

GAHC010024382023



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

Case No. : WP(C)/1018/2023

LACHIT BORTHAKUR
S/O- LT. KUMUD CH. BORTHAKUR, R/O- KUMARANICHINGA, P.O.
RAJABHETA, P.S. DIBRUGARH, DIST.- DIBRUGARH, ASSAM

VERSUS

DIBRUGARH UNIVERSITY AND ANR
REP. BY ITS VICE CHANCELLOR

2:THE REGISTRAR
DIBRUGARH UNIVERSITY
DIBRUGARH-

Advocate for the Petitioner : DR. R SARMAH

Advocate for the Respondent : SC, DIB. UNIVERSITY

B E F O R E
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

01-03-2023

Heard Mr. R. Sarmah, learned counsel for the petitioner. Also heard Mr. N.C. Das, learned senior counsel and Standing Counsel, Dibrugarh, for all the respondents.

2. The petitioner, while serving as a Lower Division Assistant, in the Finance & Accounts Branch (A), Dibrugarh University, was subjected to a Departmental Proceeding and, on the basis of the enquiry report dated 14.07.2004, the petitioner was imposed with the penalty of removal from service, by order dated 31.12.2004. Being aggrieved with the order dated 31.12.2004, the petitioner filed W.P.(C) No.2406 of 2005 challenging the penalty of removal from service before this Court. This Court disposed of the said W.P.(C) No.2406 of 2005 by order dated 9.2.2015 by setting aside the impugned order of penalty dated 31.12.2004 and remanded back to the disciplinary authority to take a fresh decision.

3. Thereafter, the disciplinary authority issued the order dated 2.11.2016 whereby the petitioner was imposed the penalty of compulsory retirement from service of the Dibrugarh University with effect from 31.12.2004. Being aggrieved by the said order dated 2.11.2016, the petitioner filed W.P.(C) No.1130 of 2017, which was disposed of by order dated 28.07.2022, with the following observation and direction :-

“4. At this stage, Mr. B.K. Bhattacharjee, learned counsel for the petitioner submits that the petitioner would be satisfied if the respondent authorities/Dibrugarh University pays the back wages or any amount due to the petitioner within a specific period of time.

5. Mr. N.C. Das, learned Senior counsel for respondents submits that the Dibrugarh University may be allowed to verify as to what amount is due to the petitioner and thereafter, the Dibrugarh University would pay the due amount to the petitioner within a specific period of time.

6. Recording the submission made by the learned Senior counsel appearing on behalf of Dibrugarh University, this writ petition is disposed of directing the authorities of the Dibrugarh University to have a verification with regard to the amount due to the petitioner and thereafter, if the petitioner is found eligible for receiving any due amount, the same shall be paid to the petitioner within a period of 3(three) months from the date of receipt of a copy of the order of this Court.

7. With the above observations and directions, this writ petition is disposed of.”

4. In the present writ petition, the petitioner is praying for his back wages for the period 1.1.2005 – 2.11.2016, i.e. the intervening period when the impugned order of penalty dated 31.12.2004 was quashed and set aside by this Court and the order dated 2.11.2016 was passed by the Disciplinary Authority of the Dibrugarh University.

5. It is trite that when any penalty is imposed upon a delinquent officer the same will not have retrospective effect. The order dated 2.11.2016 is an order of compulsory retirement from service of Dibrugarh University with regard to the petitioner giving a retrospective effect. Accordingly, it is held that the penalty imposed upon the petitioner by the order dated 2.11.2016 shall be prospective in nature.

6. The petitioner is, accordingly, directed to make a representation before the competent authority in the Dibrugarh University praying for back wages for the period 1.1.2005 - 2.11.2016 within a period of one week from today. Thereafter, on receipt of the representation, the competent authority in the

Dibrugarh University shall consider and dispose of the representation within two months from the date of receipt of the representation.

7. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant