

GAHC010171552022



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

Case No. : WP(C)/5648/2022

MRS. IRINA KONWAR
S/O SRI ANANDA SAGAR DEKA, R/O NEAR SANTAK TEA ESTATE GARDEN
HOSPITAL, P.O. AND P.S.-SANTAK, DIST-SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HIGHER EDUCATION DEPARTMENT,
SACHIVALAYA, DISPUR, GUWAHATI-781006

2:THE DIRECTOR
HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

3:THE DEPUTY DIRECTOR
HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-78101

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

20.11.2023

Heard Mr. D. Gogoi, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education.

2. This petition has been filed by the petitioner praying for release of arrear salary of 25% stated to be payable to the petitioner for the period of her suspension from service as well as leave encashment and group insurance scheme.

3. The petitioner is working as an Associate Professor in the department of Zoology in Gargaon College, Simaluguri, Dist: Sivasagar. The petitioner was placed under suspension with effect from 30.07.2019 as she was arrested in connection with a criminal matter. The charges were brought against the petitioner for misappropriation of money pertaining to a society by the name Sansay Aru Rindan Samabay Samiti Limited of the Gargaon College which is a Society under the Assam Co-operative Societies Act, 1950. The petitioner approached this Court earlier by filing W.P.(C) No. 3303/2021 praying for adequate orders for interference with the suspension order. This writ petition was disposed of on 19.07.2021 with a direction to the Director of Higher Education to pass a reasoned order by examining the claims of the petitioner for vacating order of suspension strictly in terms of the proviso to Rule 6(2) of the Assam Discipline and Appeal Rules, 1964. In terms of this direction, the Department of Higher Education passed the order dated 05.10.2021, By the said order, suspension was withdrawn and the petitioner was reinstated in her original substantive post of Assistant Professor in Gargaon College with immediate effect. This order was issued in compliance of the directions of the Court dated 19.07.2021 passed in W.P.(C) No. 3303/2021.

4. The learned counsels for the parties have been heard. Pleading have been carefully perused.

5. The petitioner is before this Court urging that inspite of the order dated 05.10.2021 whereby the petitioner was reinstated in service, the subsistence allowance of 25% along with the leave encashment and group insurance scheme amount have not been released to the petitioner. In terms of the orders passed by the Court, the respondent-Higher Education Department has filed an affidavit wherein it is stated that this 25% arrear during the period of suspension after the initial three months till the date of her retirement is not treated as "on duty" when the incumbent was reinstated by a speaking order dated 05.10.2021. The said order dated 05.10.2021 is extracted below:

GOVERNMENT OF ASSAM

OFFICE OF THE DIRECTOR OF HIGHER EDUCATION, ASSAM

KAHILIPARA, GUWAHATI-19

No. DHE/CE/Misc-23/2019/134 Dated Khalipara, the 05th October 2021

SPEAKING ORDER

*Read the Hon'ble High Court's oRder dated 19-07-2021 in WP(C) No.3103/2021 filed by Irina Konwar-Vs- The State of Assam and 3 others. As per Hon'ble High Court order dated 19.07.2021 the Hon'ble High Court has passed an order as **"7. In doing so, the Director may examine the case of the petitioner whether the charge connected is with her position as a Government servant whether her continuance in office is likely to embarrass the Government or the petitioner in the discharge of her duties was not involved in any act of moral turpitude. By arriving at such conclusion, the Director of Higher Education Assam shall pass a reasoned order."***

The petitioner Mrs. Irina Konwar, Associate Professor in the department of Zoology of Gargaon College, P.O. Simaluguri, Dist. Sivasagar, was placed under suspension with effect from 30-07-2019 who has been forwarded to Judicial Custody in connection with Simaluguri Police Station Cine No. 76/19, U/S

406/409/420 IPC on 31-07-2019 vide this office order No: DHE/CE/Misc/23/2019/34, dated 27-08-2019.

The Charges brought against Mrs. Irina Konwar. Associate Professor in the department of Zoology of Gargaon College, P.O. Simaluguri, Dist. Sivasagar, is misappropriation of fund/money of a society named Sansay Aru Rindan Samabay Samiti (SAESS) Ltd. of Gargaon College, functioned under the Assam Co-Operative Society Act 1950. This society is not under the jurisdiction of this Directorate of Higher Education, Assam.

Accordingly as per the Hon'ble High Court's order dated 19-07-2021 in WP(C) No.3303/2021 filed by Irina Konwar-Vs- The State of Assam and 3 others, the suspension of Mrs. Irina Konwar, Associate Professor in the department of Zoology of Gargaon College, P.O. Simaluguri, Dist. Sivasagar, issued vide this office order No. DHE/CE/Misc/23/2019/34, dated 27-08-2019, is hereby withdrawn and reinstatement in her original substantive post of Assistant Professor in Gargaon College with immediate effect.

The Hon'ble High Court's order dated 19-07-2021 in W.P.(C) No.3343/2021 filed by Irina Konwar-Vs- The State of Assam and 3 others is hereby complied with and disposed of with the above

Sd/- Shri Dharma Kt. Mili, ACS

Director of Higher Education, Assam

Khahilipara, Guwahati-19

6. From a bare perusal of the order dated 05.10.2021 issued by the Director, which is extracted above, the averments made in Paragraph-2 of the affidavit, the said order dated 05.10.2021 has not been correctly interpreted. By the order dated 05.10.2021, the suspension was withdrawn and the petitioner was reinstated in service. It is also not the case of the respondents that any disciplinary proceedings

were initiated and penalty as permissible under law was imposed on the petitioner. Under such circumstances, this Court fails to understand that the stand reflected in the affidavit by the Department of Higher Education as to why the 25% of the arrear during the period of suspension after the initial three months period till the date of her retirement is not treated to be "on duty". It appears to have been passed without taking note of the order dated 05.10.2021. Under such circumstances, this Court is of the view that ends of justice will be met if this writ petition is disposed of with a direction to the Director, Higher Education, namely, the respondent No. 2, to examine the claims of the petitioner for release of 25% arrear salary for the period of her suspension along with leave encashment and group insurance scheme. If these amounts have not been released then in terms of the order dated 05.10.2021 passed by the Director, necessary orders be issued releasing the said amount as prayed for.

7. Copy of the speaking order be furnished on the petitioner.
8. The entire exercise be completed within a period of 60 days from date of receipt of certified copy of the order.
9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant