

GAHC010133322021



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

Case No. : WP(C)/4435/2021

YOUSUF ALI AHMED
S/O- LT. JOYNAL ABEDIN SK, R/O- A.M.C.O. ROAD (ISLAM NAGAR), P.O.
A.M.C.O. ROAD, P.S. DHUBRI, DIST.- DHUBRI, ASSAM, PIN- 783323

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
D.M. DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE DY. COMMISSIONER
SONITPUR
TEZPUR
P.S. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001

4:THE SALARY DRAWING AND DISBURSING OFFICER OF THE OFFICE OF
THE DY. COMMISSIONER
SONITPUR
TEZPUR
DIST.- SONITPUR
PIN- 784001

5:THE TREASURY OFFICER
SONITPUR

P.S. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001

6:THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
KRISHNAPUR
BELTOLA TINIALI
DIST.- KAMRUP (M)
ASSAM
GHY-29

7:THE DIRECTOR OF LAND RECORDS AND SURVEY ETC.
RUPNAGAR
DIST.- KAMRUP (M)
ASSAM
GHY-3

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 09.01.2023

Heard Mr. M. Hussain, the learned counsel appearing on behalf of the petitioner and Mr. J. C. Handique, the learned counsel appearing for the respondent Nos. 1 & 7, Mr. P. Nayak, the learned counsel appears for the respondent No. 2 and 5, Mr. T.C. Chutia, the learned counsel appears on behalf of the 3 and 4 and Mr. R. Ali, the learned counsel appears on behalf of the respondent No. 6.

2. This Court vide an order dated 16/12/2022 had directed the respondents to obtain instructions as to why the petitioner's subsistence allowances have not

been paid though he is otherwise entitled to as per the applicable Rules.

3. At this stage, it may be relevant to take note of that the instant writ petition has been filed challenging the action of the respondent authorities in not making payment of the subsistence allowances to the petitioner to which he is entitled to during his period of suspension. It appears from the records that initially the petitioner was terminated from service, but subsequently he was reinstated by an order dated 27/2/2020 with a further direction that in terms with Rule 7 (iii) of the Assam Services (Discipline and Appeal) Rules, 1964, the salaries and allowances drawn by the petitioner during his period of absence shall be recovered in equal installments till the recovery is complete. Accordingly, vide an order dated 26/09/2020 passed by the Deputy Commissioner, Sonitpur, it was mentioned that Rs. 16,866/- (Rupees sixteen thousand eight hundred sixty six) per month, shall be recovered in 119 installments and Rs. 16,865/- (Rupees sixteen thousand eight hundred sixty five) shall be recovered in 128 installments.

4. At this stage, it may be relevant to take note of that the petitioner was suspended from 31/10/2017 to 25/12/2018. During the period of his suspension, the petitioner was entitled to subsistence allowances in terms with F.R. 53 (1) (ii) of the Fundamental Rules and Subsidiary Rules applicable to the State of Assam. A subsistence allowances at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave or on half average pay or on half pay and in addition dearness allowance based on such salary. The proviso to FR 53 (1) (ii) also stipulates that if the period of suspension exceeds 3 months, the authority which may or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowances for any period subsequent to the period of the first 3

(three) months in the manner stipulated therein. Under such circumstances, the petitioner's entitlement to subsistence allowances have been mentioned in the Fundamental Rules and the Subsidiary Rules of the Government of Assam. This aspect of the matter can also be seen from paragraph 2.8.1, 2.8.2 and 2.8.3 of the Manual of Departmental Proceedings (Government of Assam-- Departmental of Personal) dated 18/8/1981.

5. It is the admitted case that the petitioner was not paid his subsistence allowances and this aspect of the matter could also be seen from the instructions so received by the learned counsel Mr. T.C. Chutia. The Office of the Deputy Commissioner, Sonitpur, have taken steps with the DLR for releasing of the subsistence allowances to the petitioner. In that view of the matter, this Court therefore taking into account F.R. 53 and the admitted stand of the Respondent Authorities to the effect that the petitioner is entitled to the subsistence allowances at the rate stipulated w.e.f. 31/10/2017 to 26/12/2018, this Court therefore directs the respondent Nos. 3 and 4 to make payment of the subsistence allowances to which the petitioner is entitled to within a period of 3(three) months from the date a certified copy of this instant order is served upon the respondent No. 3.

6. With the above observations and directions, the instant petition stands disposed.

JUDGE

Comparing Assistant