

GAHC010099052023



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

Case No. : WP(C)/2637/2023

SANTANU NANDAN MAZUMDER
S/O- LATE SARADINDU SHEKHAR MAZUMDER ,
R/O- VILLAGE NIZFULBARI PART I, P.O- SIALTIC, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

CACHAR
SILCHAR

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
SALCHAPARA
CACHAR
ASSAM

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KATIGORAH

CACHAR
ASSAM

7:THE DEPUTY INSPECTOR OF SCHOOLS
SILCHAR
CACHA

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-08-2023

Heard Mr. D. Chakrabarty, learned counsel for the petitioner and Mr. N. J. Khataniar, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4 to 7. Also heard Mr. B. Deori, learned Government Advocate, Assam for the respondent No. 3.

2. The petitioner is a Headmaster of Kaliprasad M.V. School under Katigorah Education Block in the district of Cachar. A departmental proceeding was initiated against him under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964 serving show cause to the petitioner under Rule 9 of the said 1964 Rules as to why the penalties prescribed under Rule 7 of the said 1964 Rules should not be inflicted him with the statement of allegation, the lists of documents and witnesses etc.

3. The Enquiry Committee was duly constituted by the Director of Elementary Education, Assam on 30.10.2020 and after hearing the petitioner, the Enquiry Officer submitted its report.

4. During the pendency of said enquiry, the petitioner was reinstated in service as he was under suspension when the departmental proceeding was initiated against him.

5. By a communication dated 03.03.2023, the Block Elementary Education, Officer, Katigorah served him the enquiry report intimating the petitioner that as per the said report, an amount of Rs.

1,18,800/- is yet to be recovered from his monthly salary @ Rs. 50% of the Net Salary and one increment has been held up without cumulative effect as per Rules.

6. The penalty imposed upon the petitioner is under the provisions of Rule 7 of the said 1964 Rules.

7. Being aggrieved with such action on the part of the respondent authorities in the Elementary Education Department, the petitioner has preferred this writ petition.

8. The Assam Services (Discipline & Appeal) Rules, 1964 is a statutory Rule under Article 309 of the Constitution of India.

9. Rule 15 of said 1964 Rules relates to "Appeal against orders imposing penalties" which stipulate as follows –

“A Government servant may appeal against an order imposing upon him any of the penalties specified in Rule 7 to the Appellate Authority specified in this behalf in the Schedule. There shall be no appeal against the order of the appellate authority.”

10. Law is well settled that when the statute provides for a particular procedure, a thing to be done in a particular way, then it has to be followed as prescribed and is required to be done in that manner and in no other manner and following any other course that cannot be permitted to act in contravention of the same. Where a statute requires to do certain things in a certain way, the thing must be done in that way and not contrary to it at all and other methods all mode of performance are impliedly and necessarily forbidden.

11. Since the said 1964 Rules is a statutory Rule and Rule 15 of the said 1964 Rules provides for an appeal against an order of imposing penalty under Rule 7 of said 1964 Rules, having statutory force, this Court is not inclined to interfere with the said penalty imposed under Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964. Moreover, there is an efficacious statutory remedy available to the petitioner pertaining to his approach against his said order of penalty preferring a statutory appeal before the appropriate forum, i.e., the appellate authority as prescribed by the said 1964 Rules.

12. Though the petitioner is aggrieved by the penalty imposed upon him under Rule 7 of the said 1964 Rules and since he has statutory alternative remedy available to him, for the said reasons, this

Court is not inclined to interfere with the said penalty imposed upon the petitioner by the enquiry committee that was communicated to him by the Block Elementary Education Officer, Katigorah on 03.03.2023.

13. In view of the above, this writ petition being not maintainable, stands dismissed.

14. However, the petitioner is at liberty to approach the concerned appellate authority as provided under Rule 15 of the Assam Service (Discipline and Appeal) Rules, 1964 against such order of penalty imposed upon him under Rule 7 of the said 1964 Rules.

JUDGE

Comparing Assistant