

GAHC010176862023



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

Case No. : WP(C)/4678/2023

BIKASH PURKAYASTHA
S/O- LT. BIRENDRA KR. PURKAYASTHA,
R/O- MALUGRAM, NABAPALLY ROAD, HOUSE NO. 7,
P.O.- SILCHAR, P.S.- MALUGRAM OUT POST,
DISTRICT- CACHAR, ASSAM,
PIN- 788002.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
DEPARTMENT OF EDUCATION(SECONDARY),
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:DEPUTY COMMISSIONER
CACHAR
SILCHAR
PIN- 788001.

4:THE INSPECTOR OF SCHOOLS
CDC
SILCHAR
DISTRICT- CACHAR
ASSAM
PIN 788001.

5:SALEH AHMED LASKAR
EX PRINCIPAL (I/C)

BASKANDI NENA MIA HIGHER SECONDARY SCHOOL
BASKANDI
R/O- TURAI MEAH ROAD
NEAR KODOMTOLA MASJID
RONGPUR PART-2
SILCHAR
DISTRICT- CACHAR
PIN- 788109.

6:THE PRINCIPAL (I/C)
BASKANDI NENA MIA HIGHER SECONDARY SCHOOL
BANSKANDI
DIST.- CACHAR
PIN NO. 788101

Advocate for the Petitioner : MRS. P GOSWAMI, MR D K ROY

Advocate for the Respondent : SC, SEC. EDU., GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

29.08.2024

O R D E R

Heard Mrs. P. Goswami, learned counsel for the petitioner. Also heard Ms. P. Das, learned Standing Counsel, Secondary Education Department, Government of Assam, for respondent Nos.1, 2 and 4 and Mr. P. Saikia, learned Government Advocate, Assam, for respondent No.3.

2. The petitioner was initially appointed as an Elective Subject Teacher in Mathematics in the Banskandi N.M.H.S. School, Cachar by an order, dated 23.09.1988, issued by the Director of Secondary Education, Assam. The service of the petitioner was regularized by an order, dated 02.02.2002, issued by the Director of Secondary Education, Assam. While the petitioner was serving as such, there was a deduction in his salary for the month of January, 2023. Accordingly, the petitioner approached the in-Charge Principal, Banskandi N.M.H.S. School by a

representation, dated 13.02.2023. However, it is the case of the petitioner that the said representation was not accepted by the then in-Charge Principal of Banskandi N.M.H.S. School. Therefore, the petitioner sent his representation by speed post which was also returned unserved. Having no option, the petitioner approached the Assistant Commissioner, Public Grievance Cell, Cachar by a representation, dated 16.02.2023, which was forwarded to the Inspector of Schools by a forwarding letter, dated 24.02.2023. However, the petitioner's representation remained unattended and, accordingly, he made another representation before the Deputy Commissioner, Cachar on 23.02.2023. However, all these representations remained unattended and, therefore, the petitioner has approached this Court by way of the present writ petition.

3. The respondent No.2/Director of Secondary Education has filed affidavit-in-opposition wherein it is stated that the petitioner is a Post-Graduate Teacher of Banskandi N.M.H.S. School and he was found absent for a total of 23 days in the year 2022, which is beyond the limit of 12 days of Casual Leave in a Calendar year. Therefore, after adjusting 12 days of Casual Leave, the rest 11 days was deducted from the salary bill of the petitioner in the month of January, 2023. It is also stated that the petitioner was informed regarding the excess Casual Leave by Order Book on 03.01.2023 and 05.01.2023 and also by registered post. However, the petitioner did not receive the letter.

4. It is also stated in paragraph-6 of the said affidavit that the other teachers in the said School who had availed excess Casual Leave were adjusted against their Earned Leave by the Inspector of Schools, CDC, Silchar except the petitioner as the petitioner did not apply for Earned Leave. Therefore, learned Standing Counsel, Secondary Education Department, Government of Assam, submits that as the petitioner had availed excess Casual Leave and he did not apply for Earned leave, the case of the petitioner could not be treated on similar footing with those

teachers whose excess Casual Leave were adjusted against Earned leave by the Inspect of Schools, CDC, Silchar.

5. Ms. Goswami, learned counsel for the petitioner, on the other hand, submits that the petitioner did not apply for any Casual Leave in the year 2022, which is clearly shown by the Daily Attendance Register of Teachers of Banskandi N.M.H.S. School, which is annexed as Annexure-1 to the affidavit filed by the respondent No.2. Therefore, the deduction of salary of the petitioner for the month of January, 2023 is illegal and, therefore, a direction should be issued to the respondents to refund the salary deducted in the month of January, 2023.

6. After hearing learned counsel for the parties and on consideration of the materials available on record, what is discernible in the present writ petition is that similarly situated teachers who had availed excess Casual Leave were adjusted against their Earned Leave by the Inspector of Schools, CDC, Silchar. Further, as the petitioner denies that he has not taken any Casual Leave for the year 2022, the same being a disputed question of fact, this Court is unable to enter into the same exercising jurisdiction under Article 226 of the Constitution of India.

7. Accordingly, the matter is remanded to the Director of Secondary Education/respondent No.2 to have a verification as to whether the petitioner had availed any Casual Leave for the year 2022 by calling for the Attendance Register of Banskandi N.M.H.S. School for the year 2022. The respondent No.2 shall also hear the petitioner in person in the presence of the Principal, Banskandi N.M.H.S. School as well as the concerned Inspector of Schools and thereafter pass appropriate orders in accordance with law within a period of two months from the date or receipt of a copy of the order of this Court.

- 8.** With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant