

GAHC010125352023



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

Case No. : WP(C)/3344/2023

LACHIT BORTHAKUR
SON OF LATE KUMUD CH. BORTHAKUR,
RESIDENT OF KUMARANICHINGA,
P.O.- RAJABHETA,
P.S.- DIBRUGARH,
DISTRICT- DIBRUGARH, ASSAM.

VERSUS

DIBRUGARH UNIVERSITY AND ANR
REPRESENTED BY ITS VICE-CHANCELLOR.

2:THE REGISTRAR DIBRUGARH UNIVERSITY DIBRUGARH-4

Advocate for the Petitioner : DR. R SARMAH
Advocate for the Respondent : SC, DIB. UNIVERSITY

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 07.06.2024

Date of Judgment: 07.06.2024

Judgment & order(Oral)

Heard Mr. R. Sarmah, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Rajesh Mazumdar, learned standing counsel, Dibrugarh University, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present writ petition, has presented a challenge to a communication, dated 02.05.2023, by which, he was held by the University authorities to be not eligible for any backwages for the period w.e.f. 01.01.2005 to 02.11.2016.

3. As projected in the writ petition; the petitioner, in pursuance of a Disciplinary Proceeding initiated against him, was imposed with a penalty of dismissal from service. The said order of penalty as imposed upon the petitioner was challenged by him by way of instituting a writ petition being WP(c)2406/2005 before this Court. This Court, upon consideration of the matter, proceeded vide order, dated 09.02.2015, to dispose of the said writ petition along with other analogous matters interfering with the penalty so imposed upon him. Upon interference made by this Court with the said penalty, the matter was remanded back to the disciplinary authority for a fresh consideration in the light of the discussions made in the said writ petition. Thereafter, the University authorities on re-consideration of the matter and after having provided a copy of the inquiry report to the petitioner and on receipt of a representation against the same from the petitioner, proceeded to impose upon the petitioner the penalty of compulsory retirement from his service w.e.f. 31.12.2004 i.e. the date when he was imposed with the penalty of dismissal from service. Thereafter, the petitioner approached this Court by way of instituting a writ petition being WP(c)1130/2017, before this Court, praying for being authorized his salaries for the period w.e.f. 31.12.2004 i.e. the date of imposition of the penalty of dismissal from service till 02.11.2016, i.e. the date on which the modified penalty of compulsory retirement from his service was imposed upon the petitioner in pursuance of the directions passed by this Court

vide order, dated 09.02.2015, in WP(c)2406/2005. This Court, vide order, dated 28.07.2022, proceeded to dispose of the said writ petition being WP(c)1130/2017, requiring the University authorities to cause a verification with regard to the amounts due to the petitioner and if he is found to be eligible to receive any amount so deemed, to release the same within a period of 3(three) months from the date of receipt of the certified copy of the order. It is seen that the University authorities vide order, dated 02.11.2022, proceeded to hold that on examination of the claim, all amounts due to the petitioner, were so released to him and no further amount was due, to be so paid to him.

The petitioner being aggrieved in the matter, again approached this Court by way of instituting writ petition being WP(c)1018/2023, assailing the actions taken in the matter and also raising a question as to whether the modified penalty of compulsory retirement from his service, as imposed upon him vide order, dated 02.11.2016, could have been so imposed upon him with retrospective effect i.e. w.e.f. 31.12.2004. This Court, upon examining the matter, was pleased vide order, dated 01.03.2023, to hold that the penalty of compulsory retirement as imposed upon the petitioner vide order, dated 02.11.2016, could not have been so imposed with retrospective effect and clarified that the order, dated 02.11.2016, would be only prospective in nature. Having arrived at the said conclusion, this Court directed the petitioner to prefer a representation before the competent authority of the University authorities, praying for backwages for the period w.e.f. 01.01.2005 to 02.11.2016 and the University authorities were directed to dispose of the matter.

The petitioner, thereafter, preferred a representation on 06.03.2023, praying

for being authorized his salaries and other allowances for the period, in question.

The University authorities, vide order, dated 02.05.2023, proceeded to reject the said prayer of the petitioner holding that he having not rendered any service to the University from 31.12.2004, he was not entitled to be authorized any backwages for the period w.e.f. 31.12.2004 to 02.11.2016. However, it was provided that he would be deemed to be in service for the said period only for grant of notional continuity for the purpose of calculating his terminal benefits.

4. Mr. Sarmah, learned counsel for the petitioner, has reiterated the facts as narrated hereinabove and has contended that the order of penalty of dismissal from service, dated 31.12.2004, as imposed upon the petitioner, having been interfered with by this Court and the University authorities being directed to examine the matter afresh from the stage of furnishing a copy of the inquiry report to the petitioner; it is contended that such an exercise could have been carried-out by the University authorities only upon the petitioner being deemed to be an employee of the said University with effect from the date he was so imposed with the penalty of dismissal from service i.e. w.e.f. 31.12.2004.

5. It was further contended by Mr. Sarmah, learned counsel, that the penalty of dismissal from service as imposed upon the petitioner by the University authorities having been found by this Court, to have been so arrived at in violation of the principles of natural justice; it has to be deemed that the petitioner, herein, was continuing in his service till the order, dated 02.11.2016,

was so passed by the University authorities imposing upon him the penalty of compulsory retirement from his service which was erroneously so shown to be effective from 31.12.2004 itself.

6. Mr. Sarmah, learned counsel, has further contended that this Court having clarified that the order, dated 02.11.2016, shall only be prospective in nature; the petitioner has to be deemed to be in service during the period w.e.f. 31.12.2004 to 02.11.2016 and accordingly, for the said period, he is entitled to receive his due salaries and accordingly, it is prayed that this Court would be pleased to direct the University authorities to release the backwages of the petitioner for the period w.e.f. 31.12.2004 to 02.11.2016.

7. Mr. Mazumdar, learned standing counsel, Dibrugarh University, on the other hand, by referring to the reasoning as set-out in the impugned communication, dated 02.05.2023, has contended that the petitioner being not in service of the said University w.e.f. 31.12.2004; the University authorities had rightly held that the petitioner for the said period would only be entitled to notional continuity for the purpose of calculating the terminal benefits.

8. It is further contended by Mr. Mazumdar, learned standing counsel, that the petitioner has not brought on record any material to demonstrate that during the period w.e.f. 31.12.2004 to 02.11.2016, he was not involved in any gainful employment.

9. I have heard the learned counsels appearing for the parties and also

perused the materials available on record.

10. The facts as narrated hereinabove not being disputed by the parties to the proceeding, the same is not being again considered.

11. In pursuance of the directions passed by this Court; the representation as submitted by the petitioner on 06.03.2023, was considered by the University authorities and vide the communication, dated 02.05.2023, the same was so rejected. The grounds as assigned by the University authorities in the communication, dated 02.05.2023, for rejecting the backwages as claimed by the petitioner w.e.f. 31.12.2004 to 02.11.2016, would require a consideration by this Court which is being accordingly done.

12. The first reason assigned by the University authorities in the said communication, dated 02.05.2023, is that the petitioner was not eligible for backwages on account of the fact that he was not in the service of the University from 31.12.2004. The said reasoning, in the considered view of this Court, in pursuance of the interference made by this Court vide order, dated 09.02.2015, in WP(c)2406/2005 and the ground on which such interference was made with the penalty order, renders the said reasoning to be not sustainable. Further, the modified penalty as imposed upon the petitioner vide order, dated 02.11.2016, which was so made effective w.e.f. 31.12.2004, having also been held by this Court to be erroneous and the same having been given a prospective effect with effect from the date of issuance of the order i.e. w.e.f. 02.11.2016; the petitioner must be deemed to have been in the service of the

University otherwise it would have not been possible for the respondent authorities to impose a modified penalty on the petitioner, herein.

13. The second ground as assigned by the University authorities in the communication, dated 02.05.2023, is that the order, dated 09.02.2015, passed by this Court in WP(c)2406/2005, having not directed for reinstatement of the petitioner in his service in the University while remanding back the matter for a fresh decision, he is not entitled to the backwages as prayed for, is on the face of it, is perverse in-as-much as this Court while remanding back the matter to the University authorities for a fresh decision in view of the discussions made in the said order, had interfered with the penalty order, dated 31.12.2004, and the only consequence of such interference is that the petitioner automatically stood reinstated in his service. Accordingly, after the order of 31.12.2004, has been interfered with by this Court; the petitioner has to be deemed to be in service. However, it is another issue as to the manner in which he would be deemed to be continuing in his service which aspect would be considered at a later stage by this Court in the present order.

14. The third ground as assigned by the University authorities for rejection of the petitioner's prayer for backwages, is that upon imposition of the penalty of dismissal from service upon the petitioner vide order, dated 31.12.2004; the relationship between the petitioner and the University stood extinguished and after disposal of WP(c)2406/2005; the employer-employee relationship only existed for the purpose of holding a fresh inquiry from the stage of furnishing the inquiry report and for no other purpose. The said reasoning is also perverse in-as-much as without the employer-employee relationship being in existence;

the University authorities were not empowered to proceed to make any consideration in case of the petitioner, herein, with regard to the directions passed by this Court in WP(c)2406/2005. The University authorities having proceeded to implement the directions as passed by this Court in WP(c)2406/2005; it has to be held that the employer-employee relationship which stood terminated on passing of the order, dated 31.12.2004, was again brought into force after this Court had interfered with the said order, dated 31.12.2004, in the proceedings of WP(c)2406/2005.

15. The last ground as assigned in the communication, dated 02.05.2023, to the effect that the petitioner is not entitled to be authorized his backwages on the ground that he had not assigned any ground for consideration of his such prayer, is on the face of it, again perverse in-as-much as there being a direction from this Court for consideration of the backwages due to the petitioner for the period w.e.f. 31.12.2004 to 02.11.2016; the University authorities were required to consider the same by treating in what manner, the said period of the petitioner, could be deemed.

16. Having dealt with the said grounds; it has to be noted that the University authorities had in its communication, dated 02.05.2023, held that the said period for which the petitioner was claiming backwages, would be entitled to be only notionally considered for continuity of service for the purpose of calculating his terminal benefits.

17. The continuity of the petitioner in his service with notional benefits having

been considered by the University authorities; it is to be seen as to in what manner the period, in question, of the petitioner, is now required to be reckoned.

18. The petitioner having been dismissed from his service vide order, dated 31.12.2004, and the said order having been set-aside by this Court but the petitioner not having been exonerated from the allegations levelled against him and for the purpose of a fresh decision that was required to be arrived at not being with regard to the quantum of the penalty imposed upon the petitioner but being so required from the stage of furnishing to the petitioner a copy of the inquiry report; it is to be noted that the petitioner must necessarily be deemed to be in his service w.e.f. 31.12.2004 on setting aside of the said order of penalty as imposed upon the petitioner.

19. The penalty of dismissal of the petitioner from service having been set aside by this Court and the petitioner not having been exonerated from the allegations levelled against him, it has to be held that the petitioner w.e.f. 31.12.2004, is under deemed suspension.

20. Having concluded that the petitioner w.e.f. 31.12.2004, would be under deemed suspension; the petitioner now would be entitled to the subsistence allowance for the period w.e.f. 31.12.2004 to 02.11.2016 and the same would also mean that the petitioner would be entitled to revision of subsistence allowance as mandated by law.

21. Accordingly, in view of the conclusions reached hereinabove; the University authorities having imposed upon the petitioner the penalty of compulsory retirement from his service, on a re-examination of the matter in the light of the discussions as contained in the order, dated 09.02.2015, passed by this Court in WP(c)4206/2005; the period of suspension would be deemed to be maintained as such and the petitioner would now be entitled only to receive the subsistence allowance which would be computed by the University authorities by also accounting for the revisions that would be so applicable and the arrears, as working-out, would now be released to the petitioner, herein.

22. The pay of the petitioner for the period w.e.f. 31.12.2004 to 02.11.2016, shall be notionally fixed for the purpose of calculating his terminal benefits as held by the order, dated 02.05.2023.

23. The petitioner having been entitled to the subsistence allowance along with its revisions; the University authorities, on computation of the same, shall release to the petitioner, the arrears, working-out, within a period of 3(three) months from the date of receipt of a certified copy of this order.

24. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant