

GAHC010011192022



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

Case No. : WP(C)/743/2022

KALPAJYOTI BHATTACHARJEE
S/O. LT. KRIPESH CHANDRA BHATTACHARJEE, R/O. WARD NO.7, NUTAN
PARA (NEAR ASEB OFFICE) O.O. LAKSHMISAHAR, DIST. HAILAKANDI,
ASSAM, PIN-781152.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY., TO THE GOVT. OF ASSAM, DEPTT. OF
GENERAL ADMINISTRATION, ASSAM CIVIL SECRETARIAT, JANATA
BHAWAN, DISPUR, GUWAHATI, ASSAM, PIN-781006.

2:THE SECRETARY

TO THE GOVT. OF ASSAM
DEPTT. OF GENERAL ADMINISTRATION
ASSAM CIVIL SECRETARIAT
JANATA BHAWAN
DISPUR
GUWAHATI
ASSAM
PIN-781006.

3:THE COMMISSIONER OF HILLS AND BARAK VALLEY DIVISION

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

4:THE DEPUTY COMMISSIONER

HAILAKANDI SUB DIVISION
HAILAKANDI
ASSAM
PIN-788151.

5:THE SUB DIVISIONAL OFFICER

SADAR
HAILAKANDI SUB DIVISION
HAILAKANDI
ASSAM
PIN-788151.

6:THE CIRCLE OFFICER

LALA
HAILAKANDI
ASSAM
PIN-788163

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 24-07-2023

Heard Mr. B. Purkayastha, learned counsel for the writ petitioner. Also heard Mr. D. Bora, learned Govt. Advocate, Assam appearing for the respondent Nos. 3 to 6. None appears for the respondent Nos. 1 and 2 although the name of the learned standing counsel is duly reflected in the cause list.

The writ petitioner herein has approached this Court with twin grievances. Firstly, that after his retirement, his period of suspension has not been regularized by the

authorities for no valid reason. Secondly, the petitioner has been deprived of his promotion.

The facts of the case, in a nutshell, are that the writ petitioner who was earlier appointed as Junior Assistant in the office of the Deputy Commissioner, Hailakandi, i.e. respondent No. 4 was placed under suspension vide order dated 12-04-2013 in the wake of a FIR lodged on 04-04-2013 alleging certain irregularities based on which Hailakandi P.S. Case No. 115/2013 was registered under Section 258/420 IPC. The petitioner was not named in the FIR. Notwithstanding the same, apprehending arrest in connection with Hailakandi P.S. Case No. 115/2013, the petitioner had approached this Court by filing anticipatory bail application bearing A.B. No. 1569/2013. By the order dated 23-04-2013 passed in A.B. No. 1569/2013, the petitioner was directed to surrender before the Chief Judicial Magistrate (CJM), Hailakandi within a period of 21 days and in the meantime, it was provided that in the event of arrest, the petitioner would be allowed to go on bail on furnishing P.R. Bond of Rs. 15,000/- with one surety of like amount to the satisfaction of the CJM, Hailakandi. Accordingly, the petitioner had surrendered before the CJM, Hailakandi. By the order dated 24-04-2013, the learned CJM, Hailakandi had extended the interim bail granted to the petitioner. For the aforesaid reasons, the petitioner was never arrested in connection with Hailakandi P.S. Case No. 115/2013.

In the meantime, the Enquiry Officer appointed for conducting an inquiry into the allegations of irregularities in the department had submitted his report on 21-03-2014. In the aforesaid report, the Enquiry Officer had concluded that there was no evidence of involvement of the petitioner in commission of any irregularities. In the wake of the

enquiry report dated 21-03-2014, the respondent No. 4 had passed order dated 19-02-2015 reinstating the petitioner back in service. However, the period of suspension of the petitioner was not regularized. Not only that, during the aforesaid period, employees junior to the petitioner were promoted to the post of Senior Assistant but the case of the petitioner was not considered for promotion. Hence, this writ petition.

Mr. Purkayastha submits that from the materials available on record, it will be evident that there is not even an iota of material available so as to substantiate any allegation against the writ petitioner. Therefore, there was no justifiable ground for the authorities to deny him promotion. Moreover, failure on the part of the departmental authorities to regularize the period of suspension of the petitioner is also highly arbitrary and illegal, inasmuch as the same has resulted into serious prejudice to the interest of the petitioner.

Responding to the above, Mr. Bora, learned Govt. Advocate, Assam submits that the prayer for regularization of the period of suspension of the petitioner would be considered only after the investigation in connection with Hailakandi P.S. Case No. 115/2013 is brought to its logical end. Mr. Bora has, however, submitted in his usual fairness that as on date, there is no adverse material available against the petitioner.

Under the service law jurisprudence, an employee is normally placed under suspension in contemplation of drawal of departmental proceedings. In the present case, there is no doubt or dispute about the fact that taking note of the enquiry report dated 21-03-2014, the authorities had decided not to proceed against the petitioner by instituting a departmental proceeding against him and accordingly, the petitioner was

reinstated in service. If that be so, it is not understood as to why the respondents have failed to regularized the period of suspension of the petitioner. Moreover, no departmental proceeding had either been initiated or is pending against him. Therefore, the petitioner's claim for consideration of his case for promotion also could not have over-looked by the authorities.

Having heard the submissions of the learned counsel for the parties and upon going through the materials available on record, this Court is of the considered opinion that the writ petitioner has made out a good case for interference of this Court in the matter.

This writ petition is, therefore, disposed of by directing the concerned respondents to regularize the period of suspension of the petitioner within 04 weeks from the date of receipt of a certified copy of this order.

The respondents shall also constitute a review DPC for consideration of the petitioner's case for promotion from the post of Junior Assistant to Senior Assistant w.e.f. the date on which his juniors were promoted, subject to the condition that the petitioner come within the zone of consideration as per relevant rules as on the date on which his juniors were considered for promotion.

It is, however, made clear that if the petitioner is eventually charge-sheeted in the police case on conclusion of investigation, it would be open for the departmental authorities to initiate appropriate action against him, as may be permissible under the law.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant