

GAHC010009632021



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

Case No. : WP(C)/590/2021

TAPAN BORAH AND 2 ORS
S/O- DURGESWAR BORA, R/O- VILL- BALIPUKHURI, P.O. BURHIGANG,
DIST.- BISWANATH, ASSAM

2: SWAPNA BORAH
W/O- BINIT KALITA
R/O- BAMGAON
P.O. CHARIALI
DIST.- BISWANATH
ASSAM

3: ANINDITA SAIKIA
D/O- MAHENDRA SAIKIA
R/O- WARD NO. 8
BISWANATH CHARIALI TOWN
P.O. CHARIALI
DIST.- BISWANATH
ASSA

VERSUS

THE BISWANATH CHARIALI MUNICIPAL BOARD AND 3 ORS
P.O. BISWANATH CHARIALI, P.S. BISWANATH, DIST.- BISWANATH, ASSAM

2: THE DIRECTOR OF MUNICIPAL ADMINISTRATION
DISPUR
GHY

3: THE EXECUTIVE OFFICER
BISWANATH CHARIALI MUNICIPAL BOARD
P.O. BISWANATH CHARIALI
P.S. BISWANATH
DIST.- BISWANATH
ASSAM

PIN- 784176

4:BISWAJIT SAIKIA
ACS
S/O- SRI JAYANTA SAIKIA
EXECUTIVE OFFICER
BISWANATH CHARIALI MUNICIPAL BOARD
DIST.- BISWANATH
ASSAM
PIN- 78417

Advocate for the Petitioner : MR. P KAKATI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29.05.2023

Heard Mr. P. Kakati, the learned counsel appearing on behalf of the petitioners and Mr. D. Das, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 3 and 4. I have also heard Ms. A. Talukdar, the learned Standing counsel appearing on behalf of the respondent No.2 i.e. the Director of Municipal Administration.

2. This Court vide an order dated 23.03.2023 after hearing the matter at length passed the following order which is reproduced hereinunder:

“Heard Mr. K. P. Pathak, learned senior counsel assisted by Mr. A. Baruah, learned counsel for the petitioner. Also Mr. D. Das, learned counsel for the respondent Nos. 1, 3 and 4 and Mr. S. S. Roy, learned counsel for the respondent No. 2.

The petitioner in the instant case have challenged the termination order dated 31.12.2020 from their respective posts under the Biswanath Chariali

Municipal Board as well as have also challenged the actions of the respondents Board in not making payment of the lawful salary to which the petitioners are entitled to. It appears on records that vide an order dated 08.02.2021, when the instant writ petition was taken up at the motion stage, this Court had stayed the impugned letters of termination dated 31.12.2020 until further orders. Further to that, it was directed that the respondent Board shall also pay the amount of Rs.2,50,000/- to each of the petitioners within two months from the date of receipt of the order, as a onetime settlement offer had been vide letter dated 17.12.2020. It was observed that the said payment shall not cause prejudice to the petitioners' right to make a further claim of their alleged dues.

It appears that the pleadings have been exchanged. However, there has been a change of the Constitution of the respondent Board w.e.f. April, 2022. The present Board through its Executive Officer have filed an additional affidavit on 22.03.2023. In the said affidavit, it is the categorical stand of the respondent Board that the impugned order dated 31.12.2020 by which the petitioners were terminated, stood automatically cancelled w.ef. 09.03.2022.

Under such circumstances, a part of the relief which has been sought for by the petitioners have already been given to them. The next aspect which arises is as regards the entitlement of the arrear salary to which the petitioners were entitled to as well as the present salary in the scale of pay. It is the submission of the learned senior counsel appearing on behalf of the petitioners that the petitioners are still getting a fixed pay of Rs.6,000/- per month.

Mr. D. Das, learned counsel appearing on behalf of the respondent Board submits that as per his instructions, the Board is willing to give the regular scale of pay to the petitioner henceforth and as regards the arrear salary, the petitioner may be given liberty to submit a representation and the respondent Board shall take such decision taking into account their financial exigency.

Upon hearing the learned counsels for the parties, this Court deems that

the statement made by Mr. Das, learned counsel for the respondent Board to the effect that the respondent Board henceforth would be giving the regular scale of pay to the petitioners and there would be a consideration of the representations submitted as regards the arrear salary, be put up by way of an affidavit so that this Court can take up the matter for further consideration.

Accordingly, list this matter again on 11.04.2023 for further consideration. In the meantime, the said affidavit be filed."

3. In pursuance to the order passed on 23.03.2023, the Executive Officer of the Biswanath Chariali Municipal Board had filed an affidavit in terms with the order dated 23.03.2023. Paragraph No.2 of the said affidavit being relevant is reproduced hereinudner:

"2 . That, in terms of the direction of the Hon'ble Court issued in Order dated 23/03/2023 in the instant Case, the Deponent, on specific instructions received from the newly elected Body of BCMB, begs to state that henceforth BCMB is willing to give the regular scale of pay to each of the Petitioners in terms of the Office Orders dated 08/09/2014 (Annexure-3 Series of the Writ Petition) and as regards the arrear salary of the Petitioners, they (Petitioners) may be given liberty by this Hon'ble Court to submit their individual representation(s) addressing the Chairman, BCMB and the Board would thereafter take such decision taking into account its financial exigency."

4. Taking into account that the Biswanath Chariali Municipal Board had given an undertaking before this Court on affidavit that henceforth the Municipal Board shall give the regular scale of pay to each of the petitioners in terms with the office order dated 08.09.2014 and would consider the representation of the petitioners for arrear salary, this Court therefore on the basis of the said undertaking as quoted hereinabove disposes of the instant writ petition.

5. The undertaking so quoted hereinabove shall form a part of the instant order and the respondent Municipal Board shall be bound to comply with the same.

6. With above, the instant petition stands disposed of.

JUDGE

Comparing Assistant