

GAHC010007862024



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

Case No. : WP(C)/179/2024

JYOTSNA RANI BARMAN
W/O- DHRUBA KUMAR TALUKDAR, R/O- VILL- BARPETA ROAD, P.O. AND
P.S. BARPETA ROAD, DISTRICT- BARPETA, ASSAM, PIN- 781315

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, SCHOOL
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI-19

4:THE DISTRICT COMMISSIONER
BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

22.01.2024

Heard Mr. I.H. Saikia, learned counsel for the petitioner. Also heard Mr. N.J. Khatoniar, learned Standing Counsel, School Education Department.

This writ petition is filed by the petitioner Ms. Jyotsna Rani Barman who is aggrieved by the impugned order dated 03.01.2024 issued by the Secretary to the Government of Assam, Department of School Education, whereby the petitioner who was posted as a District Elementary Education Officer (DEEO), BDC, Bongaigaon and given the additional charge as an Inspector of Schools, Bongaigaon. She filed an application on 19.12.2023 before the authorities seeking leave along with permission for Station Leave from 21.12.2023 to 28.12.2023 to accompany her old and ailing mother. The prayer for leave was neither rejected nor was subsequently granted. Nevertheless, the petitioner remained on leave for the said period. Thereafter, the petitioner resumed her service on 29.12.2023. However, by the impugned order dated 03.01.2024 the petitioner was placed under suspension. It is submitted that the petitioner's substantive posting is DEEO, BDC, Bongaigaon and she was also given

additional charge of Inspector of Schools, BDC, Bongaigaon. The impugned order dated 03.01.2024, however, does not indicate the reasons as to why she is suspended from the post of DEEO, Bongaigaon, the impugned order only reflects the petitioner's absence from her Office of Inspector of School, BDC, Bongaigaon. It is further submitted that on 09.01.2024 an appeal against the suspension order was preferred by the petitioner before the Secretary to the Government of Assam, Department of School Education. The said appeal is stated to be pending.

This Court on 12.01.2024 permitted the respondent authorities to obtain required instructions in the matter. Today when the matter was called up, Mr. N.J. Khatoniar, learned Standing Counsel, Department of School Education submits that instructions are awaited and he prays for further time.

Having heard the learned counsel for the parties and having perused the pleadings on record, it is seen that there is an appeal filed by the petitioner on 09.01.2024 which is stated to be presently pending before the Secretary to the Government of Assam, Department of School Education. Learned Standing Counsel, Department of School Education also does not have any instructions from the Department as to the status of the appeal.

Under Rule 14 of the , Assam Services (Discipline and Appeal) Rules, 1964

there is a provision of an appeal to be preferred before the next Higher Authority or the Authority who has passed the suspension order and who is immediately subordinate to the said Authority. It is submitted at the bar that Highest Authority in the Department is the Secretary to the Department of School Education.

Considering that the petitioner has been placed under suspension and the statutory appeal has been preferred as provided for under the Assam Services (Discipline and Appeal) Rules, 1964, more particularly, (Rules 14) this Court is of the considered view that this writ petition need not be kept pending any further. This Court is of the view that there will be no bar for the Secretary to the Government of Assam, Department of School Education to consider and dispose of the appeal applying the doctrine of necessity as there is presently no Higher Authority above the Secretary to the Government of Assam in the Department of School Education. The Secretary to the Government of Assam, Department of School Education will dispose of the appeal within a period of 2 (two) weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner and pass a speaking order and thereafter serve a copy thereof to the writ petitioner. If any details are found to be necessary while deciding the appeal, the Secretary to the Government of Assam, Department of School Education will call for from the petitioner or requisition from any other

subordinate Department Authority as may be found necessary.

As it is also submitted by the learned counsel for the petitioner that vide corrigendum dated 10.01.2024 certain corrections were made in the impugned suspension order dated 03.01.2024 issued in Notification No.E-429684/3 and a copy thereof could be procured only after filing of the writ petition although this corrigendum has been issued pursuant to filing of the appeal by the petitioner, it is directed that the same shall not be considered to be a bar by the authorities concerned to hear the entire matter and pass a speaking order as directed within the time frame. Accordingly, the writ petition stands disposed of in terms of the above. It is needless to say that the petitioner is given liberty to approach this Court, if her grievances are found to have not been redressed by the authority concerned even after disposal of the statutory appeal.

JUDGE

Comparing Assistant