

GAHC010008592021



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

Case No. : WP(C)/430/2021

AMAL KUMAR BORUAH
S/O LATE HEMKANTA BORUAH,
PERMANENT RESIDENT OF TEOK BARUAH GAON, PO JAKHARIA, PS
TEOK, DIST JORHAT, ASSAM 785112

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT , SACHIVALAYA,
DISPUR GUWAHATI 781006

2:THE DIRECTOR CUM DISCIPLINARY AUTHORITY
SECONDARY EDUCATION ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE DEPUTY DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

4:THE INSPECTOR OF SCHOOLS

JDC GUWAHAT

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

03-05-2023

Heard Mr. S. Borthakur, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Secondary) Education for all the official respondent Nos. 1 to 4.

2) Petitioner, Headmaster of Janata High School, Namsissu, district-Jorhat, a provincialised School of the State.

3) As the authorities found the date of joining of the petitioner in service was overwritten in his Service Book, he was asked to explain the same vide communication dated 06.09.2018, to which the petitioner filed his reply on 11.10.2018. Being not satisfied with his written explanation, the Director of Secondary Education, Assam vide order under No.GB-EST/DSE/Allegation/10/2020/3 dated 11.09.2020 suspended the petitioner from service, pending Departmental Proceeding.

4) It is stated by the petitioner that till date, he has been placed under suspension in terms of said order dated 11.09.2020 of the Director of Secondary Education, Assam and that only on one occasion i.e., 28.01.2021, the authority concerned reviewed regarding continuation of suspension of the petitioner and thereafter, the said authority did not review pertaining to suspension of the petitioner.

5) Pursuant to the order of the Court dated 27.01.2023, Mr. B. Kaushik, learned Standing Counsel, Department of School (Secondary) Education placed copies of the show-cause notice dated 23.12.2020 that was issued to the petitioner by the Disciplinary Authority-cum-Director of Secondary Education, Assam, along with the statement of allegations, list of documents and list of witness etc., whereas, he was placed under suspension on 11.09.2020.

6) The petitioner submitted his reply to the show-cause notice dated 23.12.2020 before the concerned Disciplinary Authority on 12.04.2021. The record also reveals that after 28.01.2021, the authorities concerned reviewed the suspension of the petitioner once on 13.04.2021 for further period of 3 months.

7) It is seen that the show-cause notice issued to the petitioner on 23.12.2020 by the Director of Secondary Education, Assam-cum-Disciplinary Authority was served on 103rd days, beyond the period of 90 days i.e., after placing the petitioner under suspension on 11.09.2020, is not tenable in law in terms of the judgment of the Hon'ble Apex Court in the case of *Ajay Kumar Choudhary Vs. Union Of India*, reported in (2015) 7 SCC 291.

8) Accordingly, the impugned order of suspension of the petitioner under No.GB-EST/DSE/Allegation/10/2020/3 dated 11.09.2020 (Annexure-H to this petition) issued by the Director of Secondary Education, Assam-cum-Disciplinary Authority ceased to have any effect and cannot sustain in law after expiry of its 90 days i.e., w.e.f., 10.12.2020 as laid down in the case of *Ajay Kumar Choudhury* (Supra). Therefore, said suspension order of the petitioner dated 11.09.2020 being nonest is hereby set aside and quashed.

9) However, it is left to the wisdom of the respondent authorities to proceed further regarding the Disciplinary Proceeding initiated against the petitioner, the same is not interfered by the Court.

10) For the reasons above, the respondent authorities, are now, directed to reinstate the petitioner in service forthwith. However, it is left to the Director of Secondary Education, Assam to decide regarding posting of the petitioner on his reinstatement in service.

11) This writ petition accordingly, stands allowed to the extent as indicated above.

JUDGE