

GAHC010157672023



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

Case No. : WP(C)/4153/2023

DR. KALPANA GOSWAMI
WIFE OF DR. HEM CHANDRA GOSWAMI,
RESIDENT OF JAKAIPLOWA NO. 2,
BIHPURIA, DISTRICT- LAKHIMPUR,
PIN- 784161.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (HIGHER) DEPARTMENT,
DISPUR, GUWAHATI, PIN- 781006.
2:THE DIRECTOR
EDUCATION (HIGHER) DEPARTMENT
GOVERNMENT OF ASSAM
KAHILIPARA
GUWAHATI- 781022.
3:THE INSPECTOR OF SCHOOLS
LAKHIMPUR
DISTRICT- LAKHIMPUR
ASSAM

Advocate for the Petitioner : MS N SAIKIA
Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19.09.2023

Heard Ms. N Saikia, learned counsel for the petitioner and Mr. K Gogoi, learned Standing counsel, Higher Education Department, Assam for the respondents.

- 2.** Pursuant to the order of the Court, Mr. K Gogoi, learned Standing counsel, Higher Education Department has placed the relevant records before the Court, which is perused.
- 3.** The petitioner herein served as an Assistant Professor of Mathematics of Kherajkhat College, Deotola, District-Lakhimpur since its venture stage. Pursuant to the Government sanction letter No. AHE.133/2013/428 dated 04.01.2014, the Director of Higher Education, Assam by Order No. PC/HE/VEN.EDNL.(77)/1/ 2014/57 dated 20.01.2014 provincialised the services of the teaching and non-teaching staff of said Kherajkhat College, including that of the petitioner, w.e.f. 01.01.2013 under the provision of Section 4 (1) of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012.
- 4.** However, while provincialising the services of the teaching and non-teachings staff of said Kherajkhat College, Deotola of District Lakhimpur by order dated 20.01.2014, the respondent authorities neither provincialised the service of the Principal nor sanctioned the post of Principal in that College.
- 5.** Pursuant to the letter of the State Government in the Higher Education Department dated 12.03.2014 and the Resolution of the Governing Body of said Kherajkhat College dated 22.03.2014, the Director of Higher Education, Assam by order dated 26.03.2014 allowed the petitioner, senior most Assistant Professor of said college to act as the Drawing and Disbursing Officer (DDO) for drawing and disbursing the salaries of the staff of the said college in addition to her normal duties subject to observance of the provision under S.O. 213(b) and S.O. 214 of the TRS and SOS and other required formalities as a very temporary arrangement until further order. Thereafter, the petitioner was allowed to serve as the Principal in-charge of said Kherajkhat College, District-Lakhimpur and she continued to serve in that capacity.
- 6.** Pursuant to the letter of the Government under ECF. No. 319630 dated 13.07.2023 and pending drawal of departmental proceeding, the Director of Higher Education, Assam by Order No. PC/HE/Prov/DDO/02/2019/912 dated 13.07.2023 suspended the petitioner with immediate effect with the observation that during the suspension period she shall be provided with subsistence allowance @ 50% for the first 3 months from the date of her suspension and @ 75% after completion of the first 3 months with the further observation that the

petitioner shall not leave the Headquarter without permission from the competent authority.

7. Being aggrieved with the said order of her suspension from service dated 13.07.2023, noted above; the petitioner has filed this writ petition on 25.07.2023.

8. The Governing Body of said Kherajkhat College, Deotola, Lakhimpur has filed an affidavit in the matter, who is yet to be made a party respondent in the present proceeding, to which the petitioner has also filed her reply.

9. As per the provisions of the said 2011 Act amended in 2012, i.e., the relevant Act under which the services of the teaching and non-teaching staff of said Kherajkhat College, Deotola, Lakhimpur was provincialised during its force, at Section 4 it was provided that the services of the employees of all eligible Venture Educational institutions under Section 3 shall be deemed to have been provincialised on the date of coming into force of the said Act and they shall become employees of the State Government with effect from that date, provided such institutions have completed at least 7 years of imparting education from the date of affiliation, recognition, concurrence or permission, as the case may be, as on the date of coming into force of the said 2011 Act.

10. As per the provision of Section 5 of the said 2011 Act, during its force, it was provided that — subject to the provisions of the said Act (2011 Act) and the Rules made thereunder all Rules including Service Rules and Rules of Conduct and Discipline which are applicable to the State Government servant of corresponding ranks shall be applicable to all employees of educational institutions whose services have been provincialised under the provisions of the said 2011 Act.

11. It is to be noted herein that a Division Bench of this Court by order dated 23.09.2016 passed in WP(C) No. 3190/2012 (Chandan Kumar Neog & Ors. -Vs- the State of Assam and Ors.) and other connected matters, declared the said 2011 Act amended in 2012 as ultra-vires and all Rules, Orders, Notifications issued thereunder stood repealed by the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 and except Sections 4 and 8 of the said 2011 Act as provided under Section 12, the remaining provisions of the said 2011 Act deemed to have come into force w.e.f. 05.05.2017 pursuant to the provisions of the said 2017 Act.

12. However, by a subsequent order, in a Review Petition preferred by the State Government in the Education Department, the Division Bench of this Court after the said order dated 23.09.2016 passed in WP(C) No. 3190/2012 and other connected matters allowed the employees whose services were already provincialised under the said 2011 Act, as amended, to remain under provincialisation.

13. As such, all such employees including the petitioner whose services were already provincialised under the said 2011 Act, as amended, remained provincialised and accordingly they have been brought under the Rules of Conduct and Discipline of the State Government, namely, the Assam Services (Discipline and Appeal) Rules, 1964.

14. Rule 6 of the said 1964 Rules relates to Suspension.

15. Rule 6 (1) of the said 1964 Rules provides that –

The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension –

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where in the opinion of the authority aforesaid he has engaged himself in activities prejudicial to the interest or the security of the State; or

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

16. Rule 14 of the 1964 Rules provides for an Appeal against orders of suspension, wherein it is stipulated that – *A Government servant may appeal against an order of suspension of the Authority to which the authority which made or is deemed to have made the order is immediately subordinate.*

17. In the case in hand, it is the Director of Higher Education, Assam being the Appellate Authority, by order dated 13.07.2023 placed the petitioner under suspension.

18. The Assam Services (Discipline and Appeal) Rules, 1964 is a Statutory Rule under Article 309 of the Constitution of India and the said 1964 Rules being a Statutory Rule wherein there

is a provision of appeal against the order of suspension. Therefore, there is efficacious alternative statutory remedy available to the petitioner against the said order of her suspension dated 13.07.2023 issued by the Director of Higher Education, Assam.

19. Since there is a Statutory provision of appeal against the said order of suspension dated 13.07.2023 provided under Rule 14 of the said 1964 Rules, noted above, as such; this Court in exercise of the power under Article 226 of the Constitution of India is not inclined to interfere with the said order of suspension of the petitioner dated 13.07.2023 issued by the Director of Higher Education, Assam.

20. Accordingly, this writ petition being not maintainable stands rejected.

21. However, the petitioner as provided in the said 1964 Statutory Rules may approach the appropriate authority by preferring an appeal against the order of her suspension dated 13.07.2023 issued by the Director of Higher Education, Assam.

22. Needless to say, in the event of preferring any such appeal by the petitioner against the said order of her suspension dated 13.07.2023 issued by the Director of Higher Education, Assam before the appropriate forum, the concerned authority shall dispose of the same in accordance with law, intimating her about the outcome of the same.

23. Return the records to Mr. K Gogoi, learned Standing counsel, Higher Education Department, Assam.

JUDGE

Comparing Assistant