

GAHC010017102021



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

Case No. : WP(C)/834/2021

SHAHI ZAMAN SK
S/O LATE SOFOR UDDIN SK, R/O VILL-BARAI BARI PART-IV, P.O.-BARAI
BARI, P.S.-GAURIPUR, DIST-DHUBRI, ASSAM, PIN-783339

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HEALTH AND FAMILY
WELFARE, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGABARI
GUWAHATI-36

3:THE JOINT DIRECTOR OF HEALTH SERVICES
DHUBRI
P.O.-DHUBRI
P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

4:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-06

5:THE ACCOUNTANT GENERAL
ASSAM
BELTOLA
GUWAHATI-29

6:THE TREASURY OFFICER
DHUBRI
P.O.-DHUBRI
P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

7:THE SUB-DIVISIONAL MEDICAL AND HEALTH OFFICER I/C GOLOKGANJ
BPHC
P.O.-GOLOKGANJ
P.S.-GOLOKGANJ
DIST-DHUBRI
PIN-783334

8:THE DISTRICT MEDICAL BOARD
DHUBRI
HEADED BY ITS CHAIRMAN
THE JOINT DIRECTOR HEALTH SERVICE
DHUBRI
P.O.-DHUBRI
P.S.-DHUBRI
DIST-DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. A R SIKDAR

**Advocate for the Respondent : MR. D. P. BORAH
: MR. R. DHAR**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 03-05-2023

Heard Mr. A. R. Sikdar, the learned counsel appearing on behalf of the petitioner and Mr. D. P. Borah, the learned Standing counsel appearing on behalf of the Health Department. I have also heard Mr. R. Dhar, the learned Standing

counsel appearing on behalf of the Accountant General.

2. The case of the petitioner herein is that the petitioner was appointed as a Ward Boy vide an order dated 07.07.2018 in the Model Hospital of the District under the Directorate of Health Services. Pursuant to the order of appointment dated 07.07.2018, the petitioner joined on 09.07.2018. It further appears that vide an order dated 23.07.2018, the petitioner was posted as the Ward Boy in Kismat Hasdaha (Kalahat) Model Hospital and was placed in the Dumordaha MPHC due to non-functioning of the Kismat Hasdaha (Kalahat) Model Hospital. Subsequent thereto, the petitioner joined on 24.07.2018 in the Dumordaha MPHC. However, vide an order dated 10.12.2018 on the ground that the age mentioned in the PwD Certificate was 58 years, the appointment order of the petitioner dated 07.07.2018 was cancelled. The petitioner being aggrieved challenged the said order dated 10.12.2018 in WP(C) No.606/2019.

3. This Court vide an order dated 30.01.2019 stayed the order dated 10.12.2018 till the returnable date and the petitioner was allowed to resume his service. It appears that the petitioner thereupon on 16.02.2019 submitted his joining report and the petitioner was thereupon allowed to render his services. Subsequent thereto, the said writ petition i.e. WP(C) No.606/2019 was closed and the petitioner was allowed to serve as a Ward Boy in terms with his earlier appointment order dated 07.07.2018. It was however observed that if the authorities have any issue with regard to the appointment of the petitioner, they must inform the petitioner before taking any adverse action.

4. The petitioner thereupon submitted a representation before the respondent authorities to regularize the period from 13.12.2018 to 15.02.2019 which was a gap period in view of the order of termination dated 10.12.2018 and the date of

joining pursuant to the order dated 30.01.2019 was on 16.02.2019. The said representation was submitted on 06.01.2021. However, as the respondents did not do anything to ventilate the grievances of the petitioner, the petitioner has approached this Court by filing the present writ petition.

5. It appears on record that this Court vide an order dated 15.02.2021 issued notice and it was further observed that pendency of the writ petition shall not be a bar upon the respondents to dispose of the pending representation of the petitioner. It further appears when the matter came up before this Court on 30.08.2022, this Court taking into account the submissions made by the learned Standing counsel for the Health Department that the respondent authorities be directed to dispose of the representation within a time frame directed the Principal Secretary to the Government of Assam, Health and Family Welfare (A) Department to examine and dispose of the representation of the petitioner dated 06.01.2021 within a period of 1 (one) month from the date of receipt of a certified copy of the said order.

6. When the matter came up before this Court again on 21.04.2023, the learned Standing counsel for the Health Department has submitted that the period from 13.12.2018 to 15.02.2019 has been regularized and as per her instruction, the petitioner has also got the benefit of the salary. However, Ms. D. Borah, the learned Standing counsel who was appearing on that date for the Health Department submitted that she would like to place written instructions in that regard.

7. Accordingly, today, the learned Standing counsel Mr. D. P. Borah, has placed the speaking order dated 18.11.2022 before this Court. It appears from the order that the Director of Health Service, Assam in terms with FR 85(a)(I) of the

FR & SR as applicable to the State of Assam had regularized the absence period w.e.f. 13.12.2018 to 15.02.2019 in respect of the petitioner as no work no pay by granting Extraordinary Leave. The said order is kept on record and marked with the letter "X".

8. The learned counsel for the petitioner though submitted that it was on account of the fault of the respondent authorities which have resulted the petitioner not being able to work during the period from 13.12.2018 to 15.02.2019 but the fact remains that pursuant to the order dated 10.12.2018, it was only on 30.01.2019 that this Court had stayed the order and thereupon, although liberty was given to the petitioner to resume his duties, the petitioner resumed his duties only on 16.02.2019. Under such circumstances, it cannot be said that solely because of the respondents, the petitioner could not work during the said period. This Court also upon perusal of the order dated 18.11.2022, does not find any infirmity to that effect in regularizing the absence period from 13.12.2018 to 15.02.2019 as no work no pay by granting Extraordinary Leave.

9. Taking into account the above, this Court is of the opinion that no further case is made out for issuance of a writ as sought for in the instant proceedings.

10. Accordingly, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant