

GAHC010022852021



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

Case No. : WP(C)/910/2021

SURAJIT BAISHYA
S/O LATE CHANDRA KANTA BAISHYA
RESIDENT OF VILLAGE AGDALA (BANIA SUBA) PO AND PS BAIHATA
CHARIALI, 781381, KAMRUP (R) ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, DEPARTMENT
OF HEALTH, GOVT. OF ASSAM, DISPUR GUWAHATI 781006

2:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
GOVT OF ASSAM
DISPUR
GUWAHATI 781006

3:THE DIRECTOR OF HEALTH SERVICES

HENGRABARI
GUWAHATI 35

4:THE JOINT DIRECTOR OF HEALTH SERVICES

LAKHIMPUR
NORTH LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. B BORAH

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

11.09.2023

Heard Mr. B Borah, learned counsel for the petitioner and Mr. D Upamanyu, learned Standing counsel, Health & Family Welfare Department, Assam for the respondent Nos. 1, 3 & 4. Also heard Mr. B Gogoi, learned Standing counsel, Finance Department, Assam for the respondent No. 2.

2. The petitioner, a Laboratory Technician was serving under the Joint Director of Health Services, Lakhimpur.

3. Pursuant to his order of appointment dated 16.07.2010, the petitioner joined his service on 22.07.2010, but he was not paid his salaries from the date of his appointment i.e., 22.07.2010 to 31.07.2010 and for the months of August, 2010; September, 2010; November, 2010; December, 2010 and January, 2011.

4. Though the petitioner approached the authorities concerned for payment of his arrear salaries, but the respondent authorities in the Health and Family Welfare Department of the State did not consider the same and did not pay him his arrear salaries for those months, noted above.

5. Being aggrieved, the petitioner has filed this writ petition on 05.02.2021, praying amongst others, for a direction to the respondent authorities in the Health and Family Welfare Department of the State to pay and/or release his monthly salaries from the date of his joining i.e., 22.07.2010 to 31.07.2010 and for the months of August, 2010; September, 2010; November, 2010; December, 2010 and January, 2011.

6. Mr. Borah, learned counsel for the petitioner relying on the decision of the Hon'ble Apex Court in the case of *Union of India & Ors. -Vs.- Tarsem Singh* reported in (2008) 8 SCC 648 and in the case of *State of Madhya Pradesh & Ors. -Vs.- Yogendra Shrivastava* reported in (2010) 12 SCC 538, submitted that he is entitled for his arrear salaries even by filing this writ petition in February, 2021 pertaining to his arrear salaries for the period from 22.07.2010 to

31.07.2010 and for the months of August, 2010; September, 2010; November, 2010; December, 2010 and January, 2011.

7. The petitioner has also placed a copy of the judgment dated 12.06.2023 passed by a Division Bench of this Court in Writ Appeal No. 365/2022 arising out of WP(C) No. 3723/2012 (disposed of on 09.11.2017).

8. Mr. Borah, learned counsel for the petitioner relying upon Paragraph 5 of *Tarsem Singh* (Supra) has submitted that the claim for his arrear salaries for the aforesaid period is not barred by limitation, as in the case of *Yogendra Shrivastava* (Supra), the Hon'ble Apex Court at Paragraph 14 have held that—

14. The Rules were retrospectively amended on 20.05.2003 substituting the words "NPA at such rates as may be fixed by the State Government from time to time by orders issued in this behalf" in place of "NPA @ 25% of pay" in the Rules. It was contended that as the Rules were amended in the year 2003 with retrospective effect from 14.10.1982, it should be deemed that the NPA payable was as notified by the Government from time to time and not "25% of the pay."

9. The Court have also perused the Judgment of the Hon'ble Division Bench of this Court passed on 12.06.2023 in Writ Appeal No. 365/2022.

10. It is a settled legal principle that claim for any arrear salary 3 (three) years prior to the date of filing of the writ petition cannot be considered in exercise of the power conferred under Article 226 of the Constitution of India. A Division Bench of this Court in the case of *Harendra Chandra Nath -Vs.- State of Tripura* reported in *2013 (2) GLT 1094* have clarified it after considering the decisions of the Hon'ble Apex Court.

11. Since the claim of the petitioner regarding his arrear salaries from 22.07.2010 to 31.07.2010 and for the months of August, 2010; September, 2010; November, 2010; December, 2010 and January, 2011 is beyond the said period of 3 (three) years prior to the filing of this writ petition on 05.02.2021, the prayer of the petitioner for issuance of a writ in the nature of Mandamus cannot be issued to the respondents herein directing them to pay the said arrear salaries to the petitioner.

12. To that extent, the prayer of the petitioner made herein stands rejected.

13. However, the petitioner may approach the appropriate forum with regard to his claim

for arrear salaries from 22.07.2010 to 31.07.2010 and for the months of August, 2010; September, 2010; November, 2010; December, 2010 and January, 2011 as per his entitlement, if any.

JUDGE

Comparing Assistant