

GAHC010074852024



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

Case No. : WA/161/2024

THE UNION OF INDIA AND ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE, NEW DELHI.

2: THE DIRECTOR
LOKOPRIYA GOPINATH BORDOLOI REGIONAL INSTITUTE OF MENTAL
HEALTH, TEZPUR, PIN- 784001
DISTRICT- SONITPUR, ASSAM.

3: THE CHIEF ADMINISTRATIVE OFFICER
LOKOPRIYA GOPINATH BORDOLOI REGIONAL INSTITUTE OF MENTAL
HEALTH, TEZPUR, PIN- 784001

VERSUS

BIYOLA BARUAH
WIFE OF SRI MAHESWAR SAIKIA, RESIDENT OF VILLAGE UDAMARI,
POST OFFICE- BALIPARA, P.S.- CHARIDUAR, DISTRICT- SONITPUR, PIN-
784101, ASSAM.

Advocate for the Petitioner : A K DUTTA
Advocate for the Respondent : MR A C BORBORA

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM
ORDER

27.05.2024

(Vijay Bishnoi, CJ)

This writ appeal is filed by the appellants being aggrieved with the order dated 07.03.2024 passed by the learned Single Judge in WP(C) No. 5622/2023, whereby the

learned Single Judge has allowed the writ petition filed by the respondent herein and directed to forthwith release the increments payable to the petitioner/respondent herein.

The respondent/writ petitioner is working as a Staff Nurse in the Lokopriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur. While the respondent was working in the said capacity, disciplinary proceedings were initiated against her levelling the charge of unauthorised absence from duty. During pendency of the said disciplinary proceedings, the respondent's Annual Grade Increment was withheld and, therefore, she filed the writ petition before this Court with a prayer to direct the respondent authorities to release the Annual Grade Increment payable to her. The respondent authorities/appellants herein opposed the writ petition before the learned Single Judge on the ground that since disciplinary proceedings were pending against the respondent, she is not entitled for the benefit of Annual Grade Increment.

The learned Single Judge, having hearing the learned counsel for the parties and after taking into consideration the Office Memorandums referred to by the appellants, has come to the conclusion that the appellants have failed to point out any Office Memorandums or any provision of law which empowers the authority to withhold Annual Increment, which an employee is entitled to get under the law, on the ground of pending of disciplinary proceeding against the said employee.

Learned counsel appearing on behalf of the appellants has argued that the learned Single Judge has erred in holding that the Annual Grade Increment of an employee cannot be withheld on account of pendency of the disciplinary proceedings. It is contended that there are Office Memorandums which clearly stipulate that if an employee is guilty of wilful absence from duty, he/she is not entitled for Annual Grade Increment and the period of absence from duty will be treated as *dies non* for all purposes, viz increment, leave and pension. In support of his submission, learned counsel for the appellants has referred to Office Memorandum dated 22.06.2010,

issued by the Government of India, Ministry of Personnel, P.G. and Pension, Department of Personnel & Training, and other Gazette Notifications.

Having perused the said Office Memorandum and the other Gazette Notifications, we are of the view that neither the Office Memorandum dated 22.06.2010 nor does the Gazette Notification stipulate that an employee is not entitled for Annual Grade Increment on account of pendency of departmental proceedings against him/her. In case the charge of unauthorised absence is proved against an employee, then only the said period may be liable to be treated as *dies non* for all purposes, i.e., increment, leave, pension etc. In the present case, the charges levelled against the respondent have yet not been proved and, therefore, the Annual Grade Increment payable to the respondent cannot be withheld on account of pendency of the disciplinary proceedings which have not been concluded.

In view of the above, we do not find any illegality in the impugned order passed by the learned Single Judge. Hence, no case for interference is made out. Resultantly, the writ appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant