

GAHC010036082022



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

Case No. : WP(C)/1491/2022

SUNIL KUMAR DAS
S/O SRI SACHINDRA CH. DAS, R/O SANTINAGAR, P.O.-KOKRAJHAR, DIST-
KOKRAJHAR, PIN-783370, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
AND AGRICULTURE PRODUCTION COMMISSIONER, ASSAM, GUWAHATI-
781006

2:THE SECRETARY
DEPARTMENT OF AGRICULTURE
BTC
KOKRAJHAR
ASSAM

3:THE DIRECTOR OF AGRICULTURE
ASSAM
KHANAPARA
PIN-781022
ASSAM

4:THE DIRECTOR OF AGRICULTURE
BTC
KOKRAJHAR
ASSAM

5:THE DISTRICT AGRICULTURAL OFFICER
KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY, MR. M SARMA

Advocate for the Respondent : GA, ASSAM, SC. AGRI. DEPTT.,SC, BTC,MR P BHARDWAJ

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER**

04.10.2024

Heard Mr. M. Sarma, learned counsel for the petitioner; Ms. G. Bora, learned counsel for the respondent Nos. 1 & 3; and Mr. P. Hazarika, learned counsel appearing on behalf of Mr. S.R. Rabha, learned Standing Counsel, BTC for the respondent No. 2.

2. This writ petition, under Article 226 of the Constitution of India, is directed against the Speaking Order dated 16.07.2021, passed by the District Agricultural Officer, Kokrajhar.

3. It is to be noted here that vide Speaking Order dated 16.07.2021, the District Agricultural Officer, Kokrajhar has observed that although the respondent No. 5 shall consider the petitioner to be on duty during the period of suspension, the subsistence allowances received by the petitioner cannot be adjusted with his regular pay and benefits, including increments if any.

4. The background facts of the case is adumbrated herein below :-

The petitioner was appointed as Peon to the office of Assistant Horticulturist, vide order dated 14.03.1978. During the course of his service, he was arrested in connection with Case No. 15/1985, by the Kokrajhar Police, which subsequently led to the petitioner being suspended from the date of his arrest w.e.f. 25.02.1985. However, vide order dated 30.04.1998, the learned Chief Judicial Magistrate, Kokrajhar has acquitted the petitioner in G.R. Case No. 77/1985,

arising out of P.S. Case No. 15/7985.

It also appears that there was no departmental enquiry initiated against the petitioner, in connection with his suspension. Thereafter, vide order dated 03.01.2017, issued by the District Agricultural Officer, Kokrajhar, the petitioner was reinstated in his service and he was superannuated in his service w.e.f. 31.01.2017.

Since the petitioner was not paid his arrear salaries, allowances, etc. for the period of 25.02.1985 to 30.04.1998, he had filed a representation before the respondent authorities. Thereafter, the respondent No. 5, vide order dated 16.07.2021, concluded that the said period of suspension may be treated as on duty, however, the subsistence allowances will be limited to the allowances of the petitioner, as the petitioner has already been drawing during the period of suspension. As such, the said order did not take into account the period of suspension of the petitioner as on duty.

5. Being aggrieved with the said Speaking Order dated 16.07.2021, passed by the District Agricultural Officer, Kokrajhar, the writ petition has been filed.

6. Mr. Sarma, learned counsel for the petitioner has referred to a decision of Hon'ble Supreme Court in the case of **Brahma Chandra Gupta vs. Union of India**, reported in **(1984) 2 SCC 433** and another decision of this court in the case of **Shri Krishna Mohan Dutta vs. The State of Tripura and Others**, reported in **(1988) 2 GLR 332** to contend that in the event a delinquent is placed under suspension on the basis of a criminal proceeding and when the criminal court acquits such delinquent, the delinquent is entitled to be

reinstated with full salary for the period of suspension .

7. Having gone through the aforesaid decisions, it appears that if any employee is put under suspension because of criminal proceeding and no separate departmental proceeding has been drawn up and thereafter, he is reinstated on being acquitted by the criminal court, he is entitled to get full salary for the period of suspension even if the acquittal is on the basis of benefit of doubt.

8. That being the position, this court is of the view that this writ petition in the interest of justice can be disposed of by directing the respondent authorities, to dispose of the representation, if any, filed by the petitioner, in the light of the aforesaid two decisions and in accordance with law.

9. It is to be mentioned here that the said exercise shall be completed within a period of 3 (three) months from the date of receipt of the representation filed by the petitioner.

10. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant