

GAHC010121262022



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

Case No. : WP(C)/4162/2022

MD. SADIQUE AHMED
S/O-LATE LOKMAN ALI, VILL- KABARIBAND,
P.O- PATHARKANDI,
DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION
(SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-06

2:THE ADDITIONAL SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION
(SECONDARY) DEPARTMENT
DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

4:THE DIRECTOR
OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN-781019

5:THE INSPECTOR OF SCHOOLS

KDC
KARIMGANJ
P.O AND DIST- KARIMGANJ
ASSAM
PIN-788710

6:THE TREASURY OFFICER
PATHARKANDI TREASURY OFFICE
P.O- PATHARKANDI

DIST- KARIMGANJ
ASSAM
PIN-788724

7:THE PRINCIPAL
OF ASIMIA HIGHER SECONDARY SCHOOL

P.O- KANAIBAZAR

DIST- KARIMGANJ
ASSAM
PIN-7872

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 19/12/2023

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. D. Mushahary, learned standing counsel, Elementary Education department appears for respondent Nos. 1, 2, 4 and 5; Mr. R. Borpujari, learned standing counsel, Finance appears for respondent Nos. 3 and 6 and Mr. K. R. Patgiri, learned counsel for respondent No.7.

2. This writ petition is filed by the writ petitioner praying for a direction to the respondents to release his arrear salary for the period of 01.06.2019 to 28.02.2021. The claim of the petitioner was that while he was serving as L. D. Assistant in Asimia High School, which was earlier known as Asimia Senior Madrassa, he was transferred to Deorali Title Madrassa and one Md. Shafiquul Islam Choudhury, L.D.A of Deorali Title Madrassa was transferred to his place in Asimia Senior Madrassa by order dated 11.06.2019. The petitioner joined in his new place of posting and thereafter his transfer order was put to challenge by Md. Shafiquul Islam Choudhury, by filing WP(C) No. 4589/2019 putting to challenge the transfer order dated 11.06.2019.

3. While issuing Notice, this court had initially suspended the order of transfer with a liberty to the authorities to pass appropriate orders as regards the transfer. In view of the interim order, the petitioner was released from Deorali Title Madrassa to enable him to go and join in his original place of posting which is Asimia Senior Madrassa. However, when he went to join, he was not allowed to join in the said Madrassa.

4. Having been prevented from joining in his original place of posting, he filed a writ petition being WP(C) No. 4695 of 2021 seeking directions from this court to the authorities concerned to permit him to join in his place of posting. This writ petition along with WP(C) No. 4589/2019 filed by Md. Shafiquul Islam Choudhury (by which the transfer order was put to challenge), were taken up for hearing and a Co-ordinate Bench of this court by order dated 08.10.2021 disposed of both the writ petitions. The transfer orders were set aside and the respondents were directed to permit both the petitioners to join in their original respective places of posting. Thereafter the petitioners went back and joined in Asimia High School. However, his salary for the period 01.06.2019 to 28.02.2021

has not been released. Being aggrieved, he has approached this court filing the present writ petition.

5. By order dated 07.08.2023 this Court had directed that arrear salary of the petitioner prepared by the authorities of Asimia High School for the period from June, 2019 to February, 2021 shall not be released as the Court was of the view that the order of transfer of the petitioner dated 08.11.2019 issued by the Director, Secondary Education, Assam was not stayed or kept in abeyance or interfered with at any stage till the Judgment dated 08.10.2021 was passed in WP(C)/4695/2021 and neither the petitioner joined in Anwarul Ulum Senior Madrassa nor did he render any service in Asimia Madrassa after the transfer order dated 08.11.2019 till rejoining his service in Asimia Senior Madrassa pursuant to the Judgment dated 08.10.2021 passed in WP(C)/4695/2021. Under such circumstances, this Court directed that the arrear salary of the petitioner prepared by the authorities of the said Asimia High School for the period with effect from 01.06.2019 to 28.02.2021 shall not be released.

6. The respondents were permitted to obtain their required instructions and an affidavit was been filed by the Secretary, namely the respondent No.1, as well as by the Director of Secondary Education, wherein there is an averment that the proposal for arrear salary of the petitioner has been forwarded to the Director of Secondary Education by the Inspector of Schools, but the same could not be processed in view of the orders passed by this Court vide order dated 07.08.2023.

7. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The orders passed by this court have also been carefully noted.

8. The learned counsels for the respondents submits specifically that since there was a direction of this court, vide order dated 08.10.2021 passed in WP (C) No. 4695/2021 and WP (C) No. 4589/2019, whereby the transfer orders have been set aside, the proposal for arrear salary has been duly processed. However, in view of the order dated 07.08.2023 the arrear salary has not been processed any further. The submissions are supported by the averments made in the affidavit filed by the respondent No.1. The said averments are also extracted below:-

“7. That the Deponent begs to state that a proposal for payment of arrear salary in respect of the Petitioner was submitted vide letter dated 12.03.2022 to the DSE by the Inspector of Schools, Respondent No.5. But it could not be processed further because of order dated 07.08.2023 passed in the instant writ petition whereby it was directed that until further order of the Hon’ble Court, the arrear salary of the Petitioner as prepared by the authorities of said Asimia High School for the period from June, 2019 to February, 2021 shall not be released”.

9. Having considered the rival submissions and upon careful perusal of the pleadings on record, it is seen that the claim for arrear salary of the petitioner cannot be held to be unjustified in view of the order dated 08.10.2021 passed in WP (C) No. 4695/2021 and WP (C) No. 4589/2019. By the said order, the transfer order was interfered with and was set aside. As a consequence thereof, the petitioner and his reliever were considered to be rendering services in their original place of posting. The Co-ordinate Bench, while interfering with the transfer order, has categorically discussed this aspect. The same is also extracted below:-

“6. From both the aforesaid aspects, we are of the view that the transfer order dated 01.06.2019 requires an interference and accordingly, the same stands set

aside. The implication thereof would be that Sofiqul Islam Choudhury will continue as the LDA of Deorail Title Madrassa and Md. Sadique Ahmed will continue as the LDA of Asimia High School which was earlier called Asimia Senior Madrassa. However as the transfer is a prerogative of the employer, liberty remains with the authorities if the causes arise in the public interest, to take decision as deemed to be required.

7. It is stated that Sadique Ahmed the petitioner in WP(C) 4695/2021 in view of the interim order of the Court dated 19.07.2019 in WP(C) 4589/2019 was subsequently transferred to another school namely Anwarul Ulum Senior Madrassa. As the order 08.11.2019 was passed as a consequence of the interim order dated 19.07.2019, we also interfere with the said order and set aside.

8. The implication of setting aside the respective transfer orders would be that the authorities would have to consider that both the writ petitioners were continuously in service in their respective posts and therefore their respective salary should be paid.”

10. Having noted the orders passed by the Co-ordinate Bench against which admittedly no appeal or review has been preferred by the department, this order has attained finality. In pursuance thereof, department has proceeded to release the arrear salary of the petitioner. Also, in view of the categorical averment made in the affidavit that the department has processed the proposal to release of arrear salary of the petitioner but for the order dated 07.08.2023, the same has not been released. In that view of the matter, this court considers it appropriate to dispose of the writ petition by altering, modifying the interim order dated 07.08.2023 and directing the respondent authorities to process the proposal for arrear salary and release the same to the petitioner as expeditiously as possible within the outer limit of 60 (sixty) days from the date of receipt of a certificate copy of this order.

11. Writ petition accordingly stands allowed and disposed of to the extent indicated above.

12. Interim orders, if any, stands merged with the final order.

JUDGE

Comparing Assistant