

GAHC010054492021



In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P.(C) NO. 5622 OF 2023

Mrs. Biyola Baruah,
Aged about 44 years
Wife of Mr. Maheswar Saikia,
Resident of village Udamari, P.O.- Balipara,
P.S.-Charlduar, Dist.-Sonitpur, Pin-784101, Assam.

.....Petitioner

-Versus-

1. The Union of India represented through the Secretary to the Government of India, Ministry of Health and family Welfare, New Delhi.
2. The Director, LGB Regional Institute of Mental Health, Tezpur, District- Sonitpur, Pin-784001.
3. The Chief Administrative Officer, LGB Regional Institute of Mental Health, Tezpur, Pin-784001.
4. The Comptroller and Auditor General (CAG) of India, Deen Dayal Upadhyaya Marg, New Delhi-110124.
5. North Eastern Council, represented by the Chairman Room No. 410, 1st Floor, NEC Secretariat, Nongrim Hills, Shillong-793003, Meghalaya.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. A. C. Borbora, learned senior counsel assisted
by Ms. N. Dey, learned counsel.

Advocate for the respondents: Mr. A. K. Dutta, learned standing counsel, LGBRIMH and Mr.K. Gogoi,
learned CGC.

ORDER

Dated :-07.03.2024

Heard Mr. A. C. Borbora, learned senior counsel assisted by Ms. N. Dey, learned counsel appearing for the petitioner. Also heard Mr. A. K. Dutta, learned standing counsel, LGBRIMH and Mr. K. Gogoi, learned CGC appears for the respondents.

2. Although this matter was taken up for hearing together with WP(C)/2209/2021, separate order is passed as the issue involved here, although is a sequel to the issues raised in W.P.(C)/2209/2021, however, this writ petition is filed with a specific prayer seeking a direction for releasing the increment payable to the petitioner, therefore a separate order is passed in this writ petition

3. This writ petition was filed putting to challenge the order dated 07.12.2022 bearing number LGB/Estt./PF/04/1510/8734, whereby the annual increments payable to the petitioner was not released as the disciplinary proceedings in respect of the petitioner are in processed and that currently the matter is

pending before the High Court.

4. In this writ petition, the challenge is to the denial of release of the increment found to be payable to the petitioner. The petitioner claims to be entitled to increment payable to the petitioner. The said increment was not released as the disciplinary proceeding is in process and the matter is present presently pending before this Court. This was informed to the petitioner by communication dated 7th December, 2022 (Annexure 18) of the writ petition. The counter affidavit has been filed by the department institute, wherein there is an averment that the petitioner is not entitled to the increment for the period 1st July 2019 to 30th June, 2020. The increment on 1st July 2020, however was released provisionally. The learned counsel for the respondents has not been able to refer to any provisions of law or the Rules, which empowers the authority to withhold an increment which an employee is entitled to get under law on the ground that a departmental proceeding is pending and/or due to the pendency of a matter before a Court of law. There is no order of this Court directing the respondents not to release the increment stated to be payable to the petitioner. Insofar as entitlement to increment is concerned, what is necessary to be seen is whether the employee fulfills the requirement of the relevant period of service. Office memorandum dated 12.09.2022 reflects that except for the conditions mentioned under Office Memorandum dated 18.02.1986, qualifying service of less than 6 (six) months on account of E.O.L between 1st of July, 2020 of the previous year till 30th June of the year under consideration shall have the effect of postponing the increment to 1st of July to next year.

5. However, from the facts pleaded available before this Court, it is seen that

notwithstanding the period of absence without leave alleged against the writ petitioner and which is the subject matter of the disciplinary proceedings, the petitioner otherwise became eligible for her increment in terms of the relevant Office Memorandums. Such position in fact is not disputed by the learned counsel appearing for the respondents. If that be so, then unless there is a specific order passed by the authorities giving reasons for withholding of the increment, mere pendency of a disciplinary proceeding, and/or pendency of any matter challenging the said disciplinary proceeding before Court of law, cannot be accepted to be a valid ground for denial of the increment payable to the petitioner.

6. Under such circumstances, the denial of increment of the petitioner cannot be sustained as no provision of law or procedure has been brought to the notice of the Court empowering the respondent authorities for withholding an increment solely on the ground of pendency of a disciplinary proceedings and/or pendency of a proceeding before this Court involving the said disciplinary proceedings. The communication dated 10th October, 2023 issued to the petitioner is therefore set aside. The authorities are directed to release the increment payable to the petitioner as per law without any further delay. Pendency of disciplinary proceedings cannot be considered to be a valid ground to withhold the increment payable to the petitioner until the disciplinary authority on valid grounds and reasons passes necessary order as empowered under the rules and procedure directing, withholding or stoppage of any increment.

7. Writ petition WP(C)/5622/2023 is therefore allowed. The respondents are directed forthwith to release the increment payable to the petitioner.

8. No order as to cost. Interim order, if any, stands vacated. Any pending I/As are also disposed of.

JUDGE

Comparing Assistant