

GAHC010209112016



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

Case No. : WP(C)/7194/2016

MINAKSHI BHATTACHARJEE SEN
W/O. SRI SUBHASH SEN, R/O. PALLYSHRI, TINSUKIA, P.O. and P.S.
TINSUKIA, DIST. TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPTT., SACHIVALAYA, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

EDUCATIONSECONDARY DEPTT.
SACHIVALAYA
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-19.

4:THE INSPECTOR OF SCHOOLS
TINSUKIA DIST. CIRCLE

TINSUKIA
DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR.A BORGOHAIN

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/02/2023

Heard Mr. S K Chakma, learned counsel appearing on behalf of Mr. D Ghosh, learned counsel for the petitioner and Mr. U Sarma, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 4.

Petitioner is a Post Graduate Teacher of Economics and serving in Tinsukia Bengali Girls' Higher Secondary School, Tinsukia, a provincialised Secondary School of the State.

Since the performance of the students in the Higher Secondary Final Examination in the subject of Economics of said Tinsukia Bengali Girls' Higher Secondary School for the years 2015 and 2016 was very poor, the Inspector of Schools, Tinsukia District Circle, Tinsukia on 14.10.2016 issued a show-cause notice to the petitioner stating that as the performance of the students in the Higher Secondary Final Examination for the years 2015 and 2016 being dis-satisfactory which had an overall impact on the result of the Higher Secondary Examination in the said school, she was charged with the negligence in her duty that is not conducive to academic aspect of the school and accordingly, directed her to submit her written statement within 3 (three) days from the date of receipt of the said show-cause notice dated 14.10.2016.

The said show-cause notice was served on the petitioner on 15.10.2016 and she on 18.10.2016 submitted her reply before the Inspector of Schools, Tinsukia District Circle, Tinsukia.

Being not satisfied with her reply, the Inspector of Schools, Tinsukia by its order under Memo No. IS/TDC/SC/107/13/7299-303 dated 27.10.2016 withheld the next two annual increments of the petitioner until her good performance is reflected in the result of the students in the Higher Secondary Final Examination in the subject of Economics in Tinsukia Girls' Higher Secondary School. Being aggrieved with said imposition of penalty of withholding 2 (two) annual increments of the petitioner, she has filed this writ petition on 23.11.2016.

The Court after considering the matter on 28.11.2016 while issuing notice to the respondent authorities stayed the impugned order of punishment dated 27.10.2016 issued by the Inspector of Schools, Tinsukia, which is still in force.

The Inspector of Schools, Tinsukia District Circle, Tinsukia stated that said show cause notice dated 14.10.2016 as well as the impugned order dated 27.10.2016 imposing penalty upon the petitioner (Annexure-E to this writ petition), noted above, had been issued following the provisions of the Assam Services (Discipline & Appeal) Rules 1964.

Rule 8 of the Assam Services (Discipline & Appeal) Rules 1964 relates to Disciplinary Authority which reads as follows:-

Rule 8. Disciplinary Authority –

- (1) The Governor may impose any one or more of the penalties specified in Rule 7 on any Government servant.*
- (2) Without prejudice to the provision of Sub-Rule (1) but subject to the provisions of Sub-Rule (3) any one or more of the penalties specified in Rule 7 may be imposed on member of a State Service by the Appointing Authority or by any other authority empowered in this behalf by a general or special order of the Governor.*
- (3) Notwithstanding anything contained in this Rule no penalty specified in clauses (iv) to (vii) of Rule 7 shall be imposed by an authority lower than the Appointing Authority.*

Rule 2(b)(i) of the Assam Secondary Education (Provincialised) Service Rules, 2003 that was in force during the relevant time in issuance of the impugned order dated 27.10.2016 provides that the Director of Secondary Education Assam is the Appointing Authority of a Post Graduate Teacher, whereas Rule 2(b)(ii) of said 2003 Rules provides that the Inspector of Schools is the appointing authority of Graduate Teacher/under-Graduate Teacher.

In the case in hand, the Inspector of Schools, Tinsukia District Circle, Tinsukia has issued the show cause notice to the petitioner and also imposed impugned penalty by order dated 27.10.2016 though it has no such authority to be a disciplinary authority of the petitioner, who is a Post Graduate Teacher of Economics in Tinsukia Bengali Girls' Higher Secondary School, Tinsukia as provided under Rule 2(b)(i) of said 2003 Rules.

Since the Inspector of Schools, Tinsukia District Circle, Tinsukia have no such jurisdiction to be the disciplinary authority of the petitioner, who is a Post Graduate Teacher to deduct her annual increment, the impugned order under Memo No. IS/TDC/SC/107/13/7299-303 dated 27.10.2016 being not sustainable in law is hereby set aside and quashed.

With the above observation and direction, this writ petition stands disposed of.

The interim order passed earlier by the Court on 28.11.2016 stands merged with this order.

JUDGE

Comparing Assistant