

GAHC010099182020



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

Case No. : WP(C)/2968/2020

DWIJEN KALITA
S/O- LT. BALIRAM KALITA, R/O- VILL- NALBARI, WARD NO.7, P.S.
NALBARI, DIST.- NALBARI, ASSAM

VERSUS

THE ASSAM GRAMIN VIKASH BANK AND 6 ORS
A JOINT UNDERTAKING OF THE GOVT. OF INDIA, GOVT. OF ASSAM AND
UNITED BANK OF INDIA HAVING ITS H.O. AT G.S.ROAD, BHANGAGARH,
GHY-05, DIST.- KAMRUP (M), ASSAM

2:THE CHAIRMAN
THE ASSAM GRAMIN VIKASH BANK
H.O.
G.S.ROAD
BHANGAGARH
GHY-05
DIST.- KAMRUP (M)
ASSAM

3:THE REGIONAL OFFICE
ASSAM GRAMIN VIKASH BANK
REP. BY ITS REGIONAL MANAGER
REGIONAL OFFICE
KOKRAJHAR
THANA ROAD
P.O. KOKRAJHAR
P.S. KOKRAJHAR
DIST.- KOKRAJHAR
ASSAM

4:THE REGIONAL OFFICE

ASSAM GRAMIN VIKASH BANK
REP. BY ITS REGIONAL MANAGER
REGIONAL OFFICE
NALBARI
P.O. NALBARI
P.S. NALBARI
DIST.- NALBARI
ASSAM

5:THE CHIEF MANAGER (PERSONNEL)
ASSAM GRAMIN VIKASH BANK
H.O.
G.S.ROAD
BHANGAGARH
GHY-05
DIST.- KAMRUP (M)
ASSAM

6:THE BRANCH MANAGER
ASSAM GRAMIN VIKASH BANK
BIJNI BRANCH
BIJNI
PATHSALA
BARPETA
ASSAM

7:THE BRANCH MANAGER
ASSAM GRAMIN VIKASH BANK
NALBARI BRANCH
NALBARI
ASSA

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, A G V B

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 21/06/2023

Heard Mr. L. Mohan, learned counsel for the writ petitioner. Also heard Mr. D. Banerjee, learned Standing Counsel, Assam Gramin Vikash Bank, appearing for th respondents.

The writ petitioner herein, is an employee of the Assam Gramin Vikash Bank (AGVB). Aggrieved by non-payment of his salary and allowances for the period from January, 2018 till 15/12/2019, the instant writ petition has been filed, seeking a Writ of Mandamus.

It appears that while serving as the Assistant Manager in the Bijni Branch of AGVB, the petitioner was transferred by order dated 29/11/2017 and posted at Bilasipara Branch at Dhubri. Since the petitioner was at the relevant point of time facing certain domestic problems owing to the adverse health condition of his wife and son, he had approached this Court by filing WP(C) 1080/2018 challenging the transfer order dated 29/11/2017. The aforesaid writ petition was disposed of by the order dated 23/07/2018 with a direction upon the respondents to consider the representations submitted by the petitioner on 06/12/2017 and 01/02/2018 and dispose of the same by a speaking order within four weeks. The petitioner was also granted liberty to submit medical certificates in connection with the ailments of his wife and son.

After the order dated 23/07/2018, the authorities had again issued another order of transfer dated 28/08/2018, this time posting him at the Sidalsuti Branch in Bongaigaon district, thus modifying the earlier transfer order dated 29/11/2017. Even on this occasion, the petitioner had challenged the order of transfer by filing WP(C) 6230/2018 before this Court. WP(C) 6230/2018 was disposed of by the order dated 07/05/2019 with a direction upon the respondents to assign posting to the petitioner at a branch which is near to his home town i.e. Nalbari or to a place him nearest to his residence so that the petitioner can continue to look after his ailing wife and son. The order of the Court was required to be complied within a period of one month. Subsequently, the petitioner was allowed to Bijni Branch, in which post he is continuing till today. The learned counsel for the parties have informed that the writ petitioner had been posted at Nalbari, where he is serving till date.

Mr. Banerjee, learned counsel appearing for the respondents submits that due to the ongoing litigations connected with the orders of transfer, the petitioner had remained absent from duty during the aforesaid period. Therefore, by following the principle of "no work no pay", the salary of the petitioner was withheld for the relevant period.

Mr. Mohan, learned counsel for the petitioner, on the other hand, submits that during that period, the petitioner had submitted application for medical leave. Therefore, it is not a case of unauthorized absence from duty. The Bank's counsel had responded by submitting that the said application was not approved by the authorities. However, there is nothing on record to indicate that the application submitted by the petitioner seeking leave for the period of absence, as noted above, had been rejected.

If an employee is entitled to leave under the Rules and submits application seeking leave on justifiable grounds, it would be incumbent upon the employer to consider such application in terms of the provisions of the Rules and Regulations applicable to the same and pass appropriate orders. Unless the application for leave is rejected, the absence of the employee from duty cannot be termed to be illegal or unauthorized so as to deny him the salary. In the present case, materials available on record are insufficient for this Court to come to a conclusion as to whether the petitioner was entitled to leave and if so had he made proper application seeking leave and if so, in what manner the leave application submitted by the petitioner was dealt with by the authorities.

Since there is no departmental proceeding initiated by the Bank till today alleging unauthorized absence from duty on the part of the petitioner, This Court would be inclined to presume that the petitioner was entitled to leave but no formal order has been passed by the authorities either accepting or rejecting the application seeking leave, if any.

Although Mr. Banerjee has invited the attention of this Court to the communication dated 09/01/2018 issued by the Regional Manager of the Bank to submit that his application for leave had been rejected, after going through the said communication, this Court is unable to accept the aforesaid submission of the learned counsel for the respondents. The communication dated 09/01/2018, though mentions about the absence of the petitioner from duty, does not indicate that his application for leave had been rejected. Moreover, the period mentioned in the communication dated 09/01/2018 is for absence from duty since 30/11/2017, which does not correspond to the prayer made in the writ petition. Although, it was mentioned that a disciplinary proceeding would be initiated against the petitioner if he did not join duty, it appears that no such proceeding was initiated against him.

It also appears from the record that the petitioner's continuance at Bijni during the relevant period was facilitated by interim and final orders passed by this Court in WP(C) 1080/2018 and WP(C) 6230/2018 as well as the order dated 11/11/2019 passed in WA No, 215/2019. Therefore, the entitlement of the petitioner to avail leave for the relevant period is liable to be considered by the competent authorities.

As such, without expressing any opinion on the merit of the claim made by the petitioner in this petition, this writ petition stands disposed of by granting four weeks time to the petitioner to submit a proper representation before the competent authority for payment of arrear salary, by justifying his period of absence for the period, as noted above. If such representation is submitted by the petitioner within four weeks from today, by enclosing a certified copy of this order, the same be

considered on merit and disposed of by a speaking order.

It is made clear that since the department has not initiated any departmental proceeding against the petitioner till today inspite of the fact that there is no restraint order from this Court, no such action will be initiated merely on the basis of the representation directed to be submitted by him by the present order.

With the above observations, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant