

GAHC010204762021



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

Case No. : WP(C)/6453/2021

ABDUL MANNAF
S/O. LT. ARBOSH ALI, VILL. AND P.O. SIMLABARI,
DIST. GOALPARA, ASSAM, PIN-783101.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOALPARA DIST. GOALPARA ASSAM PIN-783121.

4:THE DEPUTY INSPECTOR OF SCHOOLS
GOALPARA DIST. GOALPARA ASSAM PIN-783121

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 06.12.2023

Heard Mr. J. Abedin, learned counsel for the petitioner and Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department.

2. The grievance raised in the present proceeding is with regard to an order dated 04.04.2013, by which, while reinstating the petitioner into service on the revocation of his order of suspension, the disciplinary authority, without conclusion of the departmental proceedings, imposed a penalty of withholding of two annual increments with cumulative effect. The petitioner has also assailed an order dated 08.10.2021, by which it was directed that the penalty of withdrawal of two annual increments with cumulative effect imposed upon the petitioner shall remain in force till finalisation of the departmental proceeding against the petitioner. The departmental proceedings against the petitioner was instituted with the issuance of the show-cause under Rule 9 of the Assam Service (Discipline and Appeal) Rules, 1964 on 01.12.2012 and the same is still pending disposal. The petitioner had retired from service on attaining the age of superannuation on 31.12.2021.

3. It is not understood as to how a penalty prescribed under Rule 7 of the said Rule of 1964 is permissible to be imposed before a conclusion of the proceedings initiated under Rule 9 thereof. The order dated 04.04.2013 (Anexure-10) to the extent of imposing a penalty before completion of department proceedings on the face of it is unsustainable.

4. However, Mr. B. Talukdar, learned counsel for the respondents, has produced an order dated 12.09.2022 issued by the Director of Elementary Education, Assam and has contended that the orders, impugned in the present writ petition, dated 04.04.2013 and 08.10.2021, inflicting the penalty of withholding of two annual increments with cumulative effect, was withdrawn.

5. In view of the issuance of the order dated 12.09.2022, the orders impugned in the present proceeding, i.e. order dated 04.04.2013 and order dated 08.10.2021 stands quashed. As a result, the petitioner is entitled to the two withheld annual increments and the same is required to be restored, which should be done forthwith. On restoration of the said two withheld annual increments, the salary of the petitioner

would now require to be recalculated and the arrears so due should be released to the petitioner. Accordingly, in view of the increase in the salary of the petitioner on account of restoration of the two withheld increments, recalculation of his pension and pensionary benefits is called for, which exercise should also be carried out forthwith. The exercises required to be carried out be so carried out by the respondent Nos. 1, 2, 3 and 4 and the arrears of salary as well as that of the pension and the pensionary benefits be released to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

6. The petitioner shall submit a certified copy of this order along with a representation before the respondent authorities for doing the needful, within a period of seven days from today.

7. With the above direction, the writ petition stands disposed of.

8. The order dated 22.09.2022 produced by Mr. Talukdar, learned counsel for the respondent, is kept on record and marked as 'X'.

JUDGE

Comparing Assistant