

GAHC010086572021



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

Case No. : WP(C)/2965/2021

ALI AZAM HUSSAIN
S/O HURMAT ALI, R/O CHALAPATHER, P.S. BATADRAVA, DIST. NAGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF EDUCATION (ELEMENTARY) DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DEPUTY COMMISSIONER

NAGAON
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

NAGAON
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

BATADRAVA
NAGAON
ASSAM

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20.04.2023

Heard Mr. H. Gupta, the learned counsel appearing on behalf of the petitioner. Mr. B.Talukdar, the learned counsel appears on behalf of the respondent Nos. 1, 2, 4 and 5 and Mr. H. Sarma, the learned counsel appears for the respondent No. 3.

2. The petitioner herein is aggrieved by the action of the respondent authorities in not releasing the salary for the period from April, 2020 to December, 2020. It is the specific case of the petitioner that without initiating any departmental proceedings, stopping the salary amounts to penalty which is contrary to the Assam Service (Discipline and Appeal) Rules, 1964(for short 'the Rules of 1964'). It is under such circumstances that the instant writ petition has been filed for a direction upon the respondent Nos. 4 and 5 to release the arrear salary of the petitioner from April, 2020 to December, 2020 and its subsequent as the same has been withheld illegally without valid reasons. At this stage, it may be relevant herein to mention that the petitioner was put under suspension in the month of January, 2021 and thereupon the petitioner has been receiving his subsistence allowance.

3. Upon filing of the instant writ petition, it appears that this Court had issued notice on 14/6/2021 making it returnable after one month. It appears on record that the Director of Elementary Education had filed an affidavit-in-opposition.

From a perusal of the said affidavit-in-opposition, it transpires the reason behind withholding the salary of the petitioner was on the ground that the Block Elementary Education Officer, Batadrava/the respondent No. 4 herein, who is the drawing and the disbursing officer had on several occasions served notice to the petitioner to submit all records and documents either to the Headmaster or the Block Elementary Education Officer, Batadrava to release the monthly salary but the writ petitioner did not respond. There are various other allegations of misconduct as well as financial irregularities mentioned in the affidavit-in-opposition.

4. To the said affidavit-in-opposition, the petitioner has filed the an affidavit-in-reply denying to the allegations made against the petitioner. It is the specific stand of the petitioner that the petitioner was appointed as a Headmaster of the school in question but he was not allowed to join and as such the question of handing over the documents did not arise as the petitioner had no power and authority over the said document in question. The allegation of financial irregularities as has been alleged in the affidavit-in-opposition has been denied by the petitioner in the affidavit-in-reply. It is also mentioned that the petitioner was put under suspension illegally and there has been a show cause notice issued to the petitioner, which has also been duly replied by the petitioner.

5. I have heard the learned counsels for the parties.

6. The issue involved in the instant writ petition is as to whether the respondent authorities could have withheld the salary of the petitioner for the period from April, 2020 to December, 2020 without there being any penalty being imposed after conducting a disciplinary enquiry in terms with Rule 9 of the Rules of 1964. A perusal of the Rules of 1964 and more particularly to Rule 9(1) of the Rules of 1964, it stipulates that no order imposing on a Government

servant any of the penalty specified in Rule 7 shall be passed except after an enquiry held as far as may be in the manner provided in the said Rule. The explanation to Rule 7 categorizes the various acts of the disciplinary authority which would not come within the ambit of penalty. Withholding the salary however, would not come within the ambit of the explanation to Rule 7 of the Rules of 1964. Under such circumstances, the question of withholding the salary of the petitioner would amount to a penalty imposed, that too without entailing an enquiry as required under Rule 9 of the Rules of 1964. Admittedly it is only in January, 2021 certain disciplinary proceedings have been initiated against the petitioner for alleged act of financial irregularities and misconduct. However, during this period of time as admitted by the petitioner, the petitioner had been paid the subsistence allowances as permissible under law. The withholding of the salary therefore for the period from April, 2020 to December, 2020 in the opinion of this Court sans an order of penalty being imposed by following the due process would be impermissible and accordingly this Court in the interest of justice directs the respondent authorities to forthwith release the arrear salary of the petitioner for the period from April, 2020 to December, 2020 and not later than 31st of May, 2023.

7. It is however observed that in case the respondent authorities fail to release the arrear salary of the petitioner for the period from April, 2020 to December, 2020 within the period as abovementioned, interest at the rate of 12% per annum shall accrue on the said amount from the date of such default.

8. The registry is directed to serve a copy of the instant order to Mr. B. Talukdar for communicating the concerned respondent authorities for payment of the arrear salary as directed herein above within the time stipulated.

9. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant