

GAHC010120762020



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

Case No. : Review.Pet./78/2020

MISSION DIRECTOR, AXOM SARBA SIKSHA ABHIJAN MISSION
KAHILIPARA, GUWAHATI-19, DIST. KAMRUP (M), ASSAM.

VERSUS

SAHIDUR RAHMAN AND 3 ORS
S/O LATE S.M. SAFUR RAHMAN, R/O PESKAR JUNGLE KANAKPUR ROAD,
H/NO 3 P.O. AND P.S. RANGIRKHARI DIST. CACHAR PERMANENT
ADDRESS PALACIA EXOTICA, ROOM NO. 4D, SURVEY, BELTOLA,
GUWAHATI 28

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
EDUCATION DEPTT.
DISPUR
GUWAHATI 06

3:DIST. MISSION COORDINATOR
SARBA SIKSHA ABHIJAN
CACHAR
DIST. CACHAR
ASSAM.

4:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-6
ASSAM

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent : SC, FINANCE

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH

ORDER

04.01.2023

Heard Mr. B. Choudhury, learned counsel for the review petitioner. Also heard Mr. M.J. Baruah, learned counsel for the respondent No.1 and Mr. R. Borpujari, learned standing counsel, Finance Department, appearing for respondent No.4.

2. The present review petition has been filed for seeking review of the order passed by this Court on 16.12.2019 in WP(C) No.242/2018, by which this Court directed release of arrears of salary, subsistence allowance and other entitlements within a period of 6(six) weeks, relevant portion of the aforesaid order is reproduced hereinbelow:-

"7. Accordingly, the respondent authorities will pass appropriate order(s) for payment of arrear of salary, subsistence allowance and other entitlements of the petitioner by invoking provision of FR-54-A(2) and release the said entitlements to the petitioner, after making necessary verification, within a period of 6(six) weeks from the date of receipt of the representation that may be submitted by the petitioner along with a certified copy of this order."

3. It has been submitted by the learned counsel for the State that before the said order was passed by this Court on 16.12.2019, the authorities had already rejected the prayer of the petitioner to give the arrear by issuing the order dated 17.01.2019, whereby it has been held that no amount shall be paid to the petitioner who was proceeded in the departmental proceeding as arrear salary for the period w.e.f. 01.02.2012 to 06.04.2018. However, the said order dated 17.01.2019 could not be brought to the notice of this Court while the said writ petition was disposed of on 16.12.2019 and accordingly, it has been submitted that the earlier

direction of this Court passed on 16.12.2019 in WP(C) No.242/2018 be recalled as regards the direction for payment of arrear salary.

4. Mr. B. Choudhury, learned counsel for the review petitioner, on the other hand, submits that there is another petition pending before this Court being WP(C) No.7026/2018, in which the petitioner has challenged the 2nd order of termination dated 06.08.2018 and the issues regarding payment of arrear of salary can be also considered by the Court while deciding the said petition

5. Mr. M.J. Baruah, learned counsel for the respondent No.1, however, submits that the said order dated 17.01.2019 was never communicated to the petitioner and as such the petitioner could not have brought the said order to the notice of this Court and it was the responsibility of the State Government to bring it to the notice of the Court if such order was issued.

6. In our opinion, whether the said order was really issued or not in view of the submissions advanced by Mr. Baruah, learned counsel for the respondent No.1, that aspect can be also raised in another writ petition being WP(C) No.7026/2018 filed by the petitioner, in which the petitioner has challenged the 2nd order of termination dated 06.08.2018, so that the Court can pass appropriate order as regards the entitlement of the arrears for the aforesaid period, which the petitioner is claiming.

7. Mr. M.J. Baruah, learned counsel for the respondent No.1, also submits that the authorities had passed an order earlier on 05.04.2018 to the effect that the petitioner shall be deemed to be in service w.e.f. 14.12.2016 and the earlier order dated 17.03.2018 treating the period from 18.02.2012 to till date i.e. till 17.03.2018 to be treated as *dies non* which has

withdrawn and as such, the authorities cannot pass contradictory orders.

8. This Court is of the view that since the 2nd order of termination is the subject matter of consideration by this Court in WP(C) No.7026/2018, which is pending, the petitioner can also raise the issues about the entitlement of arrear of salary for the period from 01.02.2012 to 05.04.2018.

9. Accordingly, the present review petition is allowed by recalling the order dated 16.12.2019 directing the authorities to release the arrear of salary, subsistence allowance and other entitlements and such entitlements as claimed by the petitioner can be raised before the Court in the pending writ petition being WP(C) No.7026/2018. The petitioner also may file additional affidavit in the said pending writ petition to bring all the relevant facts and submissions on record.

10. With the above observation, the present review petition stands disposed of.

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant