

GAHC010015422014



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

Case No. : WP(C)/4911/2014

SANTA RAM SALOI
S/O LT. SATYA RAM SALOI, R/O GOGOK, P.S. RANGIA, DIST- KAMRUP,
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPTT., DISPUR, GHY-6

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

3:THE PRINCIPAL
COTTON COLLEGE
GHY-1

4:THE VICE-CHANCELLOR
COTTON UNIVERSITY
GUWAHATI-1

5:THE REGISTRAR
COTTON UNIVERSITY
GUWAHATI-1

Advocate for the Petitioner : MRP BHARDWAJ

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 30.07.2024

- 1.** Heard Mr. P. Bhardwaj, learned counsel for the petitioner.
- 2.** Also heard Mr. S. Bhuyan, learned Standing counsel, Higher Education Department, for respondent Nos. 1 & 2 and Mr. P.D. Nair, learned Standing counsel, Cotton University, Guwahati, for respondent Nos. 4 & 5.
- 3.** The petitioner was initially appointed as a Casual Employee by an order dated 02.07.1983 issued by the Principal, Cotton College, Guwahati and the petitioner was posted in the Cotton Girls Hostel No. 1. Thereafter, by an order dated 01.02.1989 issued by the Principal, Cotton College, Guwahati, Grade-IV employees were made permanent w.e.f. 12.03.1982 and 27.05.1983. The name of the petitioner appears in the category of permanent appointment made w.e.f. 27.05.1983 at Serial No. 11 therein. While the petitioner was serving as such, the petitioner fell ill due to Jaundice from 05.01.2013 to 11.09.2013. To that effect, the Senior Medical and Health Officer, Rangiya CHC, FRU issued a certificate stating that the petitioner was under his treatment from 05.01.2013 to 11.09.2013. After completing treatment, the petitioner approached the Principal, Cotton College, Guwahati for joining in his service on 12.09.2013. However, It is the case of the petitioner that the Principal, Cotton College, Guwahati did not permit the petitioner to join back in his service. Being aggrieved, the present writ petition was filed in the year, 2014.
- 4.** Mr. P. Bhardwaj, learned counsel appearing for the petitioner submits that the petitioner, after completing treatment w.e.f. 05.01.2013 to 11.09.2013,

proceeded to join in his service on 12.09.2013, however, the Principal, Cotton College, Guwahati did not permit the petitioner to join back without citing any reasons, and therefore, being aggrieved, the petitioner has filed the present writ petition in the year 2014 with a prayer to permit him to join in his service. However, during the intervening period, the petitioner, on attaining the age of superannuation, retired in the early part of 2024. He also submits that there is no order of termination of the petitioner till date nor any order imposing any penalty upon the petitioner has been passed. He, therefore, submits that the petitioner may be directed to be reinstated back into service and to pay his arrear salary along with all other pensionary benefits.

5. Mr. P.D. Nair, learned Standing counsel, Cotton College, Guwahati, on the basis of affidavit filed, submits that the petitioner is a habitual absentee and prior to the year 2013, the petitioner has been warned on several occasions and the petitioner has also given undertakings that he would not repeat such acts in future. The learned Standing counsel has drawn the attention of this Court to the undertakings given by the petitioner on 26.02.2013 and 02.08.2013 before the College Authorities, which is annexed to the counter affidavit filed by the respondent No. 3 as Annexure-18 and Annexure-24 respectively. He submits that the petitioner despite giving undertakings did not join back to his service and he continued to remain as an absentee till the date of his retirement. He also submits that as the petitioner did not render any service from January, 2013, the petitioner is not entitled to any arrear salary and cannot be reinstated back into service, and therefore, the present writ petition should be dismissed.

6. This Court, while recording the submission of the learned counsel for the petitioner that no termination order has been passed terminating the petitioner from service nor any order imposing any penalty on the petitioner has been

passed, made a pointed question to the learned Standing counsel, Cotton University, Guwahati with regard to the correctness of the submission made by the petitioner's counsel.

Mr. P.D. Nair, learned Standing counsel, Cotton University, Guwahati in his usual fairness submits that there is no record of issuing any order of termination against the petitioner nor any order imposing any penalty upon the petitioner.

7. This Court, on perusal of the materials available on record, is of the considered opinion that the petitioner, despite giving several undertakings that he would not repeat the habit of being an absentee in the college, continued to absent himself from service. Further, it appears that when the petitioner was taking his treatment for Jaundice w.e.f. 05.01.2013 to 11.09.2013, the petitioner did not make any application praying for grant of leave for the said period. It is also an admitted fact that the petitioner was not serving in the college since January, 2013 till the date of his retirement.

In such circumstances, this Court is unable to grant any relief to the petitioner by giving a direction to reinstate him back into service and to grant him the arrear salary with regard to the period of absence.

8. However, this Court has also taken into consideration the submission of Mr. P.D. Nair, learned Standing counsel, Cotton University, Guwahati that no order of termination nor any order imposing any penalty upon the petitioner has been passed. Therefore, this Court deems it appropriate to hold that in the absence of any termination order, the petitioner should have been deemed to have continued in service till the date of his retirement. However, considering the fact that the petitioner has not given his service to the college from January, 2013 upto the date of his retirement, he shall not be entitled to any back wages or

salary. However, applying the principle of equity, this Court directs that the petitioner shall be entitled to pensionary benefits w.e.f. 27.05.1983, i.e. the date of regularisation upto 04.01.2013. The respondents are, therefore, directed to calculate the pensionary benefits payable to the petitioner and thereafter pay the same to the petitioner within a period of 4 (four) months from the date of receipt of a certified copy of this order.

9. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant