

GAHC010024052023



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

Case No. : WP(C)/642/2023

HIRANYA MEDHI
S/O- LATE BRAJA GOPAL MEDHI, R/O- CHILARAI NAGAR, HORSERACE
ROAD, H NO. 3, BHANGAGARH, KAMRUP (M), ASSAM, PIN- 781005

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF HEALTH AND FAMILY WELFARE, GHY- 781006, KAMRUP(M),
ASSAM

2:THE DIRECTOR OF HEALTH SERVICE
ASSAM
HENGRABARI
GHY- 781036
KAMRUP (M)
ASSAM

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
6TH MILE
KHANAPARA
GUWAHATI- 781022
KAMRUP (M)
ASSAM

4:THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
DEPTT OF FINANCE
DISPUR
GHY- 0

Advocate for the Petitioner : MR. A CHAMUAH

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 06/11/2023

Heard Mr. A. Chamuah, learned counsel for the petitioner. Also heard Mr. S. Sharma, learned standing counsel, Health and Family Welfare Department.

2. This writ petition is filed by the petitioner who is an employee under the department of Health and Family Welfare. The petitioner was initially appointed as a Junior Assistant (formally known as LDA) and he was posted under the Directorate of Health Services, Assam (DHS). Subsequently, the petitioner was promoted to the post of Senior Assistant under the Directorate of Health Services, Assam (DHS). Thereafter, by order dated 14.06.2010 the petitioner was transferred and posted in the Office of Director of Medical Education, Assam (DME). Subsequently, the petitioner's case was considered and he was promoted to the post of Superintendent by order dated 08.12.2021. Although the petitioner was transferred to the Office of the Director of Medical Education, Assam (DME), he could not join in the said post because of his physical disability as stated. Necessary representations were furnished before the authority concerned. Subsequently, taking note of the applications filed by the petitioner, the transfer order was stayed by order dated 04.12.2010. Since then, he has been rendering services in the Directorate of Health Services, Assam (DHS). Since the petitioner could not join in his place of posting as transferred earlier, his salary and pay and allowances for the months of July, August and September, 2010 were not released due to the lack of a vacant post of Senior

Assistant under the Directorate for Health Service at the relevant point in time.

3. It is submitted that the petitioner will superannuate on 30.11.2023. There is an apprehension that because of non-release of his pay and allowances for the months of June, July, August and September, 2010, it may be treated to be a break in service and therefore, the same will affect the release of his pay and retirement benefits.

4. Mr. S. Sharma, learned standing counsel, Health and Family Welfare Department submits that there is no dispute that the petitioner had rendered services, but the salary and pay and allowances for the said period was not released to the petitioner.

5. Learned counsels for the parties have been heard. It is also seen that in an additional affidavit filed by the petitioner, communication dated 11.04.2023 was issued by the Directorate of Health Services, Assam (DHS) to the Principal Secretary, Health and Family Welfare Department, wherein it is stated that because of his physical disability, the petitioner continued to work under the Directorate of Health Services, Assam (DHS) and could not join in the Office of the Director of Medical Education as per the transfer order dated 14.06.2010. The said order was subsequently altered and modified. Although he continued to render his services under the Director of Health Service under the Drugs Branch, his pay and allowances for salary for June, July, August and September, 2010 could not be released because of non availability of vacant post of Senior Assistant under the said Director at the relevant point in time. Subsequently, a vacancy of Senior Assistant which arose from the month of October 2010, the petitioner was accommodated against that vacant post and he has since been drawing his salary and allowances regularly.

6. It is seen that the department does not dispute the contentions of the petitioner. The only question that remains is regularization of his services, which he had rendered for the months of June, July, August and September 2010, and release of the pay and allowances for those months.

7. In view of the communication dated 11.04.2023 issued by the Directorate of Health Services, Assam (DHS) it is clear that there is no dispute that the petitioner had rendered services as a Senior Assistant under the Directorate of Health Services, Assam (DHS) for the months of June, July, August and September, 2010 and as such he is entitled to his pay and allowances. The department had subsequently altered or modified the transfer order issued taking a sympathetic view on the application/representation made by the petitioner.

8. Under such circumstances, non-release of the pay and allowances for the months from June to September, 2010 for which services have been rendered by the petitioner, besides denying him his due salary, will also have the effect of creating a break in service for the petitioner and which will ultimately affect his claim for pensionary benefits.

9. Under such circumstances, the respondents are directed to pass necessary orders by regularizing his services rendered for the months of June to September, 2010 and which services he had rendered has not been denied by the department. The department, more particularly, the Principal Secretary, Government of Assam, Health and Family Welfare Department will process the claim of the petitioner for regularizing the period of the petitioner rendering his services for the months of June, July, August, September, 2010 for release of his outstanding salary and pay and allowances as per the provisions of law, if required, by creating a supernumerary post for the said months of June, July,

August, September, 2010.

10. The directions above shall be carried out immediately by the department in order that the petitioner is granted his due, pensionary benefits as and when he retires.

11. Writ petition stands disposed of in terms of the above. No order as to cost.

12. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant