

GAHC010111132016



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

Case No. : WP(C)/2747/2016

THANESWAR BORAH
S/O LT. GNGARAM BORAH R/O VILL- WARD NO. 6, JYOTI NAGAR, P.O. and
P.S. DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR

ELEMENTARY EDUCATION DEPARTMENT
ASSAM
KAHILIPARA-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHEMAJI
ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS

DHEMAJI
ASSAM.

5:THE DEPUTY COMMISSIONER

DHEMAJI
ASSAM.

6:THE MISSION DIRECTOR

SARBASIKSHA ABHIJAN MISSION
ASSAM
KAHILIPARA
GUWAHATI -19.

7:THE ADDITIONAL DEPUTY COMMISSIONER-
CUM- DISTRICT MISSION COORDINATOR
SARBA SIKSHA ABHIJAN
DHEMAJI.

8:THE SCHOOL MANAGING COMMITTEE

DHEMAJI TOWN ME SCHOOL
DHEMAJI
REP. BY ITS PRESIDENT

Advocate for the Petitioner : MR.D BORAH

Advocate for the Respondent : SC, SSA

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 28.03.2023

Heard Mr. N. Borah, counsel for the petitioner. Also heard Mr. P. N. Sarma, learned counsel for the respondent Nos. 1, 2, 3 & 4; Mr. S. R. Baruah, learned counsel for the respondent No. 5; Mr. B. Gogoi, learned counsel for the respondent Nos. 6 & 7 and Mr. A. Gohain, learned counsel for the respondent No. 8.

2. The instant writ petition has been filed by the petitioner being aggrieved by the order dated 09.10.2015 issued by the DEO, Dhemaji thereby directing the petitioner to pay an amount of Rs.2,15,061/- into the bank account of the SSA, Dhemaji; by the letter dated 24.03.2016 issued by DEO, Dhemaji thereby directing the petitioner to pay an amount of Rs.2,15,061/- in the bank account

of the SSA, Dhemaji; the order dated 12.04.2016 whereby the petitioner was placed under suspension as well as for a mandamus directing the respondent to keep the impugned decision to hold the departmental proceedings in abeyance.

3. The facts involved in the instant case are that the petitioner was appointed as Assistant Science Teacher at Dhemaji Town M.E. School on 24.04.1992. Subsequent to the retirement of one- Karna Bahadur Chetry, Headmaster of the said School on 30.06.2012, the Director of Elementary Education Officer allowed the petitioner to take over the charge of the Headmaster till further arrangements were affected. In pursuance thereto, the petitioner rendered his service as an In-charge Headmaster of the said School. Subsequent thereto on 20.09.2014 upon the appointment of one- Smti. Anju Dutta as a regular Headmistress of the said School, the petitioner handed over the charge. The petitioner while handing over to the charge to the newly appointed Headmistress of the School also handed over the detailed expenditure report in respect of the Mid Day Meal fund along with the expenditure report of Mid Day Meal Rice for the period of taking over and handling over charge of the post of Headmaster by the petitioner i.e. from August, 2012 to September, 2014.

4. It further reveals from a perusal of the writ petition that during the said period when the petitioner was holding the additional charge of Headmaster, a sum of Rs.9,60,812/- was received by the petitioner as fund for Mid Day Meal Scheme. Out of the said amount a sum of Rs.8,45,524/- was incurred as expenses for the scheme. Further an amount of Rs.27,390/- was incurred by the petitioner as miscellaneous/excess expenses. The balance amount which remained was Rs.87,898/- which was deposited by the petitioner in the bank account of the school. Further to that, the petitioner had also deposited the fund of Rs.1,75,600/- received as expenses for uniform. However, on

09.10.2015, the petitioner received a letter issued by the DEO, Dhemaji directing the petitioner to pay an amount of Rs.2,15,061/- to the bank account of the SSA, Dhemaji for irregularities in the Mid Day Meal Scheme of the School. The petitioner on enquiry could come to learn that the said letter dated 09.10.2015 was issued on the basis of a letter of the Addl. Deputy Commissioner-cum-District Mission Coordinator, SSA dated 04.12.2015. Sensing foul play, the petitioner issued a communication dated 14.11.2015 denying the allegations leveled against him as well as had also requested for the letter dated 04.12.2015. The petitioner followed the said representation by another letter dated 15.03.2016 again requesting the DEO to furnish the relevant materials based on which the charge have been leveled. The DEO instead of dealing with the letters so submitted against issued another communication dated 24.03.2016 directing the petitioner to pay an amount of Rs.2,15,061/- to the bank account of the SSA, Dhemaji for misappropriation in Mid Day Meal Scheme of the School. The petitioner on receipt of the said communication on 24.03.2016 again submitted a representation on 31.03.2016 denying the charges and allegations therein. Subsequent thereto, the DEO, Dhemaji issued the order dated 12.04.2016 thereby placing the petitioner under suspension for committing irregularities in Mid Day Meal Rice amounting to Rs.2,15,061/-. The petitioner, therefore, being aggrieved have approached this Court under Article 226 of the Constitution. It appears that on 04.05.2016, this Court had issued notice of motion and on the same day, the order of suspension dated 12.04.2016 as well as orders dated 09.10.2015 and 24.03.2016 by which the petitioner was directed to make payment of Rs.2,15,061/- was stayed.

5. It further appears from the records that the matter has come before this Court on various occasions but even after passage of almost seven years, the

respondents have not filed any affidavit. On 13.02.2023, when the matter came up before this Court, this Court directed the Elementary Education Department to file an affidavit-in-opposition indicating as to what happened to the departmental proceedings initiated against the petitioner.

6. Mr. P. N. Sarma, learned counsel appearing on behalf of the Elementary Education Department submits that immediately after passing of the order dated 04.05.2016, the petitioner was re-instated on 30.05.2016. Subsequent, thereto on 30.03.2017, the District Elementary Education Officer, Dhemaji had regularized the period of suspension of petitioner from 13.04.2016 to 31.05.2016. The learned counsel, therefore, submits that in that view of the matter, challenge to the order dated 12.04.2016 does not survive any further.

7. The next question therefore arises, as regards the legality of the order dated 09.10.2015 and 24.03.2016 by which the petitioner was directed to deposit the amount of Rs.2,15,061/- to the bank account of the SSA, Dhemaji for misappropriation in Mid Day Meal Scheme of the School.

8. A perusal of the orders impugned i.e. the order dated 09.10.2015 as well as order dated 24.03.2016 shows that the said orders amounts to penalty coming within the meaning of Rule 7(iii) of the Assam Service (Discipline and Appeal) Rules, 1964. This Court made a specific query upon the learned counsel for the Elementary Education Department as to whether there was any departmental proceedings initiated taking into account, it is the mandate of Rule 9(1) of the Rules of 1964 that without holding a departmental proceedings in the manner stipulated in the subsequent Sub-Rules of Rule 9 of the Rules of 1964, it is not permissible to inflict any penalty in terms with Rule-7.

9. The learned counsel for the Elementary Education Department with all

fairness submits that as per his instructions, there was no enquiry conducted as is required in terms with Rule 9 of the Rule of 1964. However, he submits that it is on account of the pendency of the writ petition wherein there is a prayer not to proceed with the departmental proceedings, the respondent have not taken any action.

10. Taking into account the said submissions and as it is apparent from the materials on record, there is no enquiry conducted in terms with Rule 9 prior to the imposition of the penalty of directing the petitioner to deposit an amount of Rs.2,15,061/-, this Court set asides and quashes the orders dated 09.10.2015 as well as 24.03.2016.

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

12. Before parting, this Court, however, would like to observe that the setting aside of the orders dated 09.10.2015 as well as 24.03.2016 for the reasons above mentioned would not preclude the right of the respondent authorities to initiate such action as deemed fit in terms with the Rules of 1964.

JUDGE

Comparing Assistant