

GAHC010072202019



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

Case No. : Cont.Cas(C)/193/2019

MRIDUSMITA PATHAK
D/O SRI GOPAL PATHAK, R/O VILL.-PATIAPAM KAMPUR, P.O- PATIPAM, P.S-
JAMUNAMUKH, DIST.-NAGAON, ASSAM

VERSUS

ROHINI KUMAR BORKOTOKY
THEJOINT DIRECTOR OF HEALTH SERVICES, MORIGAON, P.O-
MORIGAON, PIN-782105, DIST.-MORIGAON, ASSAM

Advocate for the Petitioner : MR B CHANDA

Advocate for the Respondent : MR. S S ROY

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

02.02.2024

1. Heard Mr. B Chanda, learned counsel for the petitioner. Also heard Mr. A Chaliha, learned counsel for the respondents.
2. The present contempt petition is filed assailing non-compliance, wilful and deliberate violation of an order dated 19.12.2018 passed by this Court in WP(C)

3718/2018. The following direction was issued under the aforesaid order:

“13. In view of the above, the present petition is disposed of with the direction to the respondent authorities to release the salary to the petitioner for the period from May, 2017 for the service rendered by her after making necessary verification within a period of 2(two) months from today. In absence of any order recalling the regularisation order dated 27.12.2013 nor any order annulling the said order dated 27.12.2013, the petitioner would be entitled to continue in her service and she cannot be prevented from joining her duties and accordingly, may be allowed to continue in her service so long as the aforesaid regularization order subsists.”

3. Pursuant to the aforesaid order, the Director of Health Services, Assam, Hengerabari, Guwahati passed a speaking order dated 21.12.2019 whereby the claim of the petitioner for salary and service benefits have been negated. The precise finding as arrived in the aforesaid speaking order is quoted hereinbelow:

“After going through all facts and circumstances above, it was found in that the appointment of Smt. Mridusmita Pathak under Jt. D.H.S. Morigaon was totally fake and letter for regularisation of her service from the Office of the DHS, Assam is also fake. Hence, question of release of salary as well as cancellation of regularization order does not arise.

Therefore, she has been removed from services vide this Directorate letter No. HSE/Verification/Gr-IV/80/Pt-I/2017/7125, dated 17.10.2019 and Jt. DHS Morigaon is directed to lodge one FIR against her for fraudulent activities at the local police station.”

4. In view of the aforesaid development, this court is of the opinion that the order dated 19.12.2018 passed in WP(C) 3718/2018 has duly been complied with.
5. However, Mr. Chanda relying on paragraph 10 of the order dated 19.12.2018 argues that the respondent is not within its jurisdiction to deny such right of the

petitioner in view of the determination made in paragraph 10 of the judgment.

6. At paragraph No. 10 of the judgment dated 19.12.2018, this court has expressed a view that appointment and regularisation of service of the petitioner may not have been made without following procedure, however, till such order is superseded by an order of competent authority, the petitioner cannot be denied benefits accruing out of aforesaid appointment order, as nothing prevented the higher authorities to nullify the said order. The impugned communication also finds a reflection that the petitioner has been removed from service by an order dated 17.10.2019 issued by the Director.
7. In view of such termination of service, this court in contempt jurisdiction needs not to go into the legality and validity either of the speaking order dated 21.12.2019 or the order of termination dated 17.10.2019. Accordingly, the contempt petition stands closed. Needless to say that the petitioner shall be at liberty to assail the order dated 21.12.2019 passed by the Director of Health Services, Assam as well as the said Director's order dated 17.10.2019, if so advised.
8. The speaking order dated 21.12.2019 is kept on record and marked as 'X'.

JUDGE

Comparing Assistant