable reasons to deny the additional post-retiral benefits, which is payable to a person of the rank of Chief Secretary, only on the ground that the respondent did not have 10 years of qualifying service. The judgment impugned espouses the correct law on the issue.

11. The judgment impugned, therefore, requires no interference.

The appeal is dismissed accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant