

GAHC010032352018



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

Case No. : WP(C)/999/2018

ZAHURUL ISLAM
S/O- LT ABDUL AZIZ, VILL- DUMARIA PART-I, P.O. LENGTISINGA, DIST-
BONGAIGAON, ASSAM, PIN-783380

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
ASSAM
GHY-19

3:THE DEPUTY DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
ASSAM
GHY-19

4:UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS SECRETARY
BAHADURSHAH ZAFAR MARG
NEW DELHI-110001

Advocate for the Petitioner : MR R ISLAM

Advocate for the Respondent : MR. A CHAMUAH, SC UGC

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 27.03.2023

Heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Higher Education Department, representing respondent nos. 1 to 3 and Mr. A. Chamuah, learned standing counsel for the UGC appearing for respondent no.4

2. The case of the petitioner is that he was placed under suspension by order dated 07.03.2017 by the Director of Education, Assam (respondent no.2) and accordingly, aggrieved by the continued suspension, the petitioner has approached this Court by filing WP(C) 3455/2017 and this Court by order dated 09.06.2017 disposed of the writ petition by directing the respondent no.2 to dispose of the representation dated 21.04.2017 of the petitioner for withdrawal of the suspension order.

3. On 03.06.2017, show cause notice was issued to the petitioner along with statement of allegations etc. which is claimed to be served on him on 21.06.2017 and by separate order dated 03.06.2017, the then Deputy Director of Higher Education Department was appointed as Enquiry Officer. It is claimed that till the date of filing of the writ petition, neither any enquiry was conducted nor any departmental proceeding has taken place. It is also submitted by the learned senior counsel for the petitioner that in the meantime the petitioner had submitted a show-cause reply dated 19.07.2017.

4. In the meanwhile, the Director of Higher Education, Assam had passed an order dated 02.01.2018, thereby rejecting the representation dated 21.04.2017 of the petitioner.

5. In brief, the background facts of the case is that the service of three lecturers were terminated and those aggrieved lecturers had filed WP(C) 2479/2015 and took a plea that the Ph.D. degree obtained by the petitioner is not inconformity with the UGC Regulation. During the pendency of the said writ petition, a show cause notice dated 13.10.2016 was issued to the petitioner against which reply dated 11.01.2017 was submitted. It is also projected that in connection with WP(C) 7174/2013, the respondent no.2 took a stand favorable to the petitioner.

6. However, the point relating to the sustainability of the Ph.D. degree obtained by the petitioner has not been gone into as it is a subject matter of the departmental proceeding initiated by the respondent no.2 against the petitioner. Hence, the Court is only visiting the issue arising out of continued suspension of the petitioner from 07.03.2017 till date.

7. The learned standing counsel for the respondent nos. 1 and 2 has referred to the stand taken in the affidavit-in-opposition filed by respondent no.2 and it is submitted that a public petition containing 83 signatures was received with the allegations questioning the Ph.D. degree of the petitioner for which an enquiry has been instituted. Accordingly, it is submitted that as there is bona fide dispute with regard to the genuineness and sustainability of the Ph.D. degree obtained by the petitioner, the enquiry was proceeded with. However, during the pendency of this writ petition, no final decision was taken by the authority. It is submitted by referring to the statement made in

paragraph 22 of the affidavit-in-opposition that an Expert Committee has already dealt with the Ph.D. degree obtained from the Magadh University.

8. The learned standing counsel for the UGC has referred to the various notifications and guidelines issued by the University Grants Commission in the matter of conferment of Ph.D. degree by the Universities.

9. As indicated above, the issue relating to the genuineness and sustainability of the PhD degree obtained by the petitioner has not been gone into as the same is the subject matter of departmental proceeding initiated against the petitioner.

10. On a pointed query of the Court, the learned standing counsel for the respondent nos.1 and 2 has submitted that he has not been instructed as to whether the order of suspension against the petitioner has been extended from time to time in accordance with departmental proceeding norms.

11. Under such circumstances, the Court finds that the ratio of the case of *Ajay Kumar Choudhury Vs. Union of India & Another, (2015) 7 SCC 291*, wherein it has been laid down that continued suspension of the employee without review and extension would not be sustainable after three months or on issuance of show cause notice, is attracted.

12. In view of the said decision rendered by the Supreme Court of India in the case of *Ajay Kumar Choudhury (supra)*, coupled with the fact that as on date, the order of suspension of the petitioner has not been reviewed or extended, the Court finds that the continued suspension of the petitioner would not be sustainable. Therefore, the impugned order of suspension bearing no. PC/HE/Misc-SC.54/2016/129 dated 07.03.2017 is prospectively held to have

spent its force. Resultantly, , the Director of Higher Education, Assam (respondent no.2) shall now pass appropriate orders to reinstate the petitioner into service with consequential financial benefit to which the petitioner is found entitled, for which consequential order shall be passed within a period of 15(fifteen) days from the date of receipt of the certified copy of this order.

13. In this writ petition, the petitioner has also assailed the order dated 02.01.2018 passed by the respondent no.2. In view of the prospective interference with the order dated 07.03.2017, no fresh order is required to be passed in respect of impugned order bearing no. PC/ HE/ Misc./ 54/ 2016/ 301 dated 02.01.2018 and the said order is also deemed to have lost its force.

14. This order shall not be a bar for the respondent authority specifically the respondent no.2 to proceed with and conclude with the departmental proceeding initiated against the petitioner, which is pending since the year 2017. It is hoped that the respondent no.2 would bring the same to its logical conclusion, preferably within an outer period of 2(two) months from the date of receipt of the certified copy of this order.

15. This writ petition stands partly allowed to the extent as indicated above, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant