

GAHC010041092022



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

Case No. : WP(C)/1580/2022

DWIJENDRA KUMAR DAS
S/O- LATE CHANDRA KUMAR DAS, R/O- VILLAGE NAKHETI (WEST), P.O
AND P.S-NALBARI, PIN- 781339, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE THE COMMISSIONER AND SECRETARY, GOVERNMENT OF
ASSAM, SECONDARY EDUCATION DEPARTMENT
DISPUR, GUWAHATI-781006

2:THE DEPUTY SECRETARY

TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR
OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.
KAMRUP (M)
ASSAM

4:THE INSPECTOR OF SCHOOLS

DDC
NALBARI
DIST.- NALBARI
ASSAM

5:THE TREASURY OFFICER
NALBARI
DIST.- NALBARI
ASSA

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

26.06.2023

Heard Mr. U. K. Nair, the learned senior counsel assisted by Ms. D. Deka, the learned counsel for the petitioner and Mr. N. J. Khataniar, the learned counsel appearing on behalf of the Secondary Education Department.

2. The case of the petitioner is that the petitioner was illegally terminated from the service on 21.05.2012. This Court, vide an order dated 01.08.2013, set aside the said termination order. It further appears from the record that vide the order dated 18.01.2014, the Inspector of Schools, NDC, Nalbari directed the Principal of the School in question to allow the petitioner to resume duty so as to enable him to complete the process of de novo proceedings till the final decision was taken in compliance to the order passed by this Court in WP(C) No.2582/2012. Thereupon, the petitioner was allowed to resume duty from 01.02.2014 and the petitioner was accordingly disbursed salaries therefrom.

3. The instant writ petition has been filed claiming the arrear salary for the period from 21.05.2012 to 17.01.2014, i.e. from the date of termination of the petitioner vide order dated 21.05.2012 till the date on which the Inspector of Schools, NDC, Nalbari directed the Principal of the School to allow the petitioner to resume duty. The petitioner is further aggrieved by the inaction on the part of the respondent authorities in not making payment of his salary for the period from 18.01.2014 to 01.04.2015.

4. This Court vide the order dated 17.05.2023 had issued notice thereby directing the Standing Counsel, Secondary Education Department to apprise this Court as regards the entitlement of the petitioner in respect to the arrear salary and as to whether any steps have been taken for the purpose of releasing the said arrear salary to the petitioner.

5. The learned counsel appearing on behalf of the Secondary Education Department today has placed an instruction issued by the Director of Secondary Education Department to the senior Standing Counsel, Education (Secondary) Department wherein it has been mentioned that as the service of the petitioner was terminated by the Inspector of Schools, NDC, Nalbari vide order dated 21.05.2012 and as the petitioner did not discharge his duties during the period from 21.05.2012 to 17.01.2014 in the Karia H.S. School, hence, the petitioner is not entitled to the arrear salary for the said period. However, it was mentioned that the petitioner may be entitled to the arrear salary for the service period w.e.f. 18.01.2015 to 01.04.2015.

6. This Court put a specific query upon the learned counsel for the Secondary Education Department as to whether the period should be from

18.01.2015 to 01.04.2014 or from 18.01.2014 to 01.04.2015. The learned counsel for the Secondary Education Department with all fairness submits that the period should be from 18.01.2014 to 01.04.2015 in view of the order passed by the Inspector of Schools, NDC, Nalbari on 18.01.2014.

7. Mr. U. K. Nair, the learned senior counsel for the petitioner has drawn the attention of this Court to the judgment and order dated 23.09.2022 passed by the Division Bench of this Court in WA No.211/2019 (***Dipali Barman vs. the State of Assam and others***) wherein a similar question arose as regards the entitlement of the salary during the period when the appellant therein was under termination. The learned senior counsel for the petitioner has drawn the attention to the paragraph Nos.14, 15, 16 & 17 of the said judgment and submits that the Director of Secondary Education Debarment was therefore directed by the Division Bench of this Court to release the arrear salary of the appellant therein and process the same for the period from 21.05.2012 to 18.01.2014, and after quantifying the same to disburse the arrear salary to the appellant therein within a period of three months from the date of receipt of the certified copy of the judgment and order.

8. I have heard the learned counsels for the parties. Upon perusal of the materials on record including the judgment passed by the Division Bench in the case of ***Dipali Barman*** (supra), this Court is of the opinion that the facts involved in the instant case are similar, and as such, the petitioner therefore would be entitled to the arrear salary for the period from 21.05.2012 to 17.01.2014, i.e. the period when the petitioner's services were terminated on account of an illegal order passed by the Inspector of Schools. Further, taking into account the instructions so

placed by the Director of Secondary Education Department, this Court is of the opinion that the petitioner would also be entitled to the arrear salary w.e.f. 18.01.2014 to 01.04.2015.

9. Under such circumstances, this Court, therefore, disposes of the instant writ petition holding that the petitioner would be entitled to the arrear salary for the period from 21.05.2012 to 17.01.2014 as well as 18.01.2014 to 01.04.2015. The said payment should be made within a period of 3 (three) months from the date a certified copy of the instant order is served upon the respondent No.3.

10. The instructions so placed by the learned counsel appearing on behalf of the Secondary Education Department is kept on record and marked with the letter "X".

JUDGE

Comparing Assistant