

GAHC010111002022



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

Case No. : WP(C)/3805/2022

GAJENDRA KALITA
S/O- LATE DWIJENDRA KALITA, R/O- VILL.- PUTHIMARI (GHOTHARTARI),
P.O. AND P.S. PATACHARKUCHI, DIST. BAJALI, ASSAM, PIN- 781325.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HOME (PRISONS), DISPUR,
GUWAHATI-781006.

2:THE INSPECTOR GENERAL OF PRISONS
ASSAM
KHANAPARA
GUWAHATI-781022.

3:THE DEPUTY INSPECTOR GENERAL OF PRISONS (RANGE)
KHANAPARA
GUWAHATI-781022.

4:THE SUPERINTENDENT
CENTRAL JAIL
SAULKUCHI
GUWAHATI-781034

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

17.02.2023

Heard Mr. R. P. Sarmah, learned senior counsel assisted by Mr. D. Doley, learned counsel appearing for the writ petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the respondents.

The writ petitioner is working as a Jail Warder and posted at the District Jail at Karimganj. Earlier, by order dated 22.10.2021 the petitioner was placed under suspension and thereafter, a disciplinary proceeding was initiated against him pursuant where to, the penalty of withholding one increment with cumulative effect was imposed upon the petitioner by the order dated 22.05.2022 issued by the Deputy Inspector General of Prisons (Range), Khanapara, Guwahati.

Aggrieved by the aforesaid order, the petitioner had approached this Court by filing the present writ petition. It is the contention of the petitioner that although he was all along willing to join the said post, yet, the authorities had not allowed him to join as a result of which he had to remain under suspension.

Taking note of the submissions of learned counsel for the parties, this Court, by order dated 08.02.2023, had requested the learned departmental counsel to seek instruction. Today, when the matter is called up, Mr. Nath, learned Sr. Govt. Advocate, Assam has produced a copy of the written instruction dated 13.02.2023, which goes to show that the petitioner has been allowed to join as the Jail Warder at the District Jail, Karimganj on 12.02.2023. If that be so, the first grievance of the petitioner, as noted above, has been substantially redressed. The next issue is pertaining to the validity of the penalty. Mr. Sarmah, learned senior counsel for the petitioner submits that the entire disciplinary proceeding

has been conducted dehors the provisions of law and therefore, the proceeding is liable to be quashed on such count alone. The submission of Mr. Sarmah prima-facie appears to be attractive. However, this Court also finds that the petitioner had submitted an appeal before the Inspector General of Prisons, Assam on 22.08.2022 under Rule 16(2) of the Assam Services (Discipline and Appeal) Rules, 1964 read with Rule 115 of the Rules for Management of Jails in Assam assailing the order of penalty dated 23.05.2022. It appears that the said appeal has not been disposed of till today.

Mr. Nath submits that if the court issues a direction, the appeal preferred by the petitioner will be considered and disposed of in accordance law within a period of six weeks from the date of receipt of a certified copy of this order. Mr. Sarmah also agrees to the aforesaid recourse subject to the condition that the appellate authority shall consider the plea regarding total illegality of the disciplinary proceeding as well as the provisions of Rule 9 of the Rules of 1964. The petitioner is also given liberty to approach this Court by filing a fresh petition if he continues to remain aggrieved even thereafter.

Taking note of the submissions made at the bar, this writ petition is being disposed of with the direction upon the respondent No.2 to consider the appeal dated 22.08.2022 submitted by the petitioner and dispose of the same with a reasoned order in the light of the observations made herein above. If the petitioner continues to remain aggrieved even thereafter, it would be open to him to approach this Court once again, if so advised.

Needless to say, since the petitioner has been allowed to join back in his place of posting, the authorities would also pass appropriate orders responding to the prayer of the petitioner for regularisation of the period of his services during

suspension, in accordance with law, and also for release of the arrear salary,
that may be payable to the petitioner.

With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant