

GAHC010205332024



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

**Case No. : WP(C)/5104/2024**

SRI MANAB DEKA  
S/O- LATE TILAK CHANDRA DEKA,  
R/O- TILAK MANSION, 125,  
RAJGARH ROAD ABOVE INDICASH ATM, GUWAHATI, KAMRUP(M),  
ASSAM, PIN-781007

VERSUS

THE STATE OF ASSAM AND ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, HIGHER EDUCATION DEPARTMENT, ASSAM SECRETARIAT,  
DISPUR, GUWAHATI, ASSAM, PIN- 781006

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM  
KAHILIPARA  
GHY- 19.

3:THE GOVERNING BODY  
REP. BY THE PRESIDENT  
PRAGJYOTISH COLLEGE  
SANTIPUR

GUWAHATI-09  
KAMRUP (M)  
ASSAM

4:PRAGJYOTISH COLLEGE

REP. BY THE PRINCIPAL  
BHARALUMUKH

SANTIPUR

GUWAHATI-09  
KAMRUP (M)  
ASSAM

5:THE PRINCIPAL  
PRAGJYOTISH COLLEGE  
BHARALUMUKH  
SANTIPUR

GUWAHATI-09  
KAMRUP (M)  
ASSA

**Advocate for the Petitioner** : MR. A BHATTACHARYYA,

**Advocate for the Respondent** : SC, HIGHER EDU,

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**O R D E R**

**01.10.2024**

Heard Mr. A. Bhattacharyya, learned counsel appearing for the petitioner and Mr. S. Bhuyan, learned Standing Counsel, Higher Education Department, Assam for the respondent Nos. 1 and 2.

**2.** The petitioner is presently serving as an Assistant Professor in the Department of Physics in Pragjyotish College, Guwahati since the year 1997 prior to provincialisation of his service.

**3.** By a communication No.DHE/CE/Misc/26/2021/19 dated 25.03.2021, the Director of Higher Education (DHE), Assam, respondent No.2, issued show cause notice to the petitioner under the provisions of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964, asking him to show

cause within 10(ten) days from the date of issuance of the said communication as to why any of the penalties prescribed in clauses (i) to (iii) of Rule 7 of said, 1964 Rules should not be inflicted upon him on the charges that- *While he was in service as Assistant Professor in the Department of Physics of Pragjyotish College, Guwahati, he unauthorizedly remained absent from duties and was involved in immoral activities at an outstation location on a full working day.*

Petitioner was accordingly charged with unauthorized absence and of possessing immoral character that rendered him to be unfit for a noble profession like teaching and also for defaming the Education Department as well as the faculties employed for noble profession of teaching.

**4.** Along with the said show cause notice dated 25.03.2021, the petitioner was served with list of witnesses and list of documents.

**5.** Subsequently, the DHE, Assam by order dated 08.04.2022, suspended the petitioner from service pending drawal of departmental proceeding specifying that he will get subsistence allowance as per Rules and that he shall not leave the Headquarter without the permission of the competent authority concerned.

**6.** Later, the petitioner approached this Court by preferring a writ petition being WP(C) No.6246/2022, challenging the said order of his suspension dated 08.04.2022.

**7.** The Court, after hearing the petitioner as well as the respondents in the Higher Education Department, disposed of the said writ petition WP(C) No.6246/2022 by order dated 11.04.2023, directing the respondents in the Higher Education Department, Assam to reinstate the petitioner to his

post upon receipt of a certified copy of the said order by the Director of Higher Education, Assam.

**8.** Pursuant to the said order of the Court dated 11.04.2023, the Director of Higher Education, Assam, by order dated 20.06.2023, withdrew the suspension order of the petitioner dated 08.04.2022 with immediate effect and the petitioner, accordingly, w.e.f. 28.06.2023 joined his service at Pragjyotish College, Guwahati submitting his joining report before the DHE, Assam.

**9.** Later, the DHE, Assam by a speaking order dated 09.05.2024, came to the conclusion that the disciplinary proceeding against the petitioner that he was unauthorizedly absent in his service was not proved and that the departmental proceeding could not establish the incident relating to the petitioner that he met a lady in a Dhaba at Morigaon and the DHE, Assam by the said speaking order dated 09.05.2024, dropped the departmental proceeding initiated against the petitioner as the charges framed against him could not be proved.

**10.** It is submitted by the petitioner that though the petitioner was reinstated in service by the order dated 20.06.2023 withdrawing his suspension order dated 08.04.2022 and by the speaking order dated 09.05.2024, dropped the departmental proceeding initiated against him on 25.03.2021, as the charged against him could not be proved, where both the orders dated 20.06.2023 and dated 09.05.2024, noted above, were issued by the DHE, Assam, the respondent authorities till date did not regularize the period of his suspension from 09.04.2022 to 27.06.2023, treating him as on duty, nor paid him the wages during the period of his suspension from 09.04.2022 to 27.06.2023 including the arrear pay and

allowances as admissible under the Rules and also not paid him the increments for the years 2021-22 and 2022-23 to which he is entitled for.

**11.** In that regard, the petitioner on 25.06.2024 submitted a representation before the DHE, Assam, which is yet to be considered and disposed of. Hence, this writ petition by the petitioner filed on 26.09.2024 praying for a direction to the respondents in the Higher Education Department as well as the authorities in the Pragjyotish College, Guwahati, amongst others:-

*“(i) Mandamus shall not be issued directing the Respondent Authorities, more particularly the Respondent No.2 to regularize the suspension period of the petitioner with effect from 09.04.2022 to 27.06.2023 treating the same as on duty;*

*(ii) Mandamus shall not be issued directing the Respondent Authorities, more particularly the Respondent No.2 to pay the back wages to the petitioner during the period of his suspension from service w.e.f. 09.04.2022 to 27.06.2023, the arrear pay and allowances admissible under law to which the petitioner is entitled to including increments payable to the petitioner, and to give all consequential benefits to the petitioner;*

*(iii) Mandamus shall not be issued directing the Respondent Authorities, more particularly the Respondent No.2 to pay interest at the bank rate on the back wages due to the petitioner for the period of his suspension and on all other pending dues from the date of non payment of such back wages and other dues till payment.”*

**12.** Apparently, the petitioner who was suspended from service on 08.04.2022, was later reinstated by the DHE, Assam by its order dated 20.06.2023 with immediate effect pursuant to the order of the Court dated 11.04.2023 passed in WP(C) No.6246/2022 and the petitioner accordingly re-joined his service on 28.06.2023. Further, the departmental proceeding initiated against the petitioner on 25.03.2021 was later dropped by the DHE, Assam by the speaking order dated 09.05.2024 as the charges

framed against the petitioner could not be proved.

**13.** It is seen that the suspension period of the petitioner was not regularized by the said order dated 20.06.2023 issued by the DHE, Assam while withdrawing the suspension of the petitioner.

**14.** After hearing the learned counsel for the parties and considering the entire aspect of the matter, the petitioner is directed to submit a fresh representation stating his grievances before the Director of Higher Education, Assam, respondent No.2 on or before 30.10.2024 through the President of the Governing Body of Pragjyotish College, Guwahati i.e. the respondent No.3 and the Principal of Pragjyotish College, Guwahati, the respondent Nos.4 & 5 along with a certified copy of this order, obtaining necessary acknowledgement from the said authority in that regard.

**15.** In the event of filing such representation by the petitioner, the DHE, Assam on obtaining necessary reports from the authorities of Pragjyotish College, Guwahati including the President of the Governing Body of said College as well as the Principal of Pragjyotish College, Guwahati, shall dispose of such representation of the petitioner pertaining to regularization of his suspension period from 09.04.2022 to 27.06.2023, payment of his salary/arrear salary as the case may be, for the period from 09.04.2022 to 27.06.2023 and his annual increments for the period of 2021-2022 and 2022-2023, as per his entitlement in accordance with law intimating the petitioner about the outcome of his representation.

**16.** As directed above, the petitioner shall file his representation before the DHE, Assam on or before 30.10.2024 stating his grievances indicating his communication number, telephone/mobile number and his full

address.

**17.** Further, the DHE, Assam shall dispose of such representation of the petitioner within a period of four months from the date of its receipt, as directed.

**18.** The President of the Governing Body of Pragjyotish College, Guwahati, respondent No.3 as well as the Principal of the said College, respondent Nos. 4 & 5 shall do the needful for compliance of this order. For that purpose, the petitioner shall submit certified copy of this order before the said respondent No.3 as well as the respondent Nos. 4 and 5, obtaining necessary acknowledgements from them in that regard.

**19.** The writ petition stands disposed of with the above observations and directions.

**JUDGE**

**Comparing Assistant**