

GAHC010247542022



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

Case No. : WP(C)/7922/2022

ABDUL JALIL MAZUMDER
S/O- LT. TAYOB ALI MAZUMDER, VILL. AND P.O. RANGAUTI PART-I, P.S.
AND DIST.- HAILAKANDI, ASSAM, PIN- 788151

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO GOVT. OF ASSAM, EDUCATION DEPTT.
(ELEMENTARY), DISPUR, ASSAM, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
ASSAM
GHY-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN- 788151

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM
PIN- 78815

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, ELEM. EDU

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

ORDER

06.01.2023

Heard Mr. S B Laskar, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Elementary Education Department, Assam for the respondent Nos. 1 to 4.

The petitioner is the senior most Assistant Teacher of 231 Hinglairpar Lower Primary School, a provincialised Lower Primary School of the State under the Hailakandi Education Block of District-Hailakandi and in absence of the regular Headmaster of the said L.P. School, he took over the charge of Headmaster of the said school.

By an order dated 24.03.2022, the Block Elementary Education Officer (BEEO), Hailakandi relieved the petitioner from the charge of Member Secretary of the School Managing Committee of the said school, directing him to hand over the charge to one Md. Maklisur Rahman Mazumdar, an Assistant Teacher of the said school.

Later, the District Elementary Education Officer (DEEO), Hailakandi by an order dated 07.06.2022 directed the petitioner to hand over the charge of Headmaster cum Member Secretary of the School Managing Committee of the said school to the other teacher, namely, Md. Maklisur Rahman Mazumdar, an Assistant Teacher with immediate effect and to report compliance.

The DEEO, Hailakandi by an order under No. DEH-7/pt/Sus/2021-22/ 1071-77 dated 02.07.2022 placed the petitioner under suspension for the reasons specified in the said order pending drawal of departmental proceeding with immediate effect, allowing the petitioner to draw 50% of his subsistence allowances as per Rules.

The petitioner on 30.08.2022 submitted a representation before the District Elementary Education Officer, Hailakandi to reinstate him in service and to recall/set

aside the said suspension order dated 02.07.2022.

As the respondent authorities did not consider the case of the petitioner, he has preferred this writ petition.

The Court on 09.12.2022 and 21.12.2022 directed the respondent authorities in the Elementary Education Department to place the relevant information as to whether the petitioner, after placing him under suspension on 02.07.2022, has been served with any show-cause notice by the DEEO, Hailakandi or not and if so, as to when.

During the deliberation of the matter, Mr. Bora, learned Standing counsel, Elementary Education Department, placed the relevant written communications of the Director of Elementary Education, Assam dated 20.12.2022, 03.01.2023 and 05.01.2023 clarifying that inspite of seeking relevant written instructions by the said Director, the DEEO, Hailakandi did not respond and furnish any report as on date and as such, the Director of Elementary Education, Assam directed the DEEO, Hailakandi to reinstate the petitioner in his service immediately pending drawal of departmental proceeding and to submit action taken report.

Rule 6 of the Assam Services (Discipline and Appeal) Rules, 1964, a statutory Rules under Article 309 of the Constitution of India relates to the disciplinary and appeal rules of a government employee of the State. The Personnel Department of the State have notified the Manual of Departmental Proceedings to aid such disciplinary and appeal proceedings. Chapter II of the said Manual relates to 'Suspension' – 'By whom and when a Government Servant may be suspended'. Rule 6(1)2.1.8 of said Chapter-II, Suspension of the Manual of the Departmental Proceedings, reads as follows-

“2.1.8. The following principles and procedure with regard to suspension need strict compliance-

- (i) Suspension should be resorted to only in cases where a major punishment is likely to be imposed if the charges are proved;
- (ii) Charges and the statement of allegations should be served within three months from the date of suspension failing which the Government Servant

concerned should be reinstated; and

- (iii) in cases where it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personnel Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personnel Department could advise whether any further extension of the period of suspension should be permitted or not.

Where the services of a Government servant are lent to the Central Government, any other State Government or to local or other Authority, the Borrowing Authority will have the powers of the Appointing Authority for the purpose of placing the officer under suspension and of the Disciplinary Authority for the purpose of initiating a disciplinary proceeding against him subject to the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

(O.M. No. ABP. 284/79/1, dated 5th September, 1979)"

Further, the Hon'ble Apex Court in the case of *Ajay Kumar Choudhary -Vs- Union of India* reported in (2015) 7 SCC 291 have held that –

“The currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge-sheet is served a reasoned order must be passed for the extension of the suspension.”

The DEEO, Hailakandi failed to place any relevant information before the Court regarding serving show-cause notice to the petitioner after placing the petitioner under suspension by its order dated 02.07.2022 and the said authority also failed to show as to when it reviewed the matter of suspension of the petitioner as required under the provisions of the Assam Services (Discipline & Appeal) Rules, 1964.

Considering the entire aspect of the matter and the decision of the Hon'ble Apex Court in the case of *Ajay Kumar Choudhary* (Supra) as well as the provisions of Rule 6(1)2.1.8. of the Chapter-II, 'Suspension' of the Manual of Departmental Proceedings, Assam, noted above, the impugned suspension order of the petitioner issued by the DEEO, Hailakandi under No. DEH-7/pt/ Sus/2021-22/1071-77 dated 02.07.2022 is set aside and quashed.

In view of the above, the DEEO, Hailakandi shall reinstate the petitioner to the post of Assistant Teacher of 231 Hinglairpar Lower Primary School, District-Hailakandi forthwith.

Needless to say, since the DEEO, Hailakandi in terms of the communications of the Director of Elementary Education, Assam dated 20.12.2022, 03.01.2023 and 05.01.2023 did not respond, as placed before the Court today, it is up to the authority concerned to take necessary action against the erring personnel, if so advised and if any action is taken it should be in accordance with law.

With the above observation and direction, this writ petition stands disposed of. Copy of the communications of the Director of Elementary Education, Assam placed before the Court today by Mr. Bora, learned Standing counsel, Elementary Education Department being communications dated 20.12.2022, 03.01.2023 and 05.01.2023 be kept as part of the record.

JUDGE

Comparing Assistant