

GAHC010004262011



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

Case No. : WP(C)/1333/2011

HARA KUMAR HAZARIKA
SON OF SRI BIRMANGAL HAZARIKA, HAFLONG CIVIL HOSPITAL
CAMPUS HAFLONG, DIMA HASAO DIST.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER AND SECY. DEPARTMENT OF PHE, DISPUR,
ASASM

2:THE DIMA HASAO AUTONOMOUS COUNCIL

REP. BY PRINCIPAL SECRETARYT
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG

3:THE CHIEF ENGINEER
PHE
ASSAM HENGERABARI
GUWAHATI-36

4:ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-28

5:ADDL. CHIEF ENGINEERPHE

DIMA HASAO DISTRICT
HAFLONG

6:EXECUTIVE ENGINEER
PHE
DIMA HASAO DISTRICT
HAFLONG

7:ASSTT. EXECUTIVE ENGINEERPHE

HAFLONG URBAN SUB-DIVISION
HAFLONG

8:SRI MAHENDRA BATHARI

S/O LATE NANDALAL BATHARI
R/O VILL. SENGYA SAMBUDHAN RAZI
P.O. AND P.S. HAFLONG
DIMA HASAO

9:SRI DHIBASHI NAIDING

D/O
LATE PRABHAT JARAMBUSA
R/O
VILL.DIBARAI
P.O. AND P.S. HAFLONG
DIMA HASAO

10:SRI V L MOUNA PARATE

S/O LATE THANZAU PARATE
VILL. MUOLHOI P.O. AND P.S. HAFLONG
DIMA HASAO

11:SRI LALROSIEK
LDA
S/O SRI NEITINKHUP HMAR VILL. LEIRI P.O. AND P.S. MAHUR DIST. DIMA
HASAO

12:SRI AJEN HAGJER
SA
S/O SRI HENO HAGIER VILL. DILIMPUR P.O. MANDERDISA DIST. DIMA
HASAO

13:SRI SAIPALDAO THAOSEN
SA
SON OF LATE DUILAL THAOSEN VILL. KUNGKRUARI
THAIJUARI P.O. AND P.S. DIYUNG Mukh DIST. DIMA HASAO

14:SRI ANIL HOJAI
SA
SON OF SRI MOHAN HOJAI VILL. PHRABDIS
P.O. DIYUNGBRA DIST. DIMA HASAO

15:SRI RAJIB UDDIN
SA
S/O SRI MAKHAN UDDIN
BEHIND HAFLONG CO. OP. SOCIETY P.O. AND P.S. HAFLONG DIST. DIMA
HASAO

16:SRI KAMLESWAR NATH
CHOWKIDAR
S/O SRI LOHIT NATH VILL. SENG SANGBUDHAN RAZI P.O. AND P.S.
HAFLONG
DIST. DIMA HASAO

17:SRI RAJU DUTTA
CHOWKIDAR
S/O LATE PANNALAL DUTTA
VILL BOILDHUR P.O. AND P.S. HAFLONG DIST. DIMA HASAO

18:SRI RAHUL ROY CHOUDHURY
JUNIOR ASSISTANT
OFFICE OF THE EXECUTIVE ENGINEER
HAFLONG
DIMA HASA

Advocate for the Petitioner : MR.S UPADHAY

Advocate for the Respondent : SC, P H E

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 12/01/2024

Heard Mr. N.N. Upadhyay, learned counsel for the writ petitioner. Also heard Mr. R.M. Das, learned Standing Counsel, Dima Hasao Autonomous Council, appearing for the respondent nos. 2, 5 & 7, Ms. N. Kalita, learned Standing Counsel, PHE Department, Assam, appearing for the respondent nos. 1 & 3 and Mr. D. Rabha, learned counsel is present on behalf of the respondent no. 4. The remain respondents have not appeared.

The facts of this case, in a nutshell, are that the authorities in the Dima Hasao Autonomous Council (erstwhile N.C. Hills Autonomous Council), Haflong had published an advertisement notice on 13/02/2004 inviting application for filling up various posts including the posts of Driver. Pursuant to the said advertisement notice, the writ petitioner herein, had applied and participated in the selection process, whereafter, he had emerged as a successful candidate. Consequently, the Principal Secretary of the Council i.e. the respondent no. 2 had issued appointment order dated 04/04/2007 appointing the petitioner in the post of Driver. The aforesaid order was thereafter followed up by the order dated 20/04/2007 issued by the Executive Engineer (PHE) Haflong Division, Haflong i.e. the respondent no. 6 wherein, it was mentioned that subject to completion of Police verification and approval of the SIU, the petitioner stands appointed as Driver in the pay scale of Rs. 2650 – 40- 2770- 50-3340-38-68-3490-90-4480-120-5200/- per month plus other allowances, as admissible under the Rules.

According to the petitioner, he had joined in the post of Driver on 20/04/2007 and had continued to serve till 23/02/2011. However, the petitioner has not been paid him salary and allowances for the services rendered by him during the aforesaid period. On the contrary, the authorities have diverted the post held by the petitioner and filled up the same by appointing the private respondent no. 18. Hence, this writ petition.

As per the stand taken by the respondent no. 6 in the counter affidavit, the petitioner had worked as Driver during the period from 21/05/2007 to 31/01/2009 and thereafter, he did not report for duty. Mr. Das, learned Standing Counsel, Dima Hasao Autonomous Council submits that the salary of the petitioner could not be paid for the relevant period due to non-receipt of approval from the SIU. The learned Standing Counsel has, however, fairly submitted that the petitioner would be entitled to receive his salary for the period during which he had served.

After going through the rejoinder affidavit filed by the writ petitioner, I find that there is no specific denial of the assertion made in the affidavit filed by the respondent no. 6 that the petitioner did not report for duty, as a result of which, his post was filled up by appointing the private respondent. If that be so, the reliefs prayed for in this writ petition, save and except issuance of a direction for payment of arrear salary and allowances as admissible under the Rule for the period during which the petitioner had rendered his services, cannot be granted by this Court in the facts and circumstances of the present case.

It is also to be noted herein that there is no controversy about the fact that pursuant to the appointment order dated 04/04/2007, the petitioner had jointed in the post of Driver and had discharged his duties during the period from 21/05/2007 to 31/01/2009. Therefore, the mere fact that

the SIU approval was awaited by the Council cannot, in the opinion of this Court, be a valid ground for the respondents to deny payment of salary to the petitioner. As a matter of fact, compelling the petitioner to work without paying his salary and allowances was not only illegal but the same had evidently resulted in hardship being faced by the petitioner and his family members, for which the petitioner is liable to be suitably compensated.

Situated thus, this writ petition stands disposed of with a direction upon the respondent nos. 2, 3 & 6 to take immediate steps for release of admitted salary payable to the petitioner under the Rules for the period from 21/05/2007 to 31/01/2009 along with interest @ 6% per annum, to be calculated with effect from 31/01/2009 till the date of release of the same.

The aforesaid exercise be carried out and completed within a period of 3 (three) months from today, failing which, the interest payable to the petitioner will be calculated of the enhanced rate of 12% per annum with effect from 31/01/2009 till release of the amount.

In so far as the other reliefs prayed for in the writ petition, the same are hereby declined.

With the above observations, this writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant