

GAHC010192882023



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

Case No. : WP(C)/5098/2023

ABDUL MAZID
S/O- LATE AIZUDDIN AHMED, VILLAGE- KHOLABANDHA, P.O.
KHLABANDHA, PIN- 781127, P.S. KACHUMARA, DISTRICT- BARPETA
(ASSAM)

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (ELEMENTARY), DISPUR,
GUWAHATI- 781006

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
P.O. AND DISTRICT- BARPETA
ASSAM
PIN- 781314

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
CHENGA EDUCATION BLOCK
P.O. CHENGA
DISTRICT- BARPETA
ASSAM
PIN- 781305

5:SRI RAHMAT ALI MONDAL

S/O- LATE KHUSMAMUD
VILLAGE- AND P.O. PATHIMARI
DISTRICT- BARPETA
ASSAM
PIN- 78112

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

15.09.2023

Heard Mr. D A Kaiyum, learned counsel for the petitioner and Mr. P N Sharma, learned Standing counsel, Department of School (Elementary) Education, Assam for all the official respondent Nos. 1 to 4.

2. Petitioner is the Head Teacher of 884 No. Pathimari Lower Primary School under Chenga Education Block of District-Barpeta.

3. Pertaining to financial anomalies of school grants, irregular attendance in classes, failure to place/produce accounts related records, documents/statement of the school and because of the violation of the Government instructions and guidelines and failure to show his desired level of respect as the Head Teacher of the said school; the Director of Elementary Education, Assam vide an Order under ECF No. 232719/30 and DFA No. 147075 dated 08.03.2023 placed the petitioner under suspension following the provisions of the Assam Services (Discipline and Appeal) Rules, 1964 with immediate effect enabling him to draw the admissible subsistence allowances during the period of his suspension as admissible under the Rules, with further observation that he shall not leave the station without prior permission from the competent authority and shall not engage himself in any profession or trade etc.

4. Being aggrieved with the said order of his suspension from service dated 08.03.2023, the petitioner on 24.05.2023 submitted a representation under Rule 14 of the said 1964 Rules before the Secretary to the Government of Assam in the Department of School (Elementary)

Education, which has not yet been disposed of.

5. The Director of Elementary Education, Assam vide ECF No. 232719/39 and DFA No. 199843 dated 08.07.2023 issued Show-Cause Notice to the petitioner under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 read with Article 311 of the Constitution of India with specific Charges, Statement of Allegations, List of Documents, and List of Witnesses, to which the petitioner submitted his reply on 24.07.2023.

6. The petitioner submitted that though he was placed under suspension by the Director of Elementary Education, Assam on 08.03.2023, but the respondent authorities did not issue any Show-Cause Notice to him within 90 days from the date of placing him under suspension and have also not reviewed within 90 days from the date of the said order dated 08.03.2023. Stating as to whether he should further be placed under suspension or not and as the same is in violation of the provisions of the Office Memorandum No. ABP 13/2018/Pt/35 dated 04.02.2020 of the State Government in the Personnel (B) Department issued by the Chief Secretary to the Government of Assam as well as in violation of the law laid down by the hon'ble Apex Court passed in the case of *Ajay Kumar Choudhury -Vs.- Union of India*, reported in (2015) 7 SCC 291 decided on 16.02.2015 and Clause 2.1.8 of the Manual of Departmental Proceedings of the State Government in the Personnel Department dated 18.08.1981, the said order of his suspension dated 08.03.2023 issued by the Director of Elementary Education, Assam should be set aside and quashed.

7. Mr. P N Sharma, learned Standing counsel, Department of School (Elementary) Education has placed a communication of the Director of Elementary Education, Assam issued under ECF No. 232719/49 dated 15.09.2023 apprising the Court that the disciplinary proceeding initiated against the petitioner vide Show-Cause Notice dated 08.07.2023 has not yet been concluded and though a Hearing Committee in that regard was constituted, but the petitioner has not yet furnished certain documents in original and as such, another verification/scrutinization drive has been re-scheduled.

8. In the said communication dated 15.09.2023, that is placed before the Court today, the Director of Elementary Education, Assam admitted the fact that the petitioner, Head Teacher of 884 No. Pathimari Lower Primary School under Chenga Education Block of District-Barpeta

was placed under suspension on 08.03.2023 and Show-Cause Notice was served upon him on 08.07.2023, which itself indicates that such Show-Cause Notice was issued to the petitioner after more than 90 from the date of suspension on 08.03.2023.

9. Moreover, from said communication dated 15.09.2023 of the Director of Elementary Education, Assam it is seen that the respondent authority concerned is silent with regard to any such review regarding keeping of the petitioner under suspension after 90 days w.e.f. 08.06.2023.

10. Considering the above as well as the provisions of Clause 2.1.8 of the Manual of Departmental Proceedings of the State Government in the Personnel Department dated 18.08.1981 and also the law laid down by the hon'ble Apex Court in the case of *Ajay Kumar Choudhury* (Supra), the Court is of the opinion that the suspension order of the petitioner dated 08.03.2023 issued by the Director of Elementary Education, Assam cannot sustain on or from 08.06.2023.

11. For the reasons above, the suspension order of the petitioner issued under ECF No. 232719/30 and DFA No. 147075 dated 08.03.2023 being un-sustainable in law w.e.f. 08.06.2023, hereby set aside and quashed and the respondents in the Department of School (Elementary) Education, Assam are directed to reinstate the petitioner in service forthwith.

12. However, it is made clear that regarding posting of the petitioner as the Head Teacher of Lower Primary School is left to the Director of Elementary Education, Assam after reinstating him in service, since the issues relating to misappropriation of funds and other materials that are available on records, a departmental proceeding is presently pending against the petitioner.

13. It is also made clear that this order shall not be considered to be of any kind of interference with the departmental proceeding that was initiated against the petitioner vide Show-Cause Notice dated 08.07.2023, noted above.

14. The petitioner shall file a representation before the Director of Elementary Education, Assam as well as District Elementary Education Officer, District- Barpeta and Block Elementary Education Officer, Chenga along with a certified copy of this order, obtaining necessary acknowledgments from the said authorities in that regard.

- 15.** With the above observation and direction, this writ petition stands disposed of.
- 16.** Copy of the communication of the Director of Elementary Education, Assam dated 15.09.2023 placed before the Court today by Mr. P N Sharma, learned Standing counsel, Department of School (Elementary) Education, Assam be kept as part of the record.

JUDGE

Comparing Assistant